

Host of legal requirements when selling goods online

THERE has been a steady move to market goods and services online. Before establishing an online presence, retailers should consider the laws regulating electronic transactions, consumer rights and data protection to ensure that they are not exposed to unnecessary risks.

Three key pieces of legislation that regulate online sales are the Electronic Communications and Transactions Act (Ecta), the Consumer Protection Act (CPA), and the Protection of Personal Information Act (Popi).

Ecta regulates all forms of electronic communications and transactions in South Africa. The CPA is also relevant to electronic transactions and provides consumers with a formal set of rights. Although most of the provisions of Popi have not



started, once effective Popi will have a considerable impact on electronic transactions.

It regulates how companies that process personal information should handle, store and secure that data. It is inevitable that online retailers will, in some manner or form, process personal information. Businesses that sell their goods online would do well to start implementing measures to

ensure compliance with Popi.

One requirement common across Ecta, the CPA and Popi is the obligation of suppliers to disclose certain information to consumers.

The consequences of non-compliance are serious. For example, a failure to comply with the disclosure requirements under Ecta would enable a consumer to cancel a deal within 14 days of receipt of any goods and obtain a full refund.

The same remedy applies where consumers are not given an opportunity to review the entire electronic transaction, correct any mistakes and withdraw from the transaction before ordering.

The timing of when disclosures must be made or consumer consent obtained is also important. The CPA, for example,

requires that certain information must be disclosed to consumers before they do a deal.

Similarly, section 18 of Popi provides that a supplier that collects personal information must ensure the subject is informed of a number of things before their data is collected.

Navigating the requirements of Ecta, the CPA and Popi together is technical. Due to the number of requirements, it is easy to fall foul of the legislation.

A contributing factor may be that in many cases, the online policies and contracting process are built without reference to the law. Businesses that sell their goods online must understand that it is not only the content of the sale and website terms that matter but the sales process too.

It is essential for retailers to

ensure their online terms and policies, and contracting process, are legally sound and provide them with the maximum protection while reducing their exposure to unnecessary risk.

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