

Much more to a name than meets the Consumer Protection Act's eye

By Livia Dyer

The Consumer Protection Act, 2008 (CPA) will, in due course, introduce new requirements for business names that may affect the way in which businesses trade at present.

The CPA provides that businesses may only trade or do any business with consumers under:

- their full names, if the business is conducted by an individual such as a sole proprietorship or partnership, as set out in the relevant person's identity document;
- their registered names, if the business is conducted by a juristic person such as a company or close corporation (CC), or by a trust (which is not generally a juristic person but which is regarded as a juristic person for the purpose of the CPA), or
- a registered "business name".

The CPA has introduced a new mechanism in terms of which businesses can register such "business names" with the Registrar of Companies (CIPRO).

The impact of these requirements is that businesses will no longer be permitted to use an informal trading name. Instead, they will either have to trade under the registered name of the entity or person in question, or under a registered business name.

Companies or other structures that already trade under a company or CC name that is registered with CIPRO will not be required to register any further business names. However, a company, CC or trust that trades under a name that is different from that registered with CIPRO will have to register that alternative name as a business name. Similarly, a sole proprietorship, partnership or trust, or any other business structure that uses a trading name different from the names of the individuals who own the business will have to register the trading name as a business name.

The trust situation is more complicated. Although a trust deed must be lodged with the Master of the High Court in terms of the Trust Property Control Act, 1988, there is currently no requirement that a trust name be registered and a trust transacts through its individual trustees. Accordingly, business trusts may, in due course, need to register a business name in terms of the CPA.

The new requirements do not require that a company or CC must always have the same registered company or CC name as that under which they trade. Rather, any alternative names that are used must be registered as business names.

In addition, any business letter, sales record, trade catalogue or circular issued by a business must, where the business is conducted under a business name, indicate the name of the person – either an individual or a juristic person – to whom that business name is registered.

The objective behind the new requirements, which will create a public record of *all* business names, appears to be to stop situations where businesses registered under one name but “trading as” something else, cannot be traced.

Failure to comply with the provisions may lead to enforcement action being taken by the Consumer Commission.

Although the majority of the substantive provisions of the CPA are due to come into effect on 24 October 2010 (unless this date is postponed by the Minister of Trade &

Industry), the business names provisions will only come into effect on a later date to be determined by the Minister. At the earliest, this will be 24 October 2011.

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