

## **Consumer Protection Act to outlaw “trading as” names of companies**

The practice whereby companies or close corporations trade under names other than their registered names will cease with the implementation of the Consumer Protection Act, 2008 (CPA).

Section 79 of the Act prohibits any person from carrying on business except under the person’s full name as recorded in an identity document or officially recognised or in the case of a juristic person (for example, a company), a business name registered with the Registrar of Companies.

This means that a trading name must be the registered name of the entity. Section 80 does, however, allow a person to register any number of business names that are used or will be used in carrying on business.

It should also be noted that in terms of section 81 of the CPA, a business name may not be the same as, or confusingly similar to an entity already registered under the Companies Act, the Close Corporations Act or the Co-operatives Act.

The name may also not be the same as or similar to a registered trade mark belonging to another person.

If an entity conducts business under a trading name that is not its registered name, the National Consumer Commission may require it to cease trading under that name.

The possible proliferation of new registered business names will require vigilance on the part of businesses and trade mark proprietors to protect their intellectual property rights in respect of their registered names.

Section 79 becomes effective on 29 October 2010, unless deferred by the Minister.

The Commission may not take any action to enforce section 79(1) at any time against a person for the use of a business name, if that person:

- Had registered that business name before 29 October 2010 in terms of any public regulation other than a repealed law; or
- Was actively conducting business under that business name for a period of at least one year before the date on which section 79 took effect.

Any business name that, as of 29 October 2010, was registered in terms of any repealed law must be regarded as having been registered in terms of this Act, as of the effective date.

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