

Consumer Protection Act in Cyberspace

Are your rights truly protected as a consumer when it comes to online direct marketing?



Now that the internet has taken centre stage, South Africa's Consumer Protection Act faces new challenges. This is because when it comes to online direct marketing, our current laws do not truly protect the consumer's rights to privacy.

What is direct online marketing?

A form of advertising which allows businesses and non-profit organizations to communicate directly to customers through a variety of media including cell phone text messaging, email, websites and online adverts; with the intention of doing a transaction and supplying goods and services.

Which are the three overlapping acts?

- *The Consumer Protection Act 68 of 2008*
- *The Protection of Personal Information Act 4 of 2013*
- *The Electronic Communications and Transactions Act 25 of 2002*

The Electronic Communications and Transactions Act 25 of 2002

Section 45 of this act allows the supplier to send electronic communication; however there are regulations that need to be adhered to for the communication to be lawful. Firstly there needs to be an option for the consumer to end the communication. Secondly, where the consumer requests for it, the way in which the information and contact details were obtained by the supplier needs to be indicated. Should the consumer not respond to the communication made to him/her there will be no agreement concluded.

Direct online marketing in terms of the Consumer Protection Act

Direct marketing has prominent elements that need to be adhered to in order to deem the marketing fair, honest and responsible.

The *Consumer Protection Act* provide for the protection of a consumer against unwanted direct marketing, for instances that would allow the consumer to provide personal information without the risk of being harassed by direct online marketers e.g. by registering a pre-emptive block.

A huge challenge with the Electronic Communications and Transactions Act is that websites operating from overseas do not fall within the scope of our legal framework and subsequently our law enforcement does not have jurisdiction on the matter. Unfortunately, this is just one example of many overlapping and sometimes conflicting web of legislative provisions that apply to direct online marketing or unsolicited commercial electronic communications.

Scholars and jurisdicitive bodies have been putting the notion of an amended Electronic Communications Act into play for quite some time now. With the continuous rise in popularity of online marketing, these provision gaps need to be filled in soon.

SERR Synergy assists businesses to comply with provisions of the above mentioned Acts.