

DIRECT SELLING & THE FAIR TRADING ACT?

Presented by:-

MR SEBASTIAN J P QUEK
Partner, K L Lim & Sebastian Quek
CASE Central Committee Member
Chairman, CASE Mediation Panel Committee
Fair Trading Legal Panel Member

13 July 2004

1. **Introduction – CASE**

2. **Introduction – The Road to CPFTA**

Mar 2001 : Joint CASE-MTI task force to study the feasibility of a
Consumer Protection (Fair Trading) Act

Oct 2002 - Oct 2003 : Consultations with public and business community

Nov 2003 : Parliament debated and passed the Bill

1 Mar 2004 : Act came into force. Not retrospective.

3. **Purpose of the Act**

a) Protect small consumers from unfair practices

b) Empower consumers to seek recourse themselves. Gives consumers the right to:-

- bring action in court for relief
- cancel timeshare & direct sales contracts within cancellation period.

- c) Minimise regulatory compliance costs
 - d) Not to penalise but to hold suppliers accountable
 - e) Increase information available to consumers
4. **“Consumer transactions”** means:
- a) Supply of **goods** or **services** by a **supplier** to a consumer as a result of a purchase, lease, gift, contest or other arrangement; or
 - b) Agreement between a supplier and a consumer, as a result of a purchase, lease, gift, contest or other arrangement, in which the supplier is to supply goods or services to the consumer or to another consumer specified in the agreement
5. **What types of transactions are covered?**
- Consumer transactions
- NB: Normal Contract Law Vs. Fair Trading Act
6. **Excluded transactions (First Schedule)**
- a) Residential property transactions (but not including lease of residential property granted in consideration for rent or time share contract)
 - b) Services provided under a contract of employment
 - c) Any transaction or activity already regulated under the Commodity Trading Act (Cap. 48A), the Moneylenders Act (Cap. 188), the Pawnbrokers Act (Cap. 222), and certain Acts under the purview of MAS
7. **“Goods”** means
- Any personal property, whether tangible or intangible, and includes chattels that are attached or intended to be attached to real property on or after delivery; and credit, including credit extended solely on the security of land;
 - Any residential property; or
 - A voucher.

8. **“Services”** means

- A service offered or provided that involves the addition to or maintenance, repair or alteration of goods or any residential property;
- A membership in any club or organisation if the club is a business formed to make profit for its owners;
- The right to use timeshare accommodation under a timeshare contract.

9. **Who is a Consumer?**

- An **individual** who, otherwise than exclusively in the course of business, receives or has the right to **receive goods or services from a supplier** or has a legal obligation to pay a supplier for goods or services that have been or are to be supplied to another individual.
- An individual is a consumer even though he obtains goods or services for **dual purposes i.e. both business as well as personal use**, but the court may **grant relief** only to the extent that the goods are intended for **non-business use**
- **Excludes** individuals who are acting exclusively in the course of business, i.e. **business to business transactions**.

10. **Who is a Supplier?**

- Includes retailers, manufacturers, promoters and distributors as well as their employees or agents
- **Employee’s conduct** in the course of his employment, **and an agent’s conduct** within the scope of his actual or apparent authority is also **deemed to be the conduct of his employer or principal respectively**
- **Publishers enjoy an exemption from liability** in respect of any statement, representation or omission in an advertisement printed, published, distributed, broadcast or telecast on behalf of a supplier **in good faith and in the publisher’s ordinary course of business**

11. **Application of Act**

- Act applies where the supplier or consumer is resident in Singapore or the offer of acceptance is made in or is sent from Singapore.

- Only one of these requirements needs to be satisfied for Act to apply

11. Unfair Practice

- a) do or say anything / fail to do or say anything, if as a result, a consumer might reasonably be deceived or misled;
- b) make a false claim;
- c) take advantage of consumer if supplier knows or should reasonably be expected to know that consumer:-
 - is not in a position to protect his or her own interests; or
 - is not reasonably able to understand character, nature, language or effect of transaction or proposed transaction or any matter related to transaction.
- d) commit one or more of the 20 unfair practices listed in the Second Schedule.

Compare with:

DSAS Code of Ethics & Conduct

Article 3: Prohibited Practices

- No Direct Seller shall engage in sales or recruiting practices that are **unfair, misleading or deceptive** or otherwise not in compliance and accordance with the relevant Singapore laws.
- No Direct Seller shall, in particular, take advantage of the old and the illiterate. In addition, no Direct Seller shall induce or mislead a customer into using product with the intention of depriving the customer of his right to cancel an order of contract under the "7-day Cooling-off period" Statement.

Article 4: Products or Services

The offer of products or services for sale by a Direct Seller shall be accurate, truthful and complete as to the price, grade, quality, make, value, performance, currency of the model and availability (as may be appropriate in each case).

12. The 20 Specific Unfair Practices

- (1) Sponsorship, approval or performance characteristics, accessories, ingredients, components, qualities, uses or benefits that are false
- (2) Standard, Quality, Grade, Style, Model, Origin or Method of Manufacture that is false;
- (3) Misrepresenting goods as "new" or "unused" which are deteriorated or re-conditioned;
- (4) Misrepresenting history of use of the goods;
- (5) Representing that goods are available for a particular reason, for a particular price without expressing limitation;
- (6) Misrepresenting that service, part, repair or replacement is needed or desirable;
- (7) Representing price benefit or advantage exists when it does not;
- (8) Charging higher price than estimated;
- (9) Representing goods and services transaction as involving rights or remedies that don't exist;

Compare with: -

DSAS Code of Ethics & Conduct

Article 8: Guarantee and After-Sales Service

The terms of any guarantee and after-sales service shall be furnished in writing prior to or at any time of the signing of a purchase order, with the full extent of the guarantee and after-sales services clearly stated. **There shall be no hidden costs to the customer.**

- (10) Misrepresenting a person as having or not having authority for final negotiations;
- (11) Oppressive, one-sided unconscionable terms in the contract;
- (12) Exerting undue pressure or undue influence;
- (13) Misrepresenting in voucher that another supplier would provide goods or services at a discount;

- (14) Representing in an objective form (editorial, documentary or scientific report) what is, in fact, an advertisement to promote goods or services without stating so;
- (15) Misrepresenting that a particular person has offered or agreed to acquire goods & services at a stated price;
- (16) Misrepresenting availability of facilities for repair of goods or spare parts for goods;
- (17) Falsely offering prizes, gifts, freebies with supply of goods or services;
- (18) Representing goods or services as available at discounted price for stated period of time although available for longer period;
- (19) Representing that goods or services are available at a discounted price for a particular reason that is different from fact; and
- (20) Use of small print to conceal material fact.

13. **What Can The Consumer Do If A Supplier Has Engaged In An Unfair Practice?**

- a) Sue the Supplier in Small Claims Tribunal or Court
 - **\$20,000 cap on the value of the claim.** Consumer may abandon the excess in order to bring your claim within the cap
 - Limitation period of **one year for action by consumer to commence.** Starting date for action may be postponed till the earliest date when consumer might **reasonably** have knowledge that the supplier had engaged in the unfair practice
- b) **For time share and direct sales contracts (“regulated contracts”)**
 - Cancel the contract within the 3-day cooling off period and receive a full refund
 - **“Time share contract”** means a contract which confers or purports to **confer on an individual time share rights** that are exercisable during a period of not less than 3 years.

- **“Direct sales contract”** means a consumer transaction which is entered into:
 - a) **During an unsolicited visit** by a supplier to the place of residence of the consumer or another person, or the place of business of the consumer
 - b) **During a visit** by a supplier to any place referred in para (a) at the express request of the consumer **where the goods or services** to which the contract relates **are other than those for which the consumer requested** the visit of the supplier
 - c) **After an offer was made by the consumer** in respect of the supply by the supplier of the goods or services in the circumstances referred to in paras (a) or (b).
- c) **Complain to specified body i.e. CASE or STB**
 - **Actions By Specified Body Against Errant Supplier**
 - i) Voluntary Compliance Agreement (VCA) to undertake not to repeat the unfair practice
 - ii) Declaration that the supplier has committed an unfair practice
 - iii) Injunction to stop the supplier from further committing the unfair practice

14. **Cancellation of Regulated Contracts**

- a) **A regulated contract may not be enforced** against the consumer at any time **earlier than 3 days**, excluding Saturdays, Sundays and public holidays, **after**:
 - The **day on which the regulated contract is entered into**; or
 - If the consumer information notice has not been brought to the attention of the consumer before or at the time when the regulated contract is entered into, **the day on which the consumer information notice is subsequently brought to the attention of the consumer**

Compare with: -

DSAS Code of Ethics & Conduct

Article 5: 7-Day "Cooling-off period" Statement

- A 7-Day "cooling-off period" statement, during which customers may, **on reasonable commercial terms**, cancel an order or contract and receive a **full refund** of their money, is to be **printed legibly** in at least 12 point font and positioned in the contract or order form **immediately above** the space for the signature of the customer.
- The contract details and particulars of the relevant Customer Service department or personnel should be given for the customer to invoke this statement if required.
- The spirit of this statement shall be upheld and shall not be circumvented deliberately.

b) **Some excluded transactions are:**

- Any contract under which the total payments to be made by a consumer do not exceed \$50
- Any direct sales contract if, before the supplier's visit or the consumer making an offer, the consumer has read the contract or, someone has explained it to him in the absence of the supplier

15. **Courts (other than Small Claims Tribunal)**

a) Costs considerations

b) Court may:

- Order restitution of any money, property or other consideration given or furnished by the consumer
- Award the consumer damages in the amount of any loss or damage suffered by the consumer as a result of the unfair practice
- Make an order of specific performance against the supplier
- Make an order directing the supplier to repair goods or provide parts for goods

- Make an order varying the contract between the supplier and the consumer

16. **Factors Considered By The Courts**

- 1) Employee - an employee's conduct in the course of his employment
- 2) Agent - an agent's conduct within the scope of his actual or apparent authority
- 3) Express Warranty – Parol or extrinsic evidence admissible
- 4) Document provided by supplier ambiguous? Interpreted against the supplier
- 5) An unfair practice may consist of a single act or omission
- 6) Absence of intention on the part of a supplier to deceive or mislead a consumer is irrelevant
- 7) "Fail to do or say anything" may involve more than an obligation to disclose known facts that may influence a consumer
- 8) Cannot contract out of Act - void
- 9) Unfair Practice or Not? Depends on reasonableness of the actions of the supplier in the circumstances
- 10) Consumer's Duty to Mitigate - made a reasonable effort to mitigate his loss or damage?
- 11) Attempt to resolve before going to court - Did the consumer made a reasonable effort to resolve the dispute with the supplier before commencing the action?

17. **CASE Mediation Centre**

- Created in June 1999
- Important community service in which disputes are settled by mediation **instead** of court action.
- 2003: MOU between CASE & DSAS

18. **8 Facts About Mediation**

- 1) Completely Voluntary
- 2) Helps parties to explore solutions
- 3) Full opportunity to put forth each side of story
- 4) Both parties are able to understand both sides of the coin
- 5) Not a judge or arbitrator
- 6) Informed decision on settlement with help of mediator
- 7) More relaxed atmosphere
- 8) No right or wrong. "Win-Win" situation

19. **Who Are Our Mediators?**

- All volunteers (professionals / experienced in various fields)
- Code of Conduct
- Agreement to Mediation
- Settlement Agreement

20. **What is the Cost of Mediation?**

CONSUMERS ASSOCIATION OF SINGAPORE		
CATEGORY	\$(Min) <\$5,000	\$(Max) >\$40,000
Member	15	325
Non-member	35	400
CASETrust	30	350
Non-CASETrust	35	400

SINGAPORE MEDIATION CENTRE	
Admin fee	\$250
Mediation fee per day	\$900

21. **Differences Between Singapore and Other Countries**

- No Fair Trading Office
- No criminal sanctions in Act
- Only civil remedies BUT ...

Sebastian J P Quek
13 July 2004