

HC

HALSBURY CHAMBERS

BULLETIN



THE CONSUMER PROTECTION ACT

Know your rights and enforce them



Have you ever gone into the grocery store, picked up a product and it had no price on it? Well that grocery store is disobeying the law and penalties can arise. Did you know that in the absence of a stated warranty given by a retailer, an implied warranty of six months

on parts and labour can be attached to the sale of all used goods and to the repair of all goods? The aforementioned protections, to name only a few, are afforded to the consumer in the Consumer Protection Act, 2006 (the "Act"). This Act is a hidden treasure with vast protections and far reaching consequences and yet its protections are undiscovered by many. It gives the unassuming public the right to demand quality service, to have full and frank disclosure of the price of goods and services, and also protects against false representations made by businesses.

So what does the Act have to offer? By section 3 of the Act, a Consumer Commission is established and thus the consumer is backed by this Commission who has the power at the request of the consumer, who has been wronged, to carry out such investigations in relation to the sale of goods or the provision of services in order to determine whether the goods or services were provided in contravention of the Act. Additionally, the said Commission has the power "by report and recommendation to the Minister of Consumer Affairs" to impose hefty fines on companies who are not complicit with the Act. It should be noted that the Consumer Commission was appointed in the past but there has been no recent re-appointment. Thus, concerns by consumers should be directed to Mrs. Barbara Burrows, Permanent Secretary in the Ministry of Labour and Social Development, who will direct all concerns to Mr. Sidney McKenzie, Chief Inspector of the Consumer Welfare Unit.

Did you know, as a consumer, in accordance with section 21(1) of the Act, **before you pay for any good**, you have the right to be provided with, both orally and in writing, information regarding the origin of the good, price, care, terms, what components the goods are made up of, what hazards there are, proper usage, assembling, installation, weight and size of the goods and where applicable, what professional fees the provider is charging in respect of the goods? The

next time you go to the ice-cream parlor you may be particularly grateful to be armed with provision 22(3) of the Act, which indicates that it is actually an offence if someone selling or purporting to sell a good by weight or other measurement knowingly deceives and delivers to the consumer, a lesser quantity than that purported and which does not correspond with the price charged.

You may pay particular attention to the contents, when writing or receiving a receipt, after reading section 23(1) of the Act, as in accordance with this section the receipt must include the amount paid, date on which the purchase was made or service rendered, description of the goods sold or services rendered and if applicable, the professional fees charged. Non-compliance with this section by the provider of goods or services means that such provider may attract a fine as hefty as Two Thousand (\$2,000.00) Dollars. Imagine paying Two Thousand (\$2,000.00) Dollars for a receipt that did not comply with the Act, when your customer only spent less than a dollar on mints! Is it worth it? Of particular interest to me was section 24(2) of the Act, so much that I had to read it several times, I could hardly believe my eyes. Section 24(2) of the Act states that:

"Any warranty given by the manufacturer (whether local or foreign) and attached to any goods or services sold or provided as the case may be, in The Bahamas shall be deemed to extend to the provider in The Bahamas who shall be liable to the customer in relation to such warranty."

In essence, what that means is we have rights as consumers. We have the right in accordance with the Act to demand that a manufacturer's foreign or local warranty be adhered to. When having your car repaired pay particular attention to section 29(3)(a) of the Act which indicates that a provider who offers a repair service shall disclose to the customer **any and all additional related repairs** that he considers necessary for the customer **to enjoy reasonably long and uninterrupted use of the repaired goods**. That means that if a mechanic has to do additional repairs above and beyond what you have agreed to, he must discuss this with you prior to doing the repairs.

Section 33(1) of the Act deals strongly with false representations from providers. It states that no provider shall falsely represent that (a) goods or services are of a particular kind, standard, grade,

quantity or style; (b) that a particular person has agreed to acquire the goods or services; (c) that goods are new or reconditioned; (d) that goods or services have an endorsement, particular performance or characteristic; and (e) that goods or services are of a particular price. Contravention of this section can cost you as much as Five Thousand (\$5000.00) Dollars. As mentioned, the Act is meant to empower the consumer and sections 36(1) and 36(2) do just that. This was another jaw dropping section for me as it stated in section 36(1) that an advertised delivery date for new, used and repaired items shall form part of the contractual agreement between the provider and the customer. Section 36(2) goes further and states that if the provider fails to meet the advertised delivery date, he **shall refund** to the customer all money's paid plus and amount equal to ten percent of the amount deposited for each week the goods were not delivered starting fourteen (14) days after the advertised delivery date. After reading that section, one would hope that consumers and providers alike will strictly adhere to it. One final provision of particular importance is section 51. In accordance with this section, all retailers or providers offering goods or services to consumers **shall be** appropriately registered. Further, the instrument of registration and licence shall be conspicuously displayed by the provider for viewing by the consumer. Those in contravention of that section commit an offence and are liable to a fine of One Thousand (\$1,000.00) Dollars.

The sections of the Act referred to in this bulletin are just teasers and are by no means exhaustive. I would encourage all consumers and providers alike to read the Act in its entirety as its importance cannot be understated. It has (1) potential business implications; (2) a great impact on proposed new businesses who should inwardly digest the Act before their launch; (3) implications of product liability; and (4) coercive forces to change consumer/provider interactions forever. In short, consumers should go armed with the provisions of the Act when making purchases, adhere to the clarion call of "Caveat Emptor", simply meaning "buyer beware", and know your rights and enforce them.

The information stated above is not intended to be construed as legal advice in any way.

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