

Ignore the Consumer Protection Act at your peril

Issued by [Bullion PR & Communication](#)

18 Jan 2023

The Consumer Protection Act (68 of 2008) was launched in 2008 and provides South Africans with key protections against the ambiguous wording and vague language traditionally associated with some contracts and professional literature. With many of these documents leaving South Africans in a vulnerable position where they were forced to stay ignorant in spite of their real commitments.



“Since 2008, the CPA has become an important part of South African law and has protected many South Africans,” says Dr Marlini Moodley, a lecturer at Mancosa and an accredited business advisor, “companies and tertiary institutions should know that ignoring the CPA is illegal, and all parties need to continue using plain language for labels, inserts, packaging, and contracts. Particularly when it comes to marketing.”

Unreadable and confusing

Two very important pieces of legislation, the National Credit Act (34 of 2005) and the CPA, have paved the way for ethical dealings across the South African landscape.

In the past, contracts were unreadable and confusing, but as Dr Moodley points out, there is now an addition to the CPA which compels drafters of contracts to use plain language that any normal consumer should be able to understand. This is especially important in the South African context, where many consumers come from previously disadvantaged backgrounds and communities where literacy levels have been traditionally low. This lack of literacy is a compounding factor making the challenges of vague language even more significant and creating a greater ethical burden on the South African business community to ensure clarity in their documents.

While literacy levels have increased significantly across the country. There are still vulnerable consumers who battle with complex language or specialised vocabulary.

“Section 22 of the CPA stipulates that contracts and advertising material must make use of plain language. There must be no ambiguities in terms of pricing or the contents of the product. However, there have been no statutory guidelines that might assist business owners in staying compliant with Section 22 of the CPA. Currently, the concept of plain language is

subject to interpretation, with this issue only being resolved by the introduction of a formal guideline,” says Dr Moodley.

Mishka Singh, a Mancosa lecturer and admitted attorney, agrees with Dr Moodley, pointing out that specific attention needs to be given to students who, despite being educated, can also be confused by ambiguous language.

“Students studying at universities and colleges are also customers. As customers, they have a right, in terms of Section 22 of the CPA, to information in plain and understandable language. In terms of this provision, any notice or document must be in the prescribed form and if no form is suggested, it must be in plain language. This applies to any contracts, marketing materials, and indemnity notices displayed to students” points out Singh.

The purpose of plain language

Many professions are governed by ethics and an industry association often tasked with ensuring the ethical conduct of their members.

“This is why the formalisation of plain language is so important,” says Dr Moodley, “for customers, the adoption of plain language ensures that any consumer reading the contract or marketing material should easily find what they need, understand what is written, and then be able to use the information.”

Despite increasing literacy levels across South Africa, the public at large still requires the simplification of various components of legislation which impact them on a daily basis; particularly when it comes to business transactions.

“Furthermore, a move to release clear and cogent guidelines pertaining to the concept of plain language must be expedited and addressed accordingly,” says Singh.

An area of concern

Singh points out that the legal jargon used in corporate contracts is a major area of concern.

Contracts may include technical language which can be difficult for the average customer to understand. These contracts are often drafted by legal professionals who are accustomed to legal jargon, its use, and the nuances associated with it. “Customers usually do not properly read or understand contracts before signing. In the past, included terms and conditions were not usually negotiable, often resulting in their heavy bias towards the consumer. Further, contracts were mass produced and many terms were fixed. The customer was not in the position to bargain with their supplier and with no option but to sign the agreement, many were forced to accept the proposed terms,” says Singh.

Customers need to understand an agreement by reading it thoroughly before signing anything. The test for plain language is whether an average buyer with average reading ability and minimal knowledge understands the content of the document without obtaining legal advice.

“It is imperative that businesses, as well as educational institutions, set forth their terms and conditions in basic, comprehensible language. Further, they need to draw attention to any relevant aspects of the contract or arrangement that may be ambiguous so that it can be easily understood by customers. All company processes should also be reviewed to ensure that communication to the customer (from the customer complaints procedure to lengthy contracts) makes use of plain language. Additionally, all language applied in any promotional strategy must be clear, and retailers cannot make use of fine print as they did in the past.

Although many of these changes may incur added costs for the retailer or institution in re-drafting their promotional templates, quotations, and agreements, these changes are necessary,” says Dr Moodley.

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