

# South African Small Independent Retailers' Knowledge of the Consumer Protection Act

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## ABSTRACT

Following the first democratic elections in 1994, the South African government has introduced several laws regulating the country's business environment for the purpose of protecting consumers from unethical business practices. One such law is the Consumer Protection Act (68 of 2008) (CPA). The CPA was implemented for a number of reasons, including to conform to international best practices regarding consumer law, to replace the existing but out-dated laws, and, most importantly, to provide protection to vulnerable consumers who in the past were exposed to unethical business practices as a result of the antecedent of apartheid. Despite the good intentions of the CPA, the law will be of little value to consumers if retailers do not generally know and apply it. Therefore, a study was undertaken to measure the perceived and actual knowledge of the CPA amongst retailers. A self-administered questionnaire was used to measure perceived and actual knowledge of the CPA amongst a sample of 97 small independent retailers located in 10 shopping malls in the Vaal Triangle area of South Africa. The findings indicate that whilst small independent retailers consider themselves well-informed regarding the CPA, their actual knowledge of the Act is lacking. This suggests that a number of small independent retailers in South Africa may be conducting their business in a manner that does not comply with the CPA and, therefore, is not in the best interests of consumers.

**Keywords:** Consumer Protection Act; Consumer Rights; Retailers; South Africa

Under the leadership of South Africa's first democratically-elected government in 1994, the protection of consumer rights was one of several issues to receive high priority by the government (Department of Trade & Industry, 2004). The rationale was that many of the country's consumers are uneducated, illiterate and inexperienced, which leaves them vulnerable to exploitation, unethical marketing practices and unfair contracts (Rampersad &

Reddy, 2012). There are three possible ways to protect consumers effectively. These include formulating consumer protection legislation that regulates the market, educating consumers about their rights, as well as the products and retailers available to them, and providing a system or mechanism of redress for consumers who has been wronged (Jones *et al.*, 2005; Mupangavanhu, 2012; Peters & Woolley, 2013).

In the past, most of the consumer rights education focused on the consumers with the reasoning that only informed consumers can take advantage of their rights (Meir, 1985). This created an environment in which consumers were frequently better informed than retailers, who were often unaware and non-compliant concerning consumer legislation (Knowler, 2013).

The Consumer Protection Act (68 of 2008) (CPA) came into force on April 1, 2011. It codified several existing laws and introduced several new concepts into South African legislation. South African businesses started preparing for the implementation of the Act as early as 2009 by updating standard terms in their contracts, as well as demanding that upstream retailers be compliant to protect them from product liability (Van Eeden, 2009).

Since its implementation, the CPA has had far reaching consequences on the South African market place, from changing the regulatory framework governing franchise agreements (Louw, 2011) and the way companies are allowed to advertise their products (Kirby, 2009), to prescribing which name(s) a business may use (Strachan, 2012). The CPA has also brought about many benefits such as replacing a patchwork of laws, creating certainty in the marketplace, and setting certain uniform standards in the business environment (Van Eeden, 2009).

Despite the implementation of the CPA, many retailers, including small independent retailers, appear to remain ignorant of the core consumer rights covered in the CPA, or wilfully choose to misrepresent consumer rights (Knowler, 2012a), as is evident by the high number of complaints received by the National Consumer Commission pertaining to the retail sector (Anon., 2011).

In South Africa, small businesses create an estimated 50 percent of all employment opportunities and contribute approximately 45 percent of the economy's gross domestic product (GDP) (IDC, 2014). Unlike the large retail chains and franchises, it is doubtful that small independent retailers have any internal legal expertise and, therefore, may not be as informed as they should be on the legal aspects of the CPA. However, their failure to comply

with the Act may result in significant financial punitive damages, loss of reputation and even the closure of the business. Despite the importance of small businesses to the South African economy and the potential dangers associated with their non-compliance to the CPA, there is a dearth of research on their knowledge of the core consumer rights in the CPA.

In order to address the gap in the literature, the purpose of the study reported on in this article was to determine small independent retailers' perceived knowledge of the core consumer rights contained in the CPA (68 of 2008) and compare this to their actual knowledge of these rights.

## **RISE OF CONSUMER RIGHTS**

The first evidence of consumer rights can be found in the Code of Hammurabi, created almost 3 800 years ago by King Hammurabi of Babylon. This code contained 282 laws that dealt mostly with property law and criminal law in its ancient form, but also contained several laws regulating contracts and commerce (Johns, 1987). The first modern consumer laws were enacted during the early nineteenth century, where countries like the United States of America (USA) led the trend with laws such as the 1872 Criminal Fraud Statute and the establishment of the Interstate Commerce Commission, followed by the Pure Food and Drug Act of 1906 and the Meat inspection Act of 1907 (Meir, 1985).

In the second half of the twentieth century, the consumer protection movement began to gain momentum when, on 16 March 1962, President Kennedy delivered a speech to the USA Congress in which he indicated that government had a responsibility to protect consumers, which required legislative and administrative actions (Peters & Woolley, 2013). In 1985, the United Nations (UN) endorsed the concept of consumer rights through the United Nations Guidelines for Consumer Protection, which contributed to the advancement of the position of consumers around the world (Brown, 2011).

## **SOUTH AFRICA'S CONSUMER PROTECTION ACT AND NINE CORE CONSUMER RIGHTS**

South Africa was slow to follow the trend towards greater consumer protection and instead the principle of *caveat emptor* (let the buyer beware) was thought to be sufficient, which meant that consumers had little or no recourse once they concluded a valid contract (Woker, 2010). The reason for this was that before the implementation of the CPA, South Africa mainly used the law of contract to regulate business contracts; contract law being derived from Roman Dutch and English laws, as are the majority of South African laws (Hawthorne, 1995). According to Rampersad and Reddy (2012), consumers could only approach the court to enforce valid contracts or claim for damages if contracts were broken. As such, courts measured only compliance with a contract and not the content of the contract.

Traditionally, one of the main reasons for using contract law to regulate business transactions was the assumption that parties have equal power to negotiate, and that if a contract was to the detriment of one of the parties, that party could not be forced into it (Cockrell, 1997). However, contract law and other actions such as claims for unjustified enrichment, based on both English and Roman Dutch laws, offered insufficient protection to a large part of the population who were vulnerable to the actions of unscrupulous retailers (Hopkins, 2003), since the bargaining power was in favour of the retailers (Turpin, 1956). The lack of a strong consumer movement exacerbated the position of vulnerable consumers in South Africa (Department of Trade & Industry, 2004). Therefore, it was necessary to develop legislation that set out basic rights as a single reference to provide certainty in the market place (Woker, 2010). South Africa did so by introducing several pieces of legislation.

The first piece of legislation was the Competition Act (89 of 1998), which led to the establishment of the Competition Commission and Competition Tribunal, responsible for the investigation of restrictive practices, abuse of dominant position and mergers. The goal of

the Competition Act (89 of 1998) was to remedy market failures, provide a framework for regulating mergers, restrict anti-competitive practices, and encourage greater participation in the economy (Competition Act, 1998). The National Credit Act (34 of 2005) followed a few years later, which deals with consumer credit and the credit information made available by credit providers. It curtails reckless lending and provides protection to over indebted consumers from unethical debt collection (National Credit Act, 2005).

The CPA (68 of 2008) is, however, by far the most important to the average consumer. There exists a huge disparity amongst South Africans due to past discrimination based on race and gender. This discrimination was not only by the state but was also practised by the private sector; the apartheid system "supported, encouraged and even demanded discrimination and unfair treatment of customers by business entities" (Rampersad & Reddy, 2012). Newman (2010) argues that large portions of the population have very little experience with contracts and often sign agreements and make purchasing decisions that are to their detriment. As such, Rampersad and Reddy (2012) indicate that the state has a responsibility to protect vulnerable consumers due to inequities caused by unjust legislation in the past.

The CPA consists of six chapters, with the nine core consumer rights dealt with in Chapter 2 of the Act. These nine rights are as follows:

- Right to equality in the consumer market and protection against discriminatory marketing practices
- Right to privacy and to restrict unwanted direct marketing
- Right to choose
- Right to disclosure of information
- Right to fair and responsible marketing
- Right to fair and honest dealing
- Right to fair, just and reasonable terms and conditions
- Right to fair value, good quality and safety
- Right to accountability from retailers (CPA, 2008).

Rampersad and Reddy (2012) suggest that complying with the CPA may contribute to retailers' profitability and growth by enhancing consumer satisfaction and loyalty. However, Lewis (2012) argues that the Act is detrimental to business in that it introduces an unnecessary burden on retailers who already struggle to comply with existing legislation and regulations. The CPA has also been criticised because it is considered to be biased and over-protective of the consumers (Manyati, 2011). For instance, Section 56 of the CPA grants consumers six months in which to return broken or defective goods to be replaced or repaired. According to Naude (2011:342), this not only creates uncertainty but as many products are not designed or intended to last that long, "it is too unbalanced in favour of consumers and will unfairly affect retailers detrimentally".

Sharrock (2010) argues that certain provisions in the CPA need clarification, as the current definitions are very broad and, therefore, problematic. He adds that there is uncertainty as to when a consumer may approach the court, which is something that needs to be resolved. Allison (2011) goes as far as to describe the Act as draconian, indicating that it is drafted in a clumsy manner, and that it has shifted the balance of power in favour of the consumer by a significant margin. In addition, both enforcement and awareness remain a problem, and retailers often act with impunity since the National Consumer Commission, which should investigate and enforce the CPA, is not up to the task, and even contacting them is a challenge (Knowler, 2012b).

## RESEARCH METHODOLOGY

### *Sample*

The target population of this study comprised retailers in the South African market classified as small businesses. A small business in the retail sector is a business that is independently owned, has a total asset value (including fixed assets) of less than R3 million, a yearly gross income of less than R19 million, less than 50 employees (National Small Business Act, 1996) and is a separate and distinct business entity, managed by one or more owners (National Small Business Amendment Act, 2003). In screening participants in order to

ensure that they fell into the small retail business class, their independent status and number of employees were used to qualify participants as it was assumed that retailers would be hesitant to divulge financial information. Owing to monetary and time considerations, the sampling frame was limited to small independent retailers situated in shopping malls in the Vaal Triangle area of South Africa. For the study, the management of 10 shopping malls in the Vaal Triangle were approached and asked if they would allow questionnaires to be distributed to retailers during business hours. Permission was obtained from the management of nine of these shopping malls. A judgement sample of 97 small independent retailers across these nine shopping malls was then selected for the study.

### *Research instrument*

The study used a self-administered questionnaire consisting of three sections to collect the required data. The first section included questions requesting demographical information and contained screening questions to ensure that all participants were part of the target population. The second section measured perceived knowledge of the CPA in terms of overall perceived knowledge of the CPA and perceived knowledge of each of the nine core consumer rights outlined in the CPA. Responses were recorded on a six-point Likert scale ranging from strongly disagree (1) to strongly agree (6). The third section was designed to measure actual knowledge of the CPA and comprised a sample of 20 correct and incorrect statements extracted from the CPA pertaining to the nine core consumer rights, to which participants were requested to provide a true, false or do not know response. The questionnaire included a cover letter outlining the purpose of the study and assuring the confidentiality of the data collected.

## RESULTS

From the 97 questionnaires distributed, completed questionnaires were received back from 43 small independent retailers. The sample included small independent retailers in a range of industries, with the majority being in the clothing (16%), food (16%) and audio, electronics, computer, mobile phone and

photography (16%) sectors. Those that indicated 'Other' (12%) mostly fell in the service industry. In terms of the type of entity, most of the participants indicated that they were a private company (33%), followed by those who were a sole proprietor (28%). Most participants (46%) indicated that their retail business had been in existence for more than 10 years, thereby suggesting a certain degree of experience in retailing. Concerning the number of employees, the vast majority of the participants (77%) indicated having four or less employees. Table 1 provides a description of the sample.

The first task in the statistical analysis was to measure the participants' perceived knowledge of the CPA. Table 2 presents the computed means and standard deviations of participants' perceived knowledge of the CPA. Given that

responses were recorded on a six-point Likert scale, higher means translate into a higher perceived knowledge. As is evident from Table 2, means above 3.5, which falls in the agreement area of the scale, were computed on overall perceived knowledge of the CPA, as well as perceived knowledge of each of the nine core consumer rights. This suggests that small independent retailers are highly confident regarding their understanding of the CPA's core consumer rights. Having established the retailers' perceived knowledge of the CPA's core consumer rights, attention then was turned to testing their actual knowledge in this regard. Table 3 presents the scores pertaining to questions measuring participants' actual knowledge of the CPA. Where participants indicated that they did not know the correct answer, their response was recorded as an incorrect response.

**TABLE 1**  
Sample description

Industry	Percent (%)	Type of entity	Percent (%)	Number of years in existence	Percent (%)	Number of employees	Percent (%)
Home, decor, interior & furniture	2	Sole proprietor	28	0-2 years	9	0-4	77
Clothing	16	Partnership	14	3-5 years	26	5-9	16
Jewellery & accessories	5	Private company	33	6-10 years	19	10-19	5
Hair, health & beauty	10	Close corporation	25	10+ years	46	20-50	2
Food	16					51+	0
Books, cards, gifts & stationary	2						
Toys, education & hobbies	14						
Sport, outdoor goods & gear	2						
Audio, electronics, computers, mobile phones & photography	16						
Hardware, DIY & construction	5						
Other	12						

**TABLE 2**  
Perceived knowledge of the Consumer Protection Act (CPA)

Core consumer rights	Mean	Standard deviation
I consider myself to be knowledgeable concerning consumer rights in general.	4.81	0.958
I consider myself to be knowledgeable concerning the consumer's right to protection against discriminatory marketing practices.	4.63	1.196
I consider myself to be knowledgeable concerning the consumer's right to privacy.	4.93	1.033
I consider myself to be knowledgeable concerning the consumer's right to choose.	4.86	1.082
I consider myself to be knowledgeable concerning the consumer's right to disclosure of information.	5.00	0.899
I consider myself to be knowledgeable concerning the consumer's right to fair and responsible marketing.	4.77	1.306
I consider myself to be knowledgeable concerning the consumer's right to fair and honest dealing.	4.88	1.295
I consider myself to be knowledgeable concerning the consumer's right to fair, just and reasonable terms and conditions.	4.67	1.322
I consider myself to be knowledgeable concerning the consumer's right to fair value, good quality and safety.	5.00	1.272
I consider myself to be knowledgeable concerning the consumer's right to accountability from retailers.	4.61	1.466

Despite participants' confidence in their understanding of the CPA's consumer rights, the results of a test of their actual knowledge, as presented in Table 3, indicates a lack of knowledge. The participants appear to be the most knowledgeable about consumers' right to disclosure of information, with 91 percent of the retailers correctly marking contracts must be in easily understandable language as true and 72 percent marking customers may choose to pay the lower price if two prices are displayed on a product as true. Similarly, the majority of participants (79%) correctly marked customers may refuse marketing material as true, thereby suggesting knowledge of the consumers' right to privacy. Some of these rights existed before the CPA came into existence, as they could be found in both common law as well as legislation such as the Consumer Affairs (Unfair Business Practices) Act of 1988, the Trade Practices Act of 1976,

the Sales and Service Matters Act of 1964, the Price Control Act of 1964 and the Merchandise Marks Act of 1941. It is debatable whether participants' knowledge of these rights is due to actual knowledge of the CPA or merely the result of retail experience and common knowledge.

Just over half of the participants correctly answered the questions pertaining to the consumers' right to fair and honest dealing (58%) and protection against discriminatory marketing practices (56%). This suggests that 44 percent of small independent retailers believe that it is acceptable to give preferential treatment to certain groups of customers and 42 percent believe that exaggerated claims when marketing products is legal. Many of these retailers still appear unaware of the changes brought about by the CPA. For example, 67 percent of the participants still

**TABLE 3**  
Actual knowledge of the Consumer Protection Act (CPA)

	Correct answer	Correct responses (%)
<b>Right to protection against discriminatory marketing practices</b>		<b>55.8</b>
The retailer may not give preferential treatment to certain groups or customers.	False	55.8
<b>Right to privacy</b>		<b>79.1</b>
Customers are allowed to tell retailers not to send them marketing material.	True	79.1
<b>Right to choose</b>		<b>31.4</b>
Retailers may require customers to take bundled products.	False	25.6
A customer may cancel a 2 year contract at any time.	True	32.6
If a customer does not authorise repairs he still has to pay for them.	False	58.1
If a person receives goods he did not order he may keep them without paying for them.	True	9.3
<b>Right to disclosure of information</b>		<b>81.4</b>
Contracts must be in easily understood language.	True	90.7
If two prices are displayed then the customer may choose to pay the lower price.	True	72.1
<b>Right to fair and responsible marketing</b>		<b>41.85</b>
A retailer using direct marketing must inform a customer that he has 5 days to change his mind after signing.	True	67.4
A retailer may offer a customer a discount for referring other customers.	False	16.3
<b>Right to fair and honest dealing</b>		<b>58.1</b>
A retailer may use exaggeration when marketing his products.	False	58.1
<b>Right to fair, just and reasonable terms and conditions</b>		<b>39.5</b>
Unfair contracts are valid if both parties agree to the terms.	False	39.5
<b>Right to fair value, good quality and safety</b>		<b>46.5</b>
Customers do not have to accept products if delivery is late and the retailer did not give the customer advance notice of the delay.	True	67.4
Voetstoots clauses in contracts are allowed.	False	23.3
Customers have up to 6 months depending on the product to return unsafe or broken products.	True	27.9
If a retailer repairs a product he has to give 3 months guarantee on the repair.	True	67.4
Retailers are not responsible for damage caused by goods they supplied.	False	46.5
<b>Right to accountability from suppliers</b>		<b>31</b>
If a lay-by is cancelled the retailer does not need to return the full deposit.	False	30.2
If a retailer has placed a disclaimer, he does not remain responsible for a customer's property in his care.	False	18.6
If a retailer repairs a product, he may keep the parts replaced.	False	44.2

believe that consumers may be trapped in long-term contracts without the right to renege on such a contract, and 77 percent of the participants believe that goods may be sold 'voetstoots' or as is, regardless of hidden defects. Furthermore, 91 percent of the participants were unaware that consumers do not have to pay for unsolicited goods, 84 percent were unaware that network marketing is now illegal and 72 percent did not know that customers have up to six months (depending on the product) to return unsafe or broken products. These small independent retailers appear to have a particular lack of knowledge concerning the consumers' right to accountability from suppliers, right to choose and right to fair, just and reasonable terms and conditions.

The totals revealed that 51 percent of participants answered more than half of the 21 questions incorrectly and 49 percent of the participants answered more than 10 questions correctly, but none managed to answer more than 14 questions correctly. This indicates that most retailers are either unfamiliar with the CPA or have only a cursory knowledge of the Act.

## 6. Discussion

The purpose of this study was to determine small independent retailers' perceived knowledge of the core consumer rights contained in the CPA (68 of 2008) and compare this to their actual knowledge of these rights in the South African market. The findings indicate that while retailers are very confident regarding their knowledge of the CPA's nine core consumer rights, a test of their actual knowledge suggests that an alarming number of them do not understand most of these rights.

Locally and internationally, consumer rights movements as well as governments have placed great emphasis on educating people regarding their consumer rights. However, educating consumers alone is not sufficient. Retailers also have to be made aware of both consumer rights as well as their responsibilities towards consumers. As such, the South African government has an important part to play in increasing retailers' awareness of the CPA. This can be done

through the extension of existing consumer rights awareness campaigns, as well as with the use of public service announcements in the media, including radio, newspapers and television.

However, ultimately, the obligation rests with the retailer to comply with and be knowledgeable about the laws that are applicable in the business sphere. Therefore, once a retailer becomes aware of the CPA, he/she should take the necessary steps to become familiar with the Act and to comply with the directives of the Act. This may be done by studying the CPA, studying one of the many textbooks and/or online brochures that discuss the Act holistically or specific provisions thereof, or by retaining the services of a lawyer or some other informed person to act as an advisor in order to ensure compliance with the current law. This is not limited to the CPA, but also includes other legislation such as the Credit Act and the relevant labour laws. This will not only protect consumers, but will also protect retailers from penalties.

Naturally, in order to comply with the CPA, retailers must first be able to understand the Act. The CPA states that contracts should be in easily understood language; the reason being, that many of the consumers in the South African market are either semi-literate or have very little experience with contracts (Newman, 2010:735). It is ironic then that the CPA itself is not written in easily understandable language, and is only available in English, despite South Africa having 10 other official languages. This poses a serious problem not only for retailers, but also for consumers. How will people who are either semi-literate or not skilled in English be able to comply with the CPA if they are unable to read and understand the Act? Therefore, it is recommended that the government should publish information regarding the CPA in all the official languages in South Africa, namely English, Afrikaans, isiZulu, isiXhosa, Setswana, Xitsonga, Sesotho, siSwati, Sesotho sa Leboa, TshiVenda and isiNdebele language. This will make the Act more accessible to both consumers and retailers who would otherwise remain ignorant of their rights and responsibilities.

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