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## GENERAL NOTICES

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### NOTICE 460 OF 2006

#### DEPARTMENT OF TRADE AND INDUSTRY

#### CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Mandisi Mpahlwa, Minister of Trade and Industry, do hereby, in *terms* of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the investigation conducted by the Committee pursuant to Notice 1067 of 2005 as published in Government Gazette No. 27753, dated 01 July 2005, as set out in the Schedule.

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**MANDISI MPAHLWA**

**MINISTER OF TRADE AND INDUSTRY**

### SCHEDULE

**CONSUMER AFFAIRS COMMITTEE**

**REPORT  
IN TERMS OF SECTION 10(1) OF THE  
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988  
(ACT 71 OF 1988)**

**REPORT 123**

**AN INVESTIGATION INTO  
WORK FROM HOME OPPORTUNITIES**

## **WORKFROM HOME OPPORTUNITIES**

### **1. *The Consumer Affairs Committee***

The Consumer Affairs (Unfair Business Practices) Act 71 of 1988 (the Act) is administered by the Consumer Affairs Committee (the Committee), a statutory body in the Department of Trade and Industry (**the DTI**). The purpose of the Act is to provide for the prohibition and control of certain business practices. An unfair business practice is defined as any business practice which, directly or indirectly, has or is likely to have the effect of:

- (a) harming the relations between business and consumers;
- (b) unreasonably prejudicing any consumer,
- (c) deceiving any consumer; or
- (d) unfairly affecting any consumer.

The Act is enabling and not prescriptive. The main body of the Act deals with various administrative procedures to be followed during investigations, the investigative powers of the investigating officials, the types of investigations the Committee could undertake and the powers of the Minister of Trade and Industry (the Minister). The Act confers wide investigative powers on the Committee. The investigations deemed necessary by the Committee are undertaken by the Consumer Investigations Directorate of **the DTI**.

The Committee can undertake two broad types of investigations, namely particular and general investigations. A particular investigation conducted in terms of section 8(1)(a) of the Act focuses on a particular individual(s) or business entity(ies). The subsequent order of the Minister will only be applicable to that particular individual or **business** entity. A general investigation conducted in terms of section 8(1)(b) focuses on a business practice which is commonly applied within the business community and which may constitute an unfair business practice. The subsequent order of the Minister will be applicable to all individuals and entities utilizing those particular business practices.

### **2. *Some dubious work from home opportunities***

Consumers are enticed in the classified sections of newspapers and magazines and on posters affixed to telephone poles to work from home and in the process earn substantial amounts. For example, an advertiser claimed that people could earn R 1 000 to R5 000 or more per month by working at home. Consumers were requested to send four standard postage stamps to the address in the advertisement. The consumers who responded received a leaflet, claiming that there were different types of work, such as "... typing, the gathering of names and addresses and administrative work, such as addressing envelopes". Interested persons were then required to send certain amounts to the advertiser. The "instructions" to the consumers, who responded by sending money to the advertiser, were that they (the consumers) should in turn advertise

"opportunities to work at home". The participating consumers were also supplied with the names and addresses of other possible interested persons. It appeared that many participating consumers received the same lists of "... possible interested parties". This resulted in participants sending each other letters offering "... work opportunities at home".

Another advertisement read:

*"EARN EXTRA MONEY - Forwarding envelopes to British Mail Order Company from home. Earn 350 pounds for every 1 000 envelopes. For info send ... (the address of the advertiser)".*

The consumers who responded to this advertisement received a single **page** leaflet explaining the "opportunity". In this leaflet it was *inter alia* stated:

*"EARN R150 per 100!  
(R1.50 per envelope)*

*Forwarding envelopes to British Mail Order Company*

We would like to offer you the opportunity to work in your own home. **By** following our easy instructions, we guarantee to pay you 25p for every addressed envelope you sent us. That is any quantity of envelopes from **1** to 99. Send a batch of **100** or **more** envelopes and we will **pay you 30p** per envelope, i.e. **€30** (Pounds sterling) for a batch of 100. Send a batch of 1 000 and we will pay you **35p** per envelope, i.e. **€350** for a batch of 1 000. You will not have to pay the cost of sending the envelopes to England.

We wish to expand our sales throughout your country of our unique "Product Name". This as you can imagine is quite a formidable task on our own, that is why we require your help! There are millions of potential buyers who **we** want to send our leaflets to. **No** single company could possibly hope to reach them all, that is why we need people **like** yourself helping us from home and **earning extra** money **by** sending us the addressed envelopes we need. **You can** start immediately by sending for your Instruction.Pack. The pack, which **is** sent to you by air mail, contains all the materials and instructions you will need and **all** further materials from us will be sent to you free of charge. You will not have to supply envelopes or postage stamps.

In order to make sure only sincere people apply, and to help pay for the instruction pack and processing you onto our computer we require a refundable deposit of R100 which will **be** refunded in full as soon as you have sent us 100 envelopes. We guarantee to pay you at least 25p for every addressed envelope you send us."

The advertiser requested that the R100 be paid to an "agent" in South Africa and not to the "British Mail Order Company".

The claims in the leaflet were obviously totally ludicrous. Why would a British company want South Africans to address envelopes for it? There are millions of consumers in Britain and Europe. The promise of £350 for a batch of 1 000 envelopes means that the company is willing to pay R3.78<sup>1</sup> for each envelope! This is a huge amount for one envelope and no businessperson in her right mind would be willing to pay this amount. The statement that "... no single company could possibly hope to reach them all" is ridiculous. Many companies all over the world are capable to easily send millions of mail shots to consumers. The guarantee of "... 25p for every addressed envelope you send us" means absolutely nothing. The guarantee is not enforceable. The consumers who responded to this leaflet and sent their R100 to the "agent" have certainly lost their money.

A characteristic of most work from home opportunities is that the promoters of these schemes, directly or indirectly receives or demands a so-called registration fee or an administration fee or any other up-front fee under the guise of various words, for offering an employment opportunity - a lucrative work from home.

During 2002 the Committee undertook a section 8(1)(a) or specific investigation into a work from home "opportunity". This "opportunity" involved *inferalia* typing from home<sup>2</sup>. Ms Patrick was the sole member of Reitz Personnel CC (Reitz). Reitz advertised in various newspapers such as Die Beeld, Die Burger, Middelburg & Witbank, Volksblad, Diamond Field Advertiser, Vaalster and Vaalweekblad. A typical advertisement read (translated from the Afrikaans):

**"Admin and Typing vacancies, Available in your area, Compensation negotiable, Immediately available, (followed by four mobile phone numbers) (Ma-Fr 9:00 - 16:00)".**

Potential employees were required to pay a registration fee of R175. They then receive a manual in which the work that they are required is set out. The preface to the manual stated:

**You now operate a small, successful and gratifying home business. With your main task, Administration, Research and Typing, you will be able to start your own home business".**

Potential participants were given a choice between three different packages namely, administration work, research or typing. If the choice fell on "research", for example, the "employees" were required to do research (whatever it means) on absurd topics such

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1 Assuming an exchange rate of R10.80 = f1.

2 See Report 99:Reitz CC and Ms Vanessa Patrick published under Notice 2775 in Government Gazette 24015 of 1 November 2002. The order of the Minister was published under Notice 2776 in the same Government Gazette, On 14 March 2003, under Notice 845 of 2003 and Government Gazette 24585, the Minister gave notice that the parties appealed against Notice 2776. Nothing came of this intended appeal.

**as:**

- "How **to handle you** bank manager".
- "~~How~~to save money".
- "~~Recipe-book~~".
- "Needlework for the housewife".
- "**My motor**".
- "Your health".
- "Computers **and you**".

"Employees" could allegedly earn R4 per **A4** page, provided they provide 20 full pages of information on a particular topic written in book form. After completion of the "book" it had to be sent to **Reitz** for approval, which is then responsible for marketing the book, "Employees" are informed that they can earn as much as R100 per book sold provided there is a market for the book.

A complainant, Ms X, chose the typing option. To qualify for "employment" she was required to pay a registration fee of R175, which she duly did. She received typing work which had to be completed within 30 days. Ms X alleged that, after she completed the work within the set period, she received a letter from Reitz that the work had not been done within 30 days. She received no money from Reitz and was informed that she **would** have to register again should she wish to continue working for Reitz. Reitz, after learning about the complaint lodged with the Committee, refunded the money paid by **Ms X** but stated that the complaint did not have any merit as the Complainant had not complied with the 30 days rule.

Officials of the Committee visited the business premises of Reitz on a number of occasions. A standard letter was found in most of the files stating that the work completed had been received late and that the "employees" were required to re-register. There was no evidence that any "research" had been made available to third parties and no effort was made on the part of Reitz to establish the credentials of those who registered to do research. Most of the persons who "registered" appeared to come from impoverished areas and were unemployed. Notwithstanding a substantial number of clients, the Committee could not **find** any evidence of consumers who received a regular income from Reitz. It was further established that the primary source of income of Reitz **was** the registration or administration fee. The work from home was simply a smokescreen.

It is clear from this report that the typing from home opportunity offered by **Ms Patrick** did not benefit her clients (on the contrary) and was against public interest. The Minister, in terms of section 12 of the Act, declared illegal the unfair business practice of **Ms Patrick**. The particular unfair business practice was described as the business practice whereby Ms Patrick and the dose corporation Reitz Personnel cc, directly or indirectly receive or demand any registration, administration or up-front fee for offering an employment opportunity.

Reitz presented the Committee with copies of letters clients who were "extremely satisfied with the services **provided** by Reitz. An investigating official was successful in tracing two of the clients. Both denied that they had written letters to express their

satisfaction with the services of Reitz. In fact, both complained about **Reitz**.

### **3. Some unambiguous work from home opportunities**

Not all work from home opportunities are undesirable or unfair business practices or against the public interest. The direct sellers of the business who are members of the Direct Selling Association's (DSA<sup>3</sup>) are examples.

Direct sellers usually work from home and are members of the sales organisation of a business. They may be independent commercial agents, independent contractors, independent dealers and distributors, employed or self-employed representatives, franchisees or the like.

Direct selling in terms of the **DSA's Code of Conduct** (hereafter called **the Code**), refers to the direct selling of consumer goods in which a sales person:

- either demonstrates the product or presents a product catalogue in homes, the workplace or similar places away from shops
- collects an order
- subsequently delivers the **goods** personally or arranges delivery
- collects payment for goods or arranges **for** payment or credit transactions
- applies "person to person" selling, "party plan" selling, "multilevel marketing" and "network marketing".

Also, in terms of the DSA's Code, direct sellers shall immediately and truthfully identify themselves to their prospective customers. They shall also identify the firm, their products and the purpose of their approach.

For the year ending 2004 year the turnover of the **DSA** members was **R1½** billion and this involved 676 000 sales persons.

### **4. Some complaints received**

The Committee received a number of complaints from consumers who complained about work from home opportunities, which **did** not materialize. Some claims **made** by persons advertising home from work opportunities are:

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**3** The **Direct Selling Association** is a national trade association representing more than 40 direct selling entities that manufacture and distribute goods and services through independent direct sellers directly to consumers in a face-to-face manner away from a fixed retail location.

- "This can be the first day of your new life. Suppose you fill in 34 envelopes per **day you** may earn up to R15 000 per month income".
- "Company requires **workers** countrywide. **Write/type** 2 000 labels and you make **R2 000**. **The more labels** you write, the more money you make".
- "Your money problems stop here!! Earn R15 000 pm. Simply distribute forms through the post. If you fill 35 envelopes in a day you can earn R15 000 pm".
- Company offers **12-month** contract. No experience needed. Type standard letters **and** documents that do not require any complicated typing. Application fee of R190 **is** payable for every 12 months renewable".
- "Do you **feel** like you are too **busy** earning a living to **make** any real money? More and more people are working from home. Why are you **missing** out **while** others are cashing in? We already work compiling data **from our homes** and earn an incredible income. Earn your worth. Work for yourself. Part time **R4 000** per month".

This opportunity **was accessed** by the consumer through the Internet and after further enquiries an official of the Committee established that the advertiser was a direct seller **and a** DSA member. **This direct** seller **transgressed** the DSA's Code of conduct because he neither immediately and truthfully identified himself to his prospective customers nor the business, its products and the purpose of his approach. Further **enquiries** exposed a number of direct sellers, as defined in section 3, who did not **observe** the Code applicable to them.

In some advertisements, the promoters require that interested parties must forward a **certain** amount **for** "further information". In other advertisements the promoters require that a self-addressed envelope must be forwarded to them. In their response the promoters then require from **the** interested consumers that some payment must be made for the "further information".

##### **5. *The meeting of the Committee held on 17 March 2005 and subsequent events***

At its meeting held on 17 March 2005 the Committee provisionally resolved to undertake a section 8(1)(b) investigation into work-from-home opportunities. The Committee further resolved that the draft notice should be forwarded to the DSA for comment and **be** published in the Government Gazette.

On 22 March 2005 the Chairperson of the **DSA** was informed that the Committee is considering an investigation in terms of section 8(1)(b) of the Act into work from home opportunities. A copy of the draft notice was attached to the letter.



The DSA was also informed that during the latter half of 2004, an official made enquiries about a number of advertisements regarding work-from-home opportunities, which seemed to be misleading. Exaggerated claims were apparently made about the earnings potential. Three websites were accessed, namely website 1, website 2 and website 3. Website 1 required that R215 should be paid into a banking account for a "Decision Package". The website stated "Work from Home. Welcome to my home based business program". The "Decision Package" included a booklet (Training Level 1), a video (Work from Home) and a CD Rom (Dare to Dream). The advertiser called himself the "International Business Expansion Manager". Ms X of website 2 and Ms Y of Website 3 R100 and R215 respectively for a "Decision Package". It was later established that the opportunities were to market the products of DSA members. It was further stated to the DSA that the advertisers mentioned did not identify themselves, the firm or the products in their advertisements and whether this type of advertising is a contravention of the DSA's Code? If the answer was in the affirmative, the DSA was whether the clause in the Code regarding identification, as set out in the DSA's code should not be included in envisaged government regulations regarding work-from-home opportunities.

The draft notice was also brought to the attention of *inter alia* the promoters of work from home opportunities who operated from Paarl, Mokopane, from Mossel Bay and Great Brakriver. They offer work from home opportunities to consumers, mostly by direct mail. Telephonic discussions were held with representatives of the entities involved. The draft notice was further brought to the attention of the Advertising Standards Authority (ASA).

### 5.1 The response of the DSA

The DSA *inter alia* wrote:

"We are supportive of the clause regarding identification being included in the envisaged government regulations regarding work from home opportunities.

In the meanwhile, we have asked Xyz<sup>4</sup> to give us a report on the activities of their distributors. Xyz confirm that the company subscribes to the DSA Code. We will revert to you on receipt of the report".

The clause regarding identification refers to clause in the Code that direct sellers shall immediately and truthfully identify themselves to their prospective customers. They shall also identify the firm, their products and the purpose of their approach. It appears that Xyz have not yet reported to the DSA.

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<sup>4</sup> Xyz refers to the company whose direct seller who did not truthfully identified himself to his prospective customers. See section 4.

## 6. **Notice of the section 8(1)(b) investigation**

At its meeting held on 5 May 2005 the Committee resolved to undertake the section 8(1)(b) investigation into work from home opportunities. In terms of the provisions of section 8(4) of the Act, Notice 1067 was published in Government Gazette 27753 on 1 July 2005. Notice 1067 read as follows:

"In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No 71 of 1988), notice is hereby given that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(b) of the said Act into advertisements in newspapers, magazines, other print media, and electronic media offering "work-from-home opportunities".

These "work-from-home opportunities" include, but are not confined to:

- (a) typing work and/or
- (b) addressing (typing or writing) envelopes of any kind whatsoever and/or
- (c) addressing (typing or writing) labels of any kind whatsoever and/or
- (d) the filling of envelopes of any kind whatsoever and/or
- (e) administrative opportunities and/or
- (f) the gathering of names and addresses and/or
- (g) the compiling of data and/or
- (h) the direct sellers of consumer goods who do not truthfully identify themselves, the firm and their products in any advertisements.

"Work-from-home opportunities" exclude:

- (a) Typing work requested by the purchaser of such a service, such as the typing of assignments required by learners and students.
- (b) The direct selling of consumer goods in which a sales person:
  - (i) either demonstrates the product or presents a product catalogue in homes, the workplace or similar places away from shops
  - (ii) collects an order
  - (iii) subsequently delivers the goods personally or arranges delivery
  - (iv) collects payment for goods or arranges for payment or credit transactions
  - (v) applies "person to person" selling, "party plan" selling, "multilevel marketing" and "network marketing",

**provided that the direct sellers truthfully identify themselves, the firm and their products in advertisements.**

- (c) Mail-order entities such as manufacturers, wholesalers or retailers who contact buyers through direct mail, catalogues, television, radio, magazines, and newspapers and deliver the goods ordered by them to a post office or a physical address nominated by clients.

Any person may within a period of thirty (30) days from the date of this notice make written representations and proposals regarding the above-mentioned investigation to: The Director, Consumer Investigations Directorate, Private Bag X84, Pretoria, 0001. Tel: 012-394-1542, Fax: 012-394-2542. e-mail: ebimo@thedti.gov.za. Enquiries: Mr E Mohamed".

Notice 1067 did not differ from the draft notice, which was forwarded, to the **DSA** and the promoters of work from home opportunities.

### **7. Responses received after publication of Notice 1067**

After publication of the Notice 1067, the Committee received a number of responses from consumers and other interested parties. The daily newspapers, Citizen and Beeld, for example, published articles about work from home opportunities. This exposure resulted in the Committee receiving a great number of complaints from consumers regarding their dealings with work from home businesses. The following are excerpts from a few of these complaints.

- "I have to compliment you and your department tackling this serious problem and wish you success with your endeavours. There are far too many poor and unemployed people who are being robbed of scarce finances by a bunch of unscrupulous jackals that have no conscience at all. Whilst trying to make money we are being taken for a ride by dishonest people".
- "I paid my R450 for the label division only to find that there is no way that you can earn money through this."

The following quotes were directly translated from the Afrikaans:

- "I saw the article in the Beeld regarding work from home scams. We may be able to assist in the investigations since we are aware of a person running a scam like that and we have the address and we can confirm that the person is at that address".
- "I thank you for your article on how innocent people get robbed of their precious money by misleading advert/articles. I paid my R450 for the label division only to find out that there is no way that you can earn money through this".
- "I responded to many of these advertisements. In one instance I responded to one where I paid R520. They promised me R50 per brochure. I sent out 230 brochures and they said they received nothing from me. I hope your investigation settles all this misconduct and resolve this irregularity".
- "Hundreds of Rands later and I have not received a single cent. I kindly request that you follow up the people which steal from others who already have no money. I am prepared to work hard".

A consumer complained that he lost money on more than occasion trying to earn an income working from home.

The ASA stated that they have received numerous complaints regarding work from home opportunities and have made several rulings regarding work from home schemes. The ASA wrote that they follow a reactive approach, in respect of work from home opportunities, by following up on matters once a complaint had been lodged with them. The complainant and the promoter are then invited to make representations before a ruling is made. In most cases the respondents do not avail themselves of the opportunity to present their cases and the rulings will then favour the complainants. The ASA deals only with advertisements placed in the mass media, such as newspapers, magazines and the electronic media. The **ASA** has no jurisdiction to deal with advertisements where the opportunities are advertised in, for example, flyers which are distributed at street corners.

## **8. Conclusion**

There are in all likelihood a large number of consumers who for some reason are desperate to receive money while working from home. They could be unemployed or employed, but struggling to **make ends** meet. It **is** also likely that these people have no or a poor understanding of business. They are therefore extremely vulnerable to claims that thousands or Rands could be earned in the comfort of their own homes or living places. They also do not understand that some of the opportunities are simply not viable, such as addressing envelopes and/or labels, typing work, the filling of envelopes of any kind whatsoever, administrative opportunities, the gathering of names and addresses and the compiling of data. Some of the consumers who part with the amounts required by the promoters, are probably also illiterate or semi-illiterate and do not question how the money they are promised is to be generated.

It is clear that the work from home opportunities offered do not benefit consumers at large. On the contrary, participating consumers more often than not contribute positively to the balance in the promoters' bank accounts. The ripping off of consumers is against public interest. The same course of reasoning applies to the direct sellers (see section 3) who do not truthfully identify themselves, the firm and their products in any advertisements.

There can be no doubt that the promoters of work from home opportunities, through their advertisements, brochures and fliers are engaged in unfair business practices as defined in the Act. This is not in the public interest.

There are, however, work from home opportunities, which cannot be regarded as unfair business practices. These opportunities should not be jeopardized by government regulations.

## 9. Recommendation

The Committee accordingly recommends that the Minister, in terms of section 12 (6) of the Act, declare as an unfair business practice, and hence illegal, any advertisement in which a work from home opportunity is offered in newspapers, magazines, other print media and electronic media and any other advertising method.

Work from-home opportunities include:

- (a) typing work and/or
- (b) addressing (typing or writing) envelopes of any kind whatsoever and/or
- (c) addressing (typing or writing) labels of any kind whatsoever and/or
- (d) the filling of envelopes of any kind whatsoever and/or
- (e) administrative opportunities and/or
- (f) the gathering of names and addresses and/or
- (g) the compiling of data.
- (h) the direct sellers of consumer goods who do not truthfully identify themselves, the firm and their products in any advertisements.

Direct sellers are members of the sales organisation of a business who are involved in direct selling. They may be independent commercial agents, independent contractors, independent dealers and distributors, employed or self-employed representatives, franchisees or the like.

Work-from-home opportunities exclude:

- (a) Typing work requested by the purchaser of such a service, such as the typing of assignments required by learners and students.
- (b) The direct selling of consumer goods in which a sales person:
  - (i) either demonstrates the product or presents a product catalogue in homes, the workplace or similar places away from shops
  - (ii) collects an order
  - (iii) subsequently delivers the goods personally or arranges delivery
  - (iv) collects payment for goods or arranges for payment or credit transactions
  - (v) applies "person to person" selling, "party plan" selling, "multilevel marketing" and "network marketing",

***provided that the direct sellers truthfully identify themselves, the firm and their products in advertisements.***

- (c) Mail-order entities such as manufacturers, wholesalers or retailers who contact buyers through direct mail, catalogues, television, radio, magazines, and newspapers and deliver the goods ordered by their to a post office or a physical address nominated by clients.



**PROF B C DUMISA**

**VICE-CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE**

**16 March 2006**