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## GENERAL NOTICE

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### NOTICE 586 OF 2006

#### DEPARTMENT OF TRADE AND INDUSTRY CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Mandisi Mphahla, Minister of Trade and Industry, do hereby, in terms of section 12(6) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), give notice that I intend publishing the following notice in the Government Gazette. Interested parties are hereby invited to comment on the proposed notice within 30 (thirty) days from publication of the said notice. Comments should be directed to the address provided at the end of the notice.

#### **"NOTICE IN TERMS OF SECTION 12 (6) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Mandisi Mphahla, Minister of Trade and Industry, having considered a report by the Consumer Affairs Committee in relation to an investigation, of which notice was given in Notice 1868 of 2005, published in Government Gazette No. 26833, dated 13 October 2005, which report was published in Notice 456 in Government Gazette No. 28687 of 2006, and being of the opinion that an unfair business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12 of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), as set out in the Schedule

#### SCHEDULE

"In this notice, unless the context indicates otherwise:

1. "Unfair business practice" means:

1.1. the business practice whereby **unauthorised branded products** are **advertised, promoted** and/or offered for sale to **end users** and where **end users** have not been alerted by the **seller** that it:

(a) is not authorised by the manufacturer as an **authorised distributor** of the **branded product**, and

(b) that the authorised South African distributor is under no obligation to honour the manufacturer's warranties/guarantees and/or after-sales support.

**Advertised** means the use of any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon, or embedded within, any medium, by means of which a person seeks to bring to the attention of all or part of end users the existence or identity of a supplier of the existence, nature, availability, properties, advantages or uses of, conditions on or prices at which products may be purchased, leased or otherwise acquired.

**Authorised distributor** means a duly authorized distributor of the manufacturer of branded products.

**Branded product** means an imported product which bears, on the product and/or the packaging thereof, the registered brand name or trade mark, of the manufacturer of such product.

**End users** means any person who purchases a product *for his/her* own use and not *for* resale and includes consumers,

**Promoted** includes advertising, displaying, offering to supply or sell any product in the ordinary course of business; and any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to an end user to purchase a product.

**Sellers are** persons who promote, offer for sale or sell any product to end users.

**Unauthorized branded product** means a branded imported product imported without the express authorization of the manufacturer and/or owner of the brand name or trademark or of his formally appointed South African distributor, and includes any tangible object or product promoted or offered in the ordinary course of business for sale or supply to end users.

- 1.2. the business practice whereby the **sellers** of unauthorized branded products do not include, in all forms of advertising or promotion, including in-store promotions, **websites** and **brochures**, when every such product is advertised or promoted, the following wording in conspicuous size, without change: "The authorized South African distributor of this product is under no obligation to honour the manufacturer's **guarantees/warrantees** or to provide **after-sales service**". The wording " this product is ... ", could be replaced with the words "... these products **are** ..." if the **plural**  $\text{\textcircled{C}}$  **applicable**."

2. The unfair business practice is hereby declared unlawful and persons are hereby directed to:

- (a) refrain from applying the unfair business practice;
  - (b) refrain at any time from applying the unfair business practice.
3. This notice shall come into operation upon date of publication hereof.
4. On the recommendation of the Consumer Affairs Committee I may, in a particular case, *in* terms of section 12(6)(c) of the Act, grant exemption from a condition or requirement contemplated in this notice to such an extent and for such period and subject to such conditions as may be specified in the exemption. Such application for exemption must be directed to:

The Chief Director: Office of Consumer Protection  
Consumer Affairs Committee  
Private Bag X84  
PRETORIA  
0001  
Email: ebimo@thedti.gov.za



**MANDISI MPAHLWA, MP**

**Minister of Trade and Industry**

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