

# The implications of consumer protection legislation on promotional strategies of retail businesses

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## ABSTRACT

The Consumer Protection Act 68 of 2008 (CPA) was designed to prevent businesses from gaining a competitive advantage by engaging in unfair business practices in South Africa. The CPA is meant to protect consumers especially from unfair and unscrupulous practices that were used previously. The overall aim of the study was to evaluate the implications of the CPA on promotional strategies of retail businesses in Durban. The study adopts both quantitative and qualitative methodologies. Data was collected through a survey using questionnaires and structured interviews were also conducted with marketing managers and business owners. The study's findings indicate that while the businesses in the sample have been complying with the provisions of the CPA, specific provisions of the CPA have impacted on their promotional strategies. Previously used methods of marketing, such as emails and SMSs, have been replaced with new methods and this has resulted in an increase in their promotion's expenditure.

**Keywords:** Consumer Protection Act, CPA, CPA and marketing, CPA compliance and promotions, promotional strategies, promotions expenditure.

## INTRODUCTION

According to Shaw (2012: 31-33), a retailer's promotional strategies aim to attract shoppers to their retail outlets, convert them into customers and entice them to buy their merchandise at the lowest operating cost possible. Innovation and technology have influenced the way in which businesses operate to change drastically over recent decades. Marketing technology has given retailers access to consumers using various social media platforms via their cellphones, tablets, laptops and other devices ((Mkwizu 2019). Technology helps to grow consumer bases and create and maintain consumer relationships. The use of promotional and marketing technology assists businesses in reaching large numbers of consumers at a low cost. Technology has in fact greatly influenced how businesses communicate with their potential consumers (Pribanci 2020). Retailers prefer cost-effective promotional strategies. Email and SMS marketing is currently still an economical and efficient way to stay in contact with consumers (Versatech 2020). In the past, the retail sector enjoyed certain freedoms when it came to promotional strategies to attract consumers. However, the Consumer Protection Act 68 of 2008 (CPA) places severe restrictions on promotions by retailers, making it challenging for them to freely market themselves as they had previously done. With the rising costs of advertising, businesses are not able to engage in the low-cost promotional strategies that they used to, particularly through the use of technology (Erasmus 2010: 19).



Hence, this study explores particular aspects relating to the promotional strategies that retail businesses in Durban are presently using; the provisions of the CPA that have an impact on the promotions undertaken by retail businesses and their implications for such businesses; as well as the measures that such businesses are adopting to address the restrictions placed in terms of the CPA.

## **PROBLEM STATEMENT**

The use of strategic marketing tools is quite important to retailers in influencing demand for their products. In the past, retailers could purchase databases and email or make use of Short Message Systems (SMSs) to stay connected with customers at any time, including weekends, with their promotional specials. However, Mohamed, Reddy and Naidoo (2017: 38) posit that, as a result of the implementation of the CPA, consumers' rights have now been given priority. Gangur and Plevný (2014: 579) maintain that the Act has a direct impact on various types of promotional strategies adopted by retailers. Nieuwenhuizen (2012: 51) confirms that bulk SMSs and emails are economical but are no longer permissible unless the recipient has given prior written consent to receive these types of advertisements. Since the early 1980s, the use of the internet was primarily one way in which retailers pushed information to potential customers. Conlon (2013: 1) notes, however, that marketers are presently facing new limitations, in terms of shrinking consumer databases once the receiver selects the "opt out" or "unsubscribe" facility, which is now compulsory on all forms of marketing media. According to Erasmus (2010: 19), the CPA places severe restrictions on promotions. Therefore, retailers are unable to market themselves as freely and fervently as they used to in the past (Soriano and Cabanes 2020). With the soaring costs of media advertising (newspapers, business magazines, etc.), businesses are now feeling the impact of not being able to undertake promotions as they used to previously.

Hence, there was a need to investigate the impact of the CPA on retail businesses in Durban as far as promotional strategies are concerned, and the measures adopted to address the restrictions imposed by the Act.

## **AIMS AND OBJECTIVES**

The overall aim of this article is to evaluate, through the findings from an empirical study, the implications of the Consumer Protection Act for the promotional strategies of retail businesses. The objectives of the article are therefore, firstly, to determine the implications of the implementation of the CPA on the promotional strategies of retail businesses in Durban; secondly, to determine the effect this has had on retailers; and thirdly, to ascertain the measures that they have adopted to address the restrictions placed by the CPA.

## **LITERATURE REVIEW**

### ***RETAILERS PREFERRED COST-EFFECTIVE PROMOTIONAL STRATEGIES IN THE PAST***

The use of digital media as a promotional strategy enhanced the way in which businesses reach customers or find new ones and also assists with the evaluation of promotional tools used (Pick 2020). Marketing promotions and communications have gone through major changes over the last 20 years. According to Powell, Groves and Dimos (2011: 8) and Battersby (2013: 6-7), marketing communication is easily conveyed, nearly instantly, by means of the internet (computer internet and mobile internet connectivity) using social media ("for example, Facebook, Instagram, Whatsapp, WeChat and LinkedIn"), email and SMSs. The authors add that, previously, marketing was seen as a process that could not be measured. However, this phenomenon has transformed considerably with the introduction of social media marketers. Moreover, retailers are deviating from print-media as a result of it being costly and are switching to the use of digital billboards and digital in-store display screens which are more cost effective ways to advertise their products (Gangur and Plevný 2014). Hence, the preferred cost-effective promotional strategies of retailers in the past included mobile device marketing (Blythe 2014: 253; Powell, Groves and Dimos 2011: 8; Battersby 2013: 6-7; Venkatesh 2015: 1177); digital media marketing; Internet marketing; Email and SMS marketing (Sands 2003: 27-29; Brewer: 2011: 3-5); publicity through online magazines and publications (Blythe 2014: 265); and group online buying (Tuten 2010: 15-18; Berman, Evans and Chatterjee, 2018).

## **THE CONSUMER PROTECTION ACT 68 OF 2008**

Since consumer protection was viewed as a “critical issue” in South Africa, the Consumer Protection Act was enacted in 2009 (Malunga 2015: 224). The reasons as to why it was necessary for the CPA to be introduced included the fact that disadvantaged consumers required more consumer protection (Brewer 2011: 1); consumer law was previously disjointed and obsolete; unfair practices were prevalent; the influence of technology resulted in complex transactions; consumers lacked the resources to take matters to court; and consumers did not have the security of globally-recognised customer philosophies, such as “the right to transparent marketing and advertising practices” (Woker 2010: 230; Reddy and Rampersad 2012: 7408). Additionally, it was demanded by the pressures of consumerism, i.e., the social force protecting consumers through legal, moral, economic and political pressure (Pather-Elias 2012: 1-3). Mugobo and Malunga (2015: 225) point to the fact that consumer protection measures became necessary because of the low levels of literacy, especially with consumers in rural areas, and because consumers did not understand their consumer rights. They also needed to follow bureaucratic channels to raise complaints.

The Consumer Protection Act (CPA) seeks to harmonize the South African consumer protection framework with international best-practice and consolidates the various rights of consumers and the obligations of suppliers into a single piece of legislation in South Africa (Woker 2010: 230; Naude 2018: 413). The marketing, promotion and distribution of any type of product or service has to now comply with the CPA. All role-players in the supply chain have the responsibility to ensure that excellent standards of goods are provided (Republic of South Africa 2009). According to Alhadid and Al-Zubi (2014: 11), the marketing mix can be defined as a combination of deliberate, strategic marketing tools and a blend of tactics to influence demand for a business’ product. Mohamed, Reddy and Naidoo (2017: 43) observe that the CPA has had an impact on all forms of promotions as well as marketing strategies of retailers in South Africa. In the past, emails and SMSs were used frequently as cost-effective promotional tools (Schiff 2013: 35).

The CPA, in its preamble, recognizes the prevalent issues that face several South African consumers, such as “high levels of poverty, illiteracy and other forms of social and economic inequality”, as well as residing in “remote or low-density population areas”. Hawthorne (2012: 353) therefore reminds one that the purpose of the Act is the promotion and advancement of the societal and financial wellbeing of consumers in South Africa. Brewer (2011:6) concurs with this view and adds that the “more vulnerable consumers are, the more protection is required”.

### ***The CPA’s fundamental consumer rights***

The CPA sets out eight fundamental consumer rights, namely: the right to equality in the consumer market (Section 8); the consumer’s right to privacy (Section 12); the consumer’s right to choose (Sections 13, 16 & 17); the right to disclosure (Section 22); the right to fair and responsible marketing (Section 34); the right to fair and honest dealing (Section 47); the right to fair, reasonable and just terms and conditions (Section 48); and the right to fair value, good quality and safety (Section 54). An overview of the selected rights that affect the promotional efforts of retail businesses are set out below.

- ***The right to equality in the consumer market:*** Slabbert (2011: 548) draws attention to the following weaknesses of marketing in rural communities: poor planning of promotions; no stock available of items that were promoted; poor delivery services; no retail outlets in some rural areas; and strategic areas were not marketed to. According to Reddy and Rampersad (2012: 7408), in terms of the CPA (Section 8), a retail business cannot unlawfully discriminate against consumers on the basis of race, gender, disability, etc. Retailers are not allowed to unfairly exclude any person or market segments from accessing products;
- ***The consumer’s right to privacy:*** as the use of technology, such as cellphones or telephones, could infringe the customer’s right to privacy, the CPA (Section 11) restricts unwanted direct marketing (i.e. by mail or electronic communication), and the consumer may refuse to accept such communication, request that it be discontinued or pre-emptively block it (Mahomed, Reddy and Naidoo 2017: 38). Jacob, Stoop and van Niekerk (2010: 320) mention that businesses are forced to desist from emailing customers without having sought their permission prior to sending out emails. Furthermore, Durant (2014: 1-2) points out that consumers are

at liberty to opt out of receiving undesirable direct marketing services, and businesses are not allowed to continue any unwelcome direct marketing of products. Kruger (2011: 25-26) notes that the Act (Section 12) prohibits marketing during certain days and at certain times as prescribed by the Minister, for example on weekends or after hours;

- **The consumer's right to choose:** the consumer has the right to select suppliers; to choose or examine goods (so "bundling" of goods is not allowed); to cancel a fixed-term contract before expiry without penalties; and to cancel a contract within five days (cooling-off period) where goods are sold by direct marketing (Section 16) (Reddy and Rampersad 2012: 7408; Monty 2012: 53-55).
- **The right to disclosure of information:** Newman maintains that, with the low literacy levels in South Africa, retailers have to make contracts and marketing material understandable for consumers. Hence, consumers have a right to information (including marketing and advertising information) in plain and understandable language (Section 22). The Act clarifies that "plain and understandable language" means that an ordinary consumer with average literary skills will be able to understand it without effort (Tait and Newman 2014: 633; Reddy 2020). In addition, all communication has to be legible and easy to understand (Ardic, Ibrahim and Mylenko 2011: 4). This would mean added costs for the retailer to re-draft promotional templates, quotations and agreements;
- **The consumer's right to fair and responsible marketing:** "Bait marketing" is prohibited by the CPA (Section 30). Cornelius (2011: 89) posits that businesses are no longer permitted to advertise products as being available in a misleading or deceptive way to a consumer or misconstrue the facts about the actual availability of those goods. They are no longer permitted to deceive consumers with regard to pricing, the nature of goods and the properties of goods or their availability (Department of Trade and Industry 2014: 4-6);
- **The consumer's right to fair and honest dealings:** Acts which are regarded as "unconscionable conduct" by retailers are prohibited (Section 40). Retailers are "not allowed to use physical force, coercion, duress or harassment, or unfair tactics in the marketing of goods" (Section 40). Gouws (2010: 10) observes that promotions by retailers cannot be conducted in a fraudulent or misleading way (Section 29); and
- **The consumer's right to fair, reasonable and just terms and conditions:** Retailers are prohibited from offering or supplying goods at "prices or terms that are unfair, unreasonable or unjust" (Section 48; Reddy and Rampersad 2012: 7410)). Naude (2009: 514-519) maintains that suppliers (including retailers) are prohibited from marketing goods in an unfair, unreasonable or unjust manner.

### **THE IMPLICATIONS OF THE CPA FOR THE PROMOTIONAL STRATEGIES OF RETAIL BUSINESSES**

The CPA has meant changes for retailers, particularly with respect to their promotional strategies, contracts and other legal documentation, and communications. Leggat (2011: 14) states that retailers are required to re-examine their institutional rules and the terms and conditions of their agreements. Reddy and Rampersad (2012: 7404-7406) note that they also have to examine the implications of breaches of agreements, and consequences for consumers.

Studies on the impact of the CPA have been conducted both from the standpoint of the retailer, as well as the consumer. From the retailer's perspective, Schalkwyk, Akpojivi and Beva-Dye (2015: 26) found that while small independent retailers believed that they were well informed about the CPA, their "actual knowledge" was lacking. Mugobo and Malunga's (2015: 230) study found that the CPA presents major challenges for furniture retailers, which included increased transaction costs and staff development needs. KPMG (2010: 4) posits that the CPA gives the consumer the right to restrict unwanted marketing. Hence, retailers are presently compelled to ensure that company practices and methodologies factor in customer preferences regarding whatever they consent to receive and at what time, without the customer having to incur any additional charges (KPMG 2010: 4).

With respect to the implications of the Act from the consumer perspective, both Tait and Newman (2014: 642) and Stoop (2015: 191), have confirmed that the focus in the transaction is now on the consumer and the balance of power is now with the retailer. The authors confirm that the introduction of the CPA has resulted in a shift from a freedom-orientated approach to consumer contracts (which implied that the parties were free to determine the

outcomes of the agreement) to a fairness-orientated approach (where the primary objective was to ensure fairness in contracts). Scott (2013: 18) maintains that the CPA was intended to support and safeguard the monetary well-being of customers, while Mupangavanhu (2012: 320) points out that the Act has been criticised as it over-protects consumers to the potential disadvantage of businesses in South Africa.

Section 11 of the CPA limits all types of unwanted marketing, since the consumer can now demand that the marketer stops such unwanted marketing or that it is not sent in the first place (Mugobo and Malunga 2015: 227). Email marketing is one of the areas affected by the CPA provisions. Email marketing is not just about positioning one's product offers to attract the attention of a consumer. It also provides a brand interaction that customers value. Emails can also be used for mass campaigns or regular contact. According to Durrant (2014: 3), with the implementation of the CPA, customers can opt out of their databases and such databases therefore continue to shrink, hence retailers will have to look for other alternative means of promoting their products.

As a result of the implementation of the CPA, consumers' rights have now been given priority (Mupangavanhu 2015: 118). Presently, retailers using social-network sites, for instance, Facebook and Twitter, are obliged to include measures to ensure CPA compliance. Coupled with this, the CPA poses a threat to businesses that promote their goods via the internet as legal action can be taken against these businesses (Slabbert, Maister, Botes and Pepper 2011: 174).

Brewer (2011: 12) points out that in South Africa, many people live in rural areas and the fact that they possess cellular phones is quite significant. The author adds that although the majority of the population is accessible daily via email and SMS, retail businesses are unable to capitalize on this because of the restrictions placed by the CPA. Marketing budgets are therefore increasing as businesses are forced to use other marketing tools to promote their products.

Hence, there are CPA provisions that specifically impact on promotions that retailers are required to adhere to. Reddy (2020: 455) comments that Section 24 requires that the labelling and trade descriptions of products should not be misleading to consumers about the contents or packaging of the goods. Mupangavanhu (2015: 129-135) points out other provisions that impact on promotions, namely: when advertising, retailers should include the challenges pertaining to the accessibility of goods at such price (Section 30); a "cooling-off period" (within which time, customers may cancel the contract – usually 5 days) should be included in direct marketing transactions; and retailers should clearly highlight the period of the promotions in any print media. In addition, they should refrain from any further communication if the consumer has requested to be unsubscribed from the mailing list, as the privacy of the consumer must be respected.

In promoting their goods, retailers are also not permitted to: limit access to such goods or prioritize any consumer groups over others when marketing, selling or distributing them; coerce consumers to get into additional agreements with such retailer or a designated third-party (Section 13; Gordon-Davis and Cumberlege 2013: 121); continue any unsolicited direct marketing of goods once consumers have opted out (Section 11); or promote goods or routinely force consumers into contracts for the supply of goods (if a consumer receives undesirable goods, they have no obligation to pay for them) (Section 21). Retailers are also not allowed to alter, disguise or de-face or even remove trademarks and other labelling in order to deceive consumers (Section 24) or misinform consumers regarding pricing, the features, form, or benefits of goods advertised, as well as the availability of such goods (Section 29; Havenga 2010: 495). In addition, they may not make promotional offers with the intention of not fulfilling them (Section 34); coerce the consumer to accept an inferior quality product or service than those generally available; or enforce any administrative charges, or charges for processing or handling of a transaction when a consumer presents a trade coupon (Section 34) (Mugobo and Malunga 2015: 225).

It is clear from the various aspects of the CPA highlighted above that the way in which promotional strategies are conducted, has evolved tremendously over the last few decades. Emails and SMSs have proved to be the most cost-effective promotional tool (Nieuwenhuizen 2012: 5). Sending out regular emails to clients helps in terms of positioning the company in the minds of the consumer. Repetitive emails flyers and specials; and open channels of communication via email entrench the company in the minds of the customer as a stable company, and assists the

customer in feeling a sense of security in dealing with that particular company (Brewer 2011: 3-5). Emails and SMSs remain vital for customer engagement as well as customer retention (Tan, Chong and Lin 2013: 889-897). Market segmentation is expensive as the cost of providing differentiated marketing communications, is high and requires considerable effort. Therefore, a standardized product and communications message is much cheaper. However, as customers opt out of their databases and the databases continue to shrink, retailers have the continuous challenge of finding alternative means of promoting their products (Sekar and Geetha 2013: 159-161).

## **METHODOLOGY**

A mixed methods approach was used for this study. Methodologies for both the quantitative and qualitative studies are set out below.

### **QUANTITATIVE METHODOLOGY**

Clow and James (2014: 169) describe the quantitative methodology as being a general term which encompasses all methods of data collection, whereby each person is asked to respond to the same set of questions in the same order. The target population for the quantitative study comprised general managers, marketing managers, CEOs, directors or senior executives from retailing businesses in Durban that were on the Durban Chamber of Commerce (DCC) listing for the Durban region. Simple random sampling was used to select the respondents for the quantitative study. Questionnaires were administered to a sample of four hundred respondents from the DCC's Marketing list. Three hundred and thirty respondents completed the questionnaires, thereby generating a response rate of 82.5 percent. The respondents were asked identical questions in the same order. In addition, a pre-test was conducted amongst 20 business owners. This assisted in resolving ambiguities in the data collection instrument. The survey questionnaire focussed on the promotional strategies used in the respondents' businesses. The questionnaire was designed to elicit the magnitude to which respondents "agreed" or "disagreed", using the five-point Likert scale. The Likert scale was preferred because it facilitates the examination of how strongly subjects "agree" or "disagree" with statements on a five-point scale (Sekaran and Bougie 2013: 390-395). The data collected was analysed using SPSS version 23 for Windows.

### **QUALITATIVE METHODOLOGY**

Grossoehme (2014: 109) comments that qualitative research is the "systematic collection", "organisation" and "interpretation of textual material" derived from conversations with respondents. The sample for the qualitative study comprised ten marketing managers of retail businesses listed with the Durban Chamber of Commerce and Industry (using purposive sampling) and that were classified as being SMMEs. The balance of the eight participants had been recommended by the first ten participants (i.e. snowball sampling). Structured interviews were used to interview the 18 selected participants. An interview schedule with pre-determined questions was used, hence an identical set of questions were used for each participant. Data from the qualitative study was analysed using thematic analysis, which involved selecting, coding and categorising the data and conclusions were drawn based on patterns in the reduced set of data. Coding units used in the data analysis included words, sentences, paragraphs and themes, for example: "Types of promotional strategies used in the business", "Provisions that affect promotional strategies", "Measures adopted to address the restrictions of the CPA" and "Implications of implementing the CPA".

### **TRIANGULATION**

Kumar (2014: 386) is of the view that "triangulation" involves the use of data from varied sources to best achieve the objectives of the study. This study made use of both qualitative and quantitative methodologies. Hence, a "mixed-methods approach" was used for the purpose of sequential triangulation. Casey and Murphy (2009: 41) state that when one method is used ahead of another, then this is referred to as sequential triangulation.

## **ETHICAL CONSIDERATIONS**

Myers (2013: 49) clarifies that research ethics is the essence of applying moral principles in the “planning, conducting and reporting of the results of research studies and the basic moral standards involved”. In this study, there were no risks to respondents to the questionnaires or participants in the structured interviews. Participation in this study was completely voluntary and respondents were informed that they could withdraw from the study at any time. Furthermore, no form of coercion was used to pressure respondents into being a part of the study.

## **DELIMITATIONS OF THE STUDY**

There were several delimitations to the study. Firstly, the entire retail business population of South Africa could not be included since the study was based in Durban. Secondly, the quantitative study was limited to retail businesses that were listed with the Durban Chamber of Commerce.

## **FINDINGS FROM THE QUANTITATIVE STUDY**

The quantitative study entailed a survey using questionnaires sent to retailing businesses in Durban. The findings are presented below in terms of the main sub-themes, namely:

- The implications of the implementation of the CPA for retail businesses;
- The provisions of the CPA that affected the promotional efforts of retail businesses; and
- The measures that retail businesses are adopting to address the restrictions imposed by the CPA.

## **VALIDITY AND RELIABILITY**

For the quantitative study, the Cronbach alpha test was used to determine reliability. Test statistics, including the Chi-square goodness-of-fit test, were applied. The acceptable value of Cronbach’s alpha is between 0.65 and 0.8” (Goforth 2015: 1-2). The reliability scores for all sections of the instrument exceeded or approximated the recommended Cronbach’s alpha value.

### ***Chi-square testing – the implications of the CPA for retailers***

In order to determine whether the scoring patterns per statement were significantly different per option, a chi-square test was done. The null hypothesis claims that similar numbers of respondents scored across each option for each statement (one statement at a time). The alternate hypothesis states that there is a significant difference between the levels of agreement and disagreement. The results as shown in Table 2 below, indicate that the highlighted significant values (p-values) are less than 0.05 (the level of significance), which implies that the distributions were not similar. That is, the differences between the way that respondents scored were significant. This shows that the respondents had varied views and responses in respect of the implications of implementing the CPA in their businesses. The requirement is that the Kaiser-Meyer-Olkin Measure of Sampling Adequacy should be greater than 0.50 and Bartlett’s Test of Sphericity, less than 0.05. In all instances, the conditions were satisfied, which allowed for the factor analysis procedure. Factor analysis was conducted only for the Likert scale items. Certain components were divided into finer components.

### ***KMO and Bartlett’s Test***

The results from the KMO and Bartlett’s Test is presented in Table 1 with respect to the implications of implementing the CPA and the measures adopted to address the restrictions of the CPA. As shown in Table 1 below, all of the conditions are satisfied for factor analysis.

**TABLE 1:  
KMO AND BARTLETT'S TEST**

	Kaiser-Meyer-Olkin Measure of Sampling Adequacy	Bartlett's Test of Sphericity		
		Approx. Chi-Square	df	Sig.
Measures adopted to address the restrictions of the CPA.	0.719	244.658	15	0.000
Implications of implementing the CPA.	0.720	620.774	55	0.000

### ***The implications of the implementation of the CPA for retail businesses in Durban***

The CPA has had various implications for retailers in Durban. This section summarizes such effects under several sub-themes.

### ***THE IMPACT OF THE CPA PROVISIONS ON BUSINESSES***

The respondents were asked to indicate the impact of the CPA provisions mentioned on their businesses. The responses included the following: they experienced loss of significant customer contact; they were unable to persuade customers to reconsider and upsell other products; there was also loss of valuable customers; it cost them in terms of time and money to have more promotions; they had to use promotions to get consent for email addresses; and the opt-out facility affected SMS campaigns. These responses reveal that the respondents were affected by the CPA provisions. Shankar, Inman, Mantrala, Kelley and Rizley (2011: 533) are of the view that retailers are moving away from print media because of the cost implications. However, the CPA has had more of an impact on such cheaper promotional methods, mainly emails and SMSs.

### ***THE IMPACT OF THE CPA ON PROMOTIONS EXPENDITURE***

The respondents were asked to indicate the increase in marketing expenditure in their businesses in specific areas as a result of implementing the provisions of the CPA. Table 2 below shows the results.



**TABLE 2:  
THE IMPLICATIONS OF IMPLEMENTING THE CPA**

	Nil		10-29%		30-49%		50-69%		70-79%		80-100%		Chi-Square
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	p-value
Re-drafting agreements and contracts	115	34.8%	175	53.0%	17	5.2%	11	3.3%	12	3.6%	0	0.0%	0.000
Telephonic communication	71	21.5%	157	47.6%	81	24.5%	17	5.2%	4	1.2%	0	0.0%	0.000
Re-labelling in plain and understandable language	208	63.2%	89	27.1%	29	8.8%	3	0.9%	0	0.0%	0	0.0%	0.000
Customer care lines	102	30.9%	172	52.1%	44	13.3%	8	2.4%	4	1.2%	0	0.0%	0.000
Disclosure of contents on packaging	195	59.1%	96	29.1%	23	7.0%	13	3.9%	3	0.9%	0	0.0%	0.000
Newspaper advertising	114	34.5%	94	28.5%	62	18.8%	33	10.0%	16	4.8%	11	3.3%	0.000
Administrative costs due to returns and refunds within the "cooling off" period	173	52.4%	98	29.7%	31	9.4%	20	6.1%	7	2.1%	1	0.3%	0.000
Printing of marketing brochures and catalogues	38	11.5%	116	35.2%	98	29.7%	54	16.4%	23	7.0%	1	0.3%	0.000
In-store promotions	189	57.4%	57	17.3%	29	8.8%	20	6.1%	13	4.0%	21	6.4%	0.000
Outdoor / mall promotions	204	62.0%	69	21.0%	21	6.4%	24	7.3%	4	1.2%	7	2.1%	0.000
Acquiring written permission to email customers	149	45.4%	125	38.1%	37	11.3%	13	4.0%	1	0.3%	3	0.9%	0.000

The majority of the respondents indicated that they had a 10-29 % increase in expenditure in respect of re-drafting agreements and contracts, as well as in expenditure for creating customer care-lines to handle customer queries. Almost half the respondents confirmed that there was a 10-29 % increase in marketing expenditure. The majority also indicated that they had a nil increase in their expenditure for re-labelling products into plain and understandable language, as well as in the costs regarding the disclosure of contents on their packaging and in the costs of in-store promotions, as a consequence of implementing the CPA provisions.

### **THE PROVISIONS OF THE CPA THAT AFFECTED THE PROMOTIONAL EFFORTS OF RETAIL BUSINESSES IN DURBAN**

The respondents were asked to indicate the impact that each of the selected consumer rights in the CPA had on their businesses, namely, the right to privacy, the right to choose, the right to fair and responsible marketing, the right to disclosure of information, and the right to fair and honest dealing. The analysis according to these sub-themes is presented and discussed below.

#### ***The privacy of the consumer must be respected***

As indicated in Table 3 below, with respect to the sub-theme "the privacy of customers must be respected", the findings show that the majority of the respondents indicated that the CPA provision which states that customers cannot be coerced or harassed into purchasing any product, had very little impact. The majority also indicated the following: that Section 11, which gives the customer the right to restrict unwanted marketing by refusing to accept

such marketing, had some impact on their businesses; that the provisions which protect the privacy of the customer by prohibiting marketing during certain days and at certain times (Section 12), had some impact; and that the right of consumers to opt out of email campaigns (Section 11), had some impact on their businesses. The findings also show that the majority indicated that the provisions allowing for paper junk-mail to be blocked by consumers placing a “no junk-mail sign” on their post boxes (Section 11), had very little impact.

**TABLE 3:  
THE PRIVACY OF CONSUMERS MUST BE RESPECTED**

Impact of “the privacy of customers must be respected”	Very little impact	Neutral	Some Impact
Section 1: Customers cannot be coerced or harassed into purchasing any product.	54,50%	1,50%	43,90%
Section 11: The consumer has the right to restrict unwanted marketing by refusing to accept such marketing.	44,50%	3,30%	52,10%
Section 12: Protects the privacy of the customer by prohibiting marketing during certain days and at certain times	43,60%	6,40%	50,00%
Section 11: Gives customers the right to opt out of email campaigns.	45,00%	2,40%	52,60%
Section 11: Allows for paper “junk mail” to be blocked by consumers by simply placing a “no junk mail” notice on their post boxes.	70,00%	1,50%	28,50%

### ***Consumers have the right to choose their products and suppliers***

Table 4 below shows the results for the sub-theme: “customers have the right to choose their products and suppliers”. The findings show that the majority of respondents indicated that Section 13 (which provides that the supplier should not bundle goods in such a way that the consumer is forced to buy additional goods from that supplier) and Section 16 (which entitles consumers to cancel a transaction originating from such direct marketing without incurring any penalty within five days) had very little impact on their businesses. Furthermore, the majority felt that Section 17, which allows consumers, subject to a reasonable cancellation fee, to cancel advance reservations, bookings or orders, had some impact.

**TABLE 4:  
CONSUMERS HAVE THE RIGHT TO CHOOSE THEIR PRODUCTS AND SUPPLIERS**

Impact of “the consumers have the right to choose their products and suppliers”	Very little impact	Neutral	Some impact
According to Section 13 the supplier should not bundle goods in such a way that the consumer is forced to buy additional goods or services from that supplier or enter into an additional agreement or transaction. The customer should be able to purchase items separately.	56,40%	2,10%	41,50%
Section 16 focusses on the “cooling off” period. The consumer is entitled to cancel a transaction originating from such direct marketing without incurring any penalty, within five days after delivery of the goods or the conclusion of the agreement.	59,10%	3,70%	37,20%
In terms of Section 17, consumers are allowed, subject to a reasonable cancellation fee, to cancel advance reservations, bookings or orders. This incurs added administrative costs for the organization.	43,00%	2,10%	54,80%

### *The right to disclosure of information*

As indicated in Table 5 below, the findings also showed that a little more than half of the respondents indicated that Section 22 of the CPA, which stipulates that contracts and advertising material must be in plain and understandable language, had very little impact in terms of added costs incurred to re-draft contracts and re-print marketing material. Further, the majority of respondents also confirmed that the requirement that labels, pricing and advertising must be in plain language (Section 22) had very little impact on their businesses.

**TABLE 5:  
THE RIGHT TO DISCLOSURE OF INFORMATION**

<b>The impact of “the right to disclosure of information”</b>	<b>Very little impact</b>	<b>Neutral</b>	<b>Some impact</b>
Section 22 of the CPA stipulates that contracts and advertising material must be in plain and understandable language. Added costs are incurred to re-draft contracts and re-print marketing material.	51,20%	2,10%	46,70%
Businesses are required to inform and educate the disadvantaged customer and to ensure that they comply with plain and understandable language requirements. Labels, prices and advertising must be in simple language (Section 22).	61,40%	5,20%	33,40%

### *The consumer’s right to fair and honest dealing*

There are several provisions that relate to the consumer’s right to fair and honest dealing. With respect to Section 29 (which provides that promotions cannot be conducted in a fraudulent or misleading way, Gouws (2010: 79-94) confirms that businesses must provide an adequate description of a product where there is a possibility that the consumer could be misled about that product. With respect to Section 30, which prohibits bait marketing, Cornelius (2011: 88-89) indicates that the consequence of this provision is that businesses need to change the way in which they approach customers for business. With respect to Section 31, prohibiting negative marketing, Knowler (2011: 1-7) states that the danger of negative option marketing is that a customer could forget to cancel or return the goods and may be unfairly prejudiced as a result.

Table 6 below shows that the majority of respondents indicated that the following sections had very little impact: Section 47, which provides for a refund and damages in the event of overselling; Section 29 prohibiting promotions that are conducted in a fraudulent, misleading or deceptive manner; and Section 31, which prohibits negative option marketing (where the consumer is bound for goods or services supplied, unless they decline such offer). In addition, the majority believed that Section 30, which prohibits “bait marketing”, i.e. advertising which deceives the consumer about the availability or pricing of products, had some impact.

**TABLE 6:  
THE CONSUMER'S RIGHT TO FAIR AND HONEST DEALING**

<b>The impact of “the consumer’s right to fair and honest dealing”</b>	<b>Very little impact</b>	<b>Neutral</b>	<b>Some impact</b>
Section 47 of the Act provides for the reasonableness test for overselling and overbooking. In terms of this test a supplier may not accept payment for goods or services where it has no reasonable intention to supply goods or services for which the consumer has paid.	59,10%	3,00%	37,80%
As a result of a supplier’s inability to supply goods or services due to over-booking or over-selling Section 47 of the Act provides for a refund or the amount paid plus interest as well as any consequential damages which directly resulted from the breach of contract. Retailers incur added administrative costs as a result of this.	61,80%	4,20%	33,90%
According to Section 29 of the Act, promotions cannot be conducted in a fraudulent or misleading way. The CPA also sets standards for product labels and general marketing of goods and services. Suppliers are not allowed to apply a trade description to a product that could mislead a consumer about that product.	70,60%	4,50%	24,80%
Bait marketing is prohibited (Section 30). Suppliers are not allowed to advertise products or services as being available at a specific price and manner so as to deceive the consumer about the actual availability of those services	64,80%	3,30%	31,80%
In terms of Section 31 a supplier may not promote any goods or services on the basis that the goods or services are to be supplied unless the consumer declines such an offer. The danger of negative option marketing is that a customer could forget to cancel or return the goods and may be unfairly prejudiced as a result. Returns are costly to administer.	65,80%	6,10%	28,20%

**MEASURES THAT RETAIL BUSINESSES IN DURBAN ARE ADOPTING TO ADDRESS THE RESTRICTIONS IMPOSED BY THE CPA**

The respondents were asked to comment on the measures that retail businesses are adopting to address the restrictions imposed by the CPA. Table 7 below indicates the results for the measures adopted to address the restrictions imposed by the CPA.

**TABLE 7:  
MEASURES ADOPTED TO ADDRESS THE RESTRICTIONS OF THE CPA**

<b>Measures adopted</b>	<b>Rarely</b>	<b>Sometimes</b>	<b>Often</b>
Special sales advertised in the newspapers	62.4%	18.5%	19.1%
In-store promotions to promote certain items	68.8%	14.8%	16.4%
More marketing representatives are employed to call on customers	51.5%	29.4%	19.1%
Marketing via social media	53.9%	27.3%	18.8%
Interactive website marketing	34.5%	28.5%	37.0%
Opt-out registry for unwanted emails	46.4%	11.2%	42.4%
Other	88.2%	8.2%	3.7%

As shown in Table 7 above, the majority “rarely” used special sales, in-store promotions (to promote certain items), marketing representatives marketing, or marketing via social media, to market their products. The majority used interactive website marketing sometimes or often. The majority also had an opt-out facility available to customers to unsubscribe, while some used more marketing representatives, website marketing, in-store promotions and special sales advertised in the newspapers. Other measures used by retailers to address the CPA restrictions included the use of Facebook; marketing directly to customers with a company profile and samples; the use of LinkedIn; the distribution of pamphlets and fliers; and the use of radio campaigns.

## **FINDINGS FROM THE QUALITATIVE STUDY AND TRIANGULATION**

For the quantitative study, four hundred questionnaires were administered to retail businesses in Durban and the findings were presented above. For the qualitative study, data was collected from eighteen marketing managers and owners of retail businesses through structured interviews. The findings from the qualitative study are discussed below under the three main themes referred to above, namely the implications of the CPA for retail businesses in Durban; the provisions of the CPA that affected retail businesses; and measures adopted to address the restrictions placed by the Act. Within each sub-theme, the findings from the quantitative study are then triangulated with the findings from the qualitative study:

### ***THE IMPLICATIONS OF THE IMPLEMENTATION OF THE CPA FOR RETAIL BUSINESSES IN DURBAN***

The findings from the qualitative study showed that the CPA had various implications for retailers in Durban. This section summarizes such effects under several sub-themes.

#### ***The impact of the CPA provisions on businesses***

The interviewees indicated that, in the past, consumers were emailed with specials, businesses were able to contact clients at any time and SMSs were sent out regularly to consumers. However, the marketing strategies of the respondents’ businesses have changed since the CPA has been implemented. Since the CPA was introduced, marketing and sales are now employed to call on customers; telesales are used and various promotional strategies are used, such as social media, in-store promotions, vehicle branding, promotional give aways and trailer-advertising. This finding is in agreement with the findings from the quantitative study.

## ***PROVISIONS OF THE CPA THAT AFFECT THE PROMOTIONAL EFFORTS OF RETAIL BUSINESSES IN DURBAN***

With respect to the CPA provisions that affect the promotional efforts of retail businesses, the following findings were evident from the qualitative study:

### ***The privacy of customers must be respected***

The findings from the structured interviews show that Section 1 of the CPA (which stipulates that the privacy of customers must be respected) had some impact on the businesses in the sample. The findings from the quantitative study were in agreement with those of the interviews (qualitative). The findings also showed that Section 12 (which protects consumer privacy by prohibiting marketing during certain days and at certain times) had no impact on the respondents' businesses. These findings were also in agreement with the findings from the quantitative study.

Businesses are now restricted by Section 1 of the CPA and are unable to use coercion or means that are deemed to be harassing customers into a sale. Leggat (2011b: 32-33) maintains that suppliers are not allowed to use physical force, coercion, undue pressure, harassment or unfair tactics when marketing to consumers. Suppliers are also not permitted to use exaggerations, innuendo or ambiguity when referring to goods or services. The findings with respect to Section 11, which gives the customer the right to restrict unwanted marketing, is in line with the views of Conlon (2013: 9) that email offers a cheaper and more efficient means of staying connected with large numbers of leads or existing customers and assists in positioning a brand above competitors.

### ***The customer's right to restrict unwanted marketing***

The structured interviews show that Section 11 of the CPA (which gives customers the right to opt out of email campaigns and future emails) had some impact on the businesses in the sample. The findings from the questionnaires were in agreement with the findings from the structured interviews. This finding is in agreement with the views of Jacobsson, Granroth and Dumont (2014: 16) that businesses are not allowed to continue with unwelcomed direct marketing of goods and services once consumers have opted out and that although email messages are highly cost efficient, it can be costly to employ a dedicated employee just to honour opt-out requests promptly.

### ***Customers have the right to choose their products and suppliers***

The findings from the structured interviews show that Section 13 of the CPA (which stipulates that the supplier should not bundle goods) has had some impact. The findings from the questionnaires were in agreement with these findings.

With regard to the sub-theme "customers have the right to choose their products and suppliers", the findings show that Section 13 (which relates to restrictions on the bundling of goods in such a way that it forces consumers to buy additional goods or enter additional agreements) had some impact on the marketing of goods. Section 16 (relating to the "cooling off" period entitling the consumer to cancel transactions arising from direct marketing without any penalty) also had some impact on marketing efforts. Brewer (2011: 1) maintains that the impact of this provision can be very far-reaching, especially for marketing products where a refund after the product has been used is not possible. The findings also show that Section 17, which allows consumers to cancel advance reservations, has had some impact.

### ***The right to disclosure of information***

Sharrock (2010: 306) states that there must be no ambiguities in terms of pricing. Businesses are required to inform and educate the disadvantaged consumer and to ensure that they comply with plain language requirements. Section 22 of the CPA demands that contracts and advertising material must be in plain and understandable language. The findings from the interviews also show that Section 22 has had an impact on businesses. This finding is in agreement with the findings from the quantitative study on this aspect.

### ***The customer has the right to fair and responsible marketing***

The findings from the structured interviews also showed that Section 34 (which relates to promotional offers and affords the consumer the right to fair and honest marketing) had no impact on the businesses in the sample.

### ***The customer has the right to fair and honest dealing***

Section 47 of the CPA stipulates that a supplier cannot over-sell or accept payments for any goods that are not available. The findings from the interviews show that Section 47 had some impact. These findings are in agreement with the findings from the quantitative study and finds support in the views expressed by Havenga (2010: 490) and Brewer (2011: 2-5) that this provision has had some impact on retail businesses.

The results of the structured interviews also show that Section 31 of the CPA (which stipulates that negative option marketing is prohibited) had no impact on the businesses that the participants worked in. The findings from the questionnaires differed from those for the interviews on this aspect.

## **THE IMPLICATIONS OF THE IMPLEMENTATION OF THE CPA ON PROMOTIONS EXPENDITURE**

The majority of the participants to the structured interviews indicated that they experienced a major increase in their promotions' expenditure as a result of implementing the related CPA provisions. The increase in marketing and promotions expenditure had arisen as a result of the costs of employing additional marketing representatives and acquiring branded vehicles for individual marketing representatives; buying databases with qualified leads; using an outsourced company for email campaigns, as well as promotions; additional competitions; and placing more advertisements in newspapers. The findings show that promotions expenditure did increase after the CPA was implemented. Hence, the findings from the quantitative study were in agreement with those from the qualitative study on this aspect. However, these findings differed from the views expressed by Gök and Hacıoglu (2010: 296) that increasing financial pressure in many industries has led to a focus on short-term marketing measures, and this short-term focus has forced reductions in marketing expenses.

### ***The measures that retail businesses in Durban are adopting to address the restrictions in terms of the CPA***

The responses from the structured interviews reveal that some of the measures being implemented to address the restrictions of the CPA are the use of mobile trailers; hiring additional marketing representatives; obtaining additional means of transportation for marketing; outsourcing the management of emails and opt-out facility; and integrating an online customer management system. Also, there was a need for additional printing of marketing material and newspaper advertising. Further, free trial samples were distributed, and free diagnostics and consults were undertaken. These measures are costly to implement and sustain. These findings were on similar lines when compared to those from the quantitative study.

## **CONCLUSIONS AND RECOMMENDATIONS**

The following conclusions are drawn based on the findings from the study:

### **THE IMPLICATIONS OF THE CPA FOR THE RETAILER**

The retailer would have to look at other means to market their products, for example, employing marketing representatives to market to individual companies, as well as social media and influencer marketing. They would also have to absorb the costs of marketing vehicles, fuel and vehicle maintenance. Marketing representatives would also need workstations to communicate with their clients via email and telephone. There would also be added costs to set up appointments with customers. Staff will need to collaborate to drive social media traffic.

## THE IMPACT OF THE CPA ON PROMOTIONS

In trying to be compliant with the CPA, the measures that the businesses in the sample were using are also very costly and labour-intensive. For example, the use of mobile trailers for advertising and the use of an outsourced company to manage the database and unwanted emails are costly. These measures are difficult to sustain and may still require the entire staff complement to be involved. Clearly, email campaigns are cost-effective. However, because of the limitations imposed by the CPA, businesses in the sample use other promotional methods to constantly acquire fresh databases so that they can communicate with their customers. The use of social media combined with artificial intelligence is gaining popularity to direct traffic to websites and generate sales. Although this is a cost-effective promotional strategy, it lacks the personal contact that emails have.

Hence, consumer protection legislation plays a major role in putting pressure on businesses to act in a socially responsible manner. The rights of customers are now respected and they no longer need to accept sub-standard services or products. The CPA has indeed improved the level of service delivery to consumers and has forced retailers to supply good quality products that are free of defects. The CPA protects the consumer by prohibiting unfair marketing and promoting ethical behaviour. Whilst the CPA is designed to protect the poor and vulnerable and promotes a fair and accessible marketplace for consumer products and services, it also places a heavier burden on businesses that do not comply with best-practice and ethical norms. For businesses, aligning their promotional strategies to the CPA is mandatory and therefore challenging. It sets out continuous assessment measures and exposes businesses to compliance risks. Retailers have to be more cautious and transparent when dealing with consumers. Every business that engages with consumers needs to scrutinise their products, services, business methods and terms of trade before they transact.

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