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## GENERAL NOTICES

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### NOTICE 188 OF 2011

#### DEPARTMENT OF TRADE AND INDUSTRY

#### CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, No 71 of 1988

I, Dr Rob Davies, 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 746 of 2008 as published in Government Gazette No. 31140, Volume 516, dated 13 June 2008, as set out in the Schedule.



Dr ROB DAVIES, MP

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 NO 71 OF 1988)**

**REPORT NO 126**

**Investigation in terms of section 8(1) (a) of the  
Consumer Affairs (Unfair Business Practices) Act, 1988,  
into the business practices of Zhauns Group of Companies**

**TABLE OF CONTENTS**

Item	Description	Page No.
1	The Consumer Affairs Committee	6
2	Investigation into the Business Practice of Zhauns Group	7
2.1	The Business Practices of Zhauns Group of Companies	7
2.2	Events Leading to and Reasons for the Investigation	9
2.3	The Investigation	11
3	Section 9 Undertaking by Zhauns Group of Companies	14
3.1	The draft Section 9 Undertaking	14
3.2	General Remarks on the Investigation	17
4	Committee's findings on the business practices of Zhauns	18
5	Recommendations	18

Draft Report: Investigation into the business practice of Zhauns Group of Companies

**1. The Consumer Affairs Committee<sup>1</sup>**

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 purpose of the Act is to provide for the prohibition or control of certain business practices. An unfair business practice is defined as any business practice which could harm the relationship between businesses and consumers or which will unreasonably prejudice, deceive or unfairly affect consumers.

The Act is enabling and not prescriptive. The main body of the Act is devoted to various administrative procedures, the investigative powers of its investigating officials, the types of investigations the Committee can undertake and the powers of the Minister of Trade and Industry (the Minister). The Act confers wide investigative powers on the Committee. There are two types of investigations which the Committee may undertake when analysing the business practices of an individual or a particular business namely: an informal section 4(1)(c) investigation or a formal section 8(1)(a) investigation. The usual procedure when the Committee receives a complaint from a consumer, is to undertake a section 4(1)(c) investigation. This investigation enables the investigators to make preliminary enquiries in order to establish how the business operates. Notice of a 4(1)(c) investigation is not published in the *Government Gazette* and details of the investigation are not made public.

However, if the Committee is of the view that there is evidence of an unfair business practice and it decides to investigate the matter further, notice of the 8 (1) (a) investigation is published in the *Government Gazette*. The Minister is not empowered to make any decisions about the discontinuance of a particular business practice on the strength of a 4(1)(c) investigation. He may do so following an 8(1)(a) investigation.

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<sup>1</sup> Statutory body appointed by the Minister

The Act does not stipulate that an 8(1)(a) investigation must be preceded by a 4(1)(c) investigation. If the Committee is of the opinion that *prima facie* evidence of an unfair business practice exists, it usually dispenses with the 4(1)(c) investigation.

Should the Committee, after an 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action to the Minister to ensure the discontinuance of that practice. The Minister's order is published in the *Government Gazette*. An infringement of the order is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both a fine and imprisonment.

## **2. Investigation into the Business Practice of Zhauns Group of Companies**

### **2.1. The Business Practices of Zhauns Group of Companies**

Zhauns Group of Companies (referred to as the respondent<sup>2</sup>) is a registered private company with CIPRO Registration Number **1996/008061/07**, and has incorporated two trading entities, namely Zhauns Business Opportunities and Engineering with CIPRO Registration Number **1982/001082/07** and Haier SA (Pty) Ltd with CIPRO Registration Number **1990/003755/07**. This company has been in operation since 1970 and has been operating under the directorship of Mr Zhaun S Amid-Ahmed. The respondent is involved in the business of importing, distributing, marketing and selling various production machines, largely imported from countries such as China.

Some of the machines sold included machines that make the following:

- Toilet rolls
- Diapers/nappies (Adult and Baby) and sanitary/maternity pads<sup>3</sup>
- Bakery equipment
- Brick / block Making
- Soap, washing powder and detergents

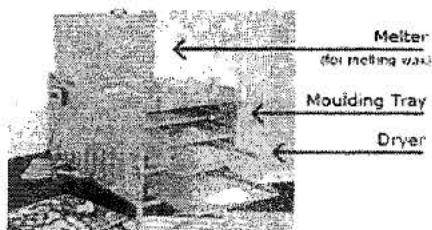
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<sup>2</sup> Also include where reference has been made to Zhauns

<sup>3</sup> Bulk of complaints received relate to the diaper making machines

For the purpose of this investigation, the complaints received by the Office of Consumer Protection related to their nappy/diaper making machines. The following are examples of the machines that are being sold and distributed by the respondent and that were subject of this investigation:

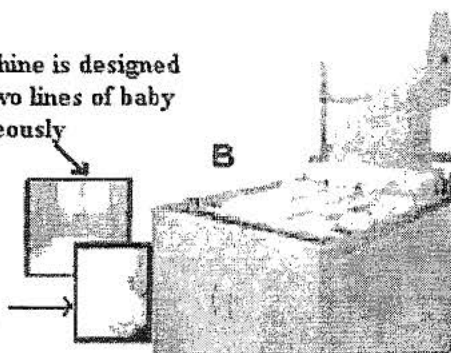
3 in 1 Soap / Candle and Chocolate making machines<sup>4</sup>



Combo Machine

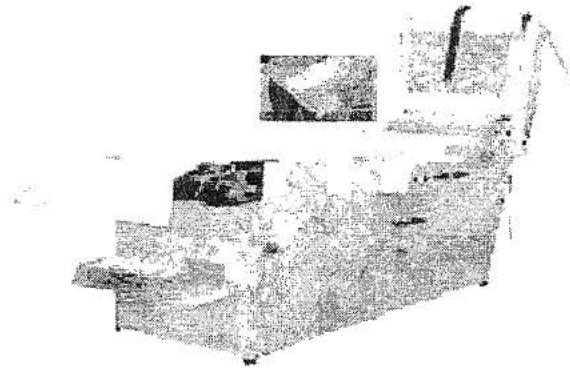
The Combo Machine is designed to make one or two lines of baby diapers simultaneously

& The same Combo machine is also designed to make Adult/Geriatric Diapers



<sup>4</sup> Received only one complaint on this machine

### Electronic Diaper Making Machine



The company also supplied production kits to its customers according to the make and model of the machine sold. The machines were sold at prices ranging from R19 000 to over R100 000 per machine. The company operated its business at its head office based in Salt River, Cape Town and had showrooms in Johannesburg and Durban.

### **2.2 Events Leading to and Reasons for the Investigation**

The purpose of a specific investigation undertaken by the Committee in terms of Section 8(1)(a) of the Consumer Affairs (Unfair Business Practices) Act 71/1988 is to obtain information regarding a business practice carried on by a particular or specific trading entity or individual and to determine whether or not such practice is unfair to consumers.

Where the business practice is found to be unfair, the Committee will make recommendations to the Minister regarding how this business practice should be brought to an end. The Minister may then publish regulations regarding that business practice.

From 2005 until the Section 8(1)(a) investigation notice was published on 13 June 2008, the Consumer Investigations Directorate of the Office of Consumer Protection received 15 complaints against the respondent. These complaints were received from consumers all over the country, including as far as Limpopo and Mpumalanga provinces.

From the complaints received, the following concerns were raised by various consumers who purchased these machines:

- (a) Regular machine breakdowns.
- (b) Machine malfunctioning.
- (c) Machines could not be repaired.
- (d) Supply of incomplete machine components.
- (e) No proper training offered.

Complainants also reported that it has been difficult to get the respondent to repair the machines and it has been difficult to secure production material from the respondent. Some complainants reported that the respondent's own technicians could not operate some of the machines at the time of installation and that these machines have never been used at all. Some machines that started off working correctly did not run for the expected course of the production as there were regular breakdowns during production.

On its website<sup>5</sup>, the company has advertised as follows regarding its diaper/nappy making models:

- Easy to operate & from home or small space.
- Machine operated 24 hours.
- No special skills required.
- Almost no service required & very silent.
- Free demo, Free training & Free installation.
- Robust/long life.
- Makes sizes s,m,l, & xl baby diapers.
- Make a baby diaper in 3-4 seconds with practice in continuous form
- Technicians are nationally based.

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<sup>5</sup> [www.zhauns.com](http://www.zhauns.com)



Most complainants demanded their monies to be paid back after their machines could not be repaired or properly operated by the technicians, but they were not successful and did not receive co-operation from the respondent.

### **2.3 The Investigation**

The resolution to institute an informal investigation in terms of Section 4(1)(c) of the Consumer Affairs (Unfair Business Practices) Act 71/1988 against the respondent was taken by the Consumer Affairs Committee on 2 March 2006 authorizing the investigating official to engage with both the complainants and respondent with a view to understand the business practice. It was further recommended on 22 June 2006 that during the course of the investigation the respondent submits proof of all the success stories it was alleging on its company website.

Following a recommendation by the Committee, a meeting was arranged with officials of the South African Bureau of Standards<sup>6</sup> (SABS) after 3 August 2006 on the possibility of testing the machines. The South African Bureau of Standards indicated that the testing of the machines would not be possible as there were no standard guidelines and norms in place relevant for the testing of the machines. A report was made before the Committee which resolved on 14 September 2006 that summons be issued against the respondent to appear at the next Committee meeting.

A summons was served on the respondent on 30 November 2006 on behalf of the Office of Consumer Protection by the Consumer Affairs Office of the Department of Economic Development in the Western Cape.

The respondent failed to appear at its scheduled meeting and the Committee resolved that the respondent be given another opportunity to appear at the next Committee meeting. The Committee resolved that should the respondent fail to appear, the Committee would consider a section 8(1)(a) investigation.

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<sup>6</sup> SABS is a regulator on product standards and specifications

On 28 March 2007 the Committee received a report that the respondent was suggesting other dates on which it could meet with the Committee and so the Committee resolved that the respondent be given one final opportunity to appear at the next Committee meeting.

Another request was submitted by the respondent to allow its appearance at the next Committee meeting due to engagements overseas and the Committee acceded to this final request for a postponement.

On 27 June 2007, Zhauns was able to attend the meeting and made representations before the Committee. The following issues were discussed with the respondent:

- a) The unauthorized use of information relating to the dti on the respondent's website.
- (b) The breakdown of complaints received by DTI, the amounts paid by complainants for their machines and their expected resolution of those complaints. In all instances complainants were requesting that the purchase price be repaid.
- (c) The respondent was requested to supply a list of those people who were successfully operating the nappy machines.
- (d) Information relating to new complaints was referred to the respondent.

A status report was tabled before the Committee by the investigating official on 7 February 2008. This report indicated that certain of the issues agreed upon with the respondent were not properly addressed. The report was filed as follows:

## STATUS REPORT

**(a) Amendment of website ([www.zhauns.com](http://www.zhauns.com))**

- All information where reference was made previously regarding product endorsement by the Department of Trade & Industry has been totally removed.
- Advertising information relating to diaper-making machines has been changed.

**(b) Resolution of complaints submitted**

Certain complaints had been resolved with complainants. In some instances complainants were offered a portion of their purchase price back. Some complainants accepted these offers of settlement but others were still negotiating for the return of their full purchase price. In no instance did the respondent offer to return the full purchase price.

**(c) Information regarding success stories**

The respondent supplied a list of consumers who had purchased the machines and who, it said, were operating successfully. The inspector contacted these consumers and the following information was obtained:

1. Consumer 1	Machine sold 2 weeks ago. Machine worked properly.
2. Consumer 2	Generally satisfied. Make production kits order twice a month.
3. Consumer 3	Not available. Incorrect contact number.
4. Consumer 4	Not available. Incorrect contact number.
5. Consumer 5	Generally satisfied. Concerned only with production kits delivery delay.
6. Consumer 6	Generally satisfied. Struggle to get repair parts. 2000 nappies per day.
7. Consumer 7	Machine runs faulty regularly. Unsatisfied with product quality.

However, the Committee received another complaint against the respondent from two consumers regarding a diaper making machine (twin combo) which was received on 21 November 2007.

After careful consideration of all the information before it the Committee, on 10 April 2008, resolved to undertake a formal investigation into the respondent's business practices. On 13 June 2008, the Department of Trade & Industry published a notice in terms of section 8(4) of the Act, namely Notice No. 746 of 2008,<sup>7</sup> in Government Gazette No. 31140. The public was informed of the investigation and requested to make recommendations to the Committee. The closing date for written representations and proposals regarding the investigation was 28 July 2008.

### **3. Section 9 Undertaking by Zhauns Group of Companies**

#### **3.1 The draft Section 9 Undertaking**

On 31 July 2008, the Office of Consumer Protection received a letter from Mr Salvatore Puglia, a legal representative for the respondent suggesting a Section 9 arrangement in terms of the Consumer Affairs Act. The following proposals were made by the respondent:

- (i) The respondent would discontinue the sales/distribution of the nappy making machines.
- (ii) The respondent would commit itself to ensuring that machines sold to date would be repaired and consumers would be supplied with production material.

A letter which included reference to new complaints was sent to the legal representative on 15 August 2008. This letter was a response to the proposed Section 9 undertaking between the office and the respondent and contained further proposals to the suggested undertaking as well as the possibility of meeting with the

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<sup>7</sup> Refers to notice of a section 8(1)(a) investigation published in the Government Gazette

respondent in Cape Town to finalise the undertaking should same be agreed upon. Further proposals were as follows:

- (i) The respondent should provide refunds to all consumers in all outstanding cases including those matters which were recently received.
- (ii) Commitment and agreement between Zhauns and complainants to reasonable turnaround times for service and repairs and supply of material and parts on machines already sold
- (iii) Further undertaking and a commitment to assist clients with service and repairs of machines with regard to matters not yet reported to the Department of Trade & Industry, should clients experience problems with machines so purchased.

On 18 August 2008, the Office of Consumer Protection received a response from the legal representative indicating that the contents the letter addressed to them on 15 August 2008 had been communicated to their client for a response. The investigating official together with a colleague from the Office of Consumer Protection met with the respondent and an agreement was reached that the respondent would start finalising refunds to various complainants and would communicate with the Office on a regular basis.

On 14 November 2008 the Committee noted that the investigating official has received further complaints against the respondent and that the official would liaise with complainants for further information. The investigating official met with some of the complainants who submitted further complaints against the respondent on 28 November 2008. On 10 February 2009, the investigating official received a call from the respondent's legal representative during which he proposed a meeting for 2 March 2009 to finally commit the respondent to resolving outstanding complaints.

On 2 March 2009, a meeting was held between the respondent, his legal representative and officials of the Office of Consumer Protection to discuss the contents of the proposed section 9 undertaking. The following issues were agreed upon:

- (i) The respondent would discontinue with the sale of the diaper/nappy making machines.
- (ii) Implementation of a back-up system by Zhauns to assist clients with service and repairs on machines already purchased.
- (iii) The respondent made a further commitment to attend to all individual complaints received after 2 March 2009, on a case by case basis.
- (iv) The respondent would refund 50% of the purchase price on the machines bought before 2005.
- (v) The respondent will assess the last four complaints received by the dti after publication of the notice of investigation for possible refunds to complainants.
- (vi) Suspension for the awarding of incentives to applicants in the Cooperative Incentive Scheme (CIS) within The Enterprise Organisation (TEO) of the dti who are potential Zhauns clients should be lifted, once the Section 9 arrangement has been finalised.

On 18 March 2009, the investigating official forwarded a copy of the draft section 9 undertaking to the respondent's legal representative for his comments. These were received by the investigating official. On 6 May 2009, the investigating official received further comments to the amended version of the draft section 9 undertaking from the legal representative. The comments were tabled before CAFCOM in a meeting held on 7 May 2009 where a decision was taken by the Committee that the comments be assessed by the investigating official and that a full report be tabled before the Committee in the next meeting.

### 3.2 General Remarks on the Investigation

The respondent was invited to attend a number of CAFCOM meetings and was eventually summonsed to appear before the Committee on 14 September 2006. He then requested even further postponements. Eventually after considering all the evidence and the fact the Committee continued to receive further complaints regarding the respondent the Committee decided to conduct a formal investigation into the respondent's business practices. A notice of a specific investigation in terms of Section 8(1)(a) of the Act was published in the Government Gazette No. 31140 on 13 June 2008 under Notice No.746 of 2008.

Following publication of this notice, the investigating official was contacted by the Respondent's legal representative who suggested that the respondent enter into a section 9 arrangement with the Committee (A section 9 arrangement is an undertaking that can be negotiated between the Committee and any party who is subject to either a formal or informal investigation with a view to ensure the discontinuance of an unfair business practice under investigation). A number of meetings were held with the respondent and his legal representative wherein attempts were made to formulate a section 9 agreement. The proposals were considered by the Committee at a number of meetings between 19 September 2008 and 20 August 2009.

Eventually after much deliberation the Committee concluded that it would be impossible to arrive at a section 9 agreement. The investigation had been ongoing for a considerable length of time and no adequate solution appeared to be on the horizon. The Committee therefore decided to conclude the investigation by making recommendations to the Minister.

**4. Committee's findings on the business practices of Zhauns**

- 4.1 The nappy making machine is a defective product.
- 4.2 The continued sale of this machine to consumers by the respondent is prejudicial to consumers
- 4.3 The business practice of selling this machine is an unfair business practice as defined in the Act.
- 4.4 The import and sale of this machine in South Africa should be prohibited

**5. Recommendations**

The Committee recommends that the Minister, in terms of section 12(6) of the Act, declares the business by Zhauns Group of Companies (Pty) Ltd to be an unfair business practice. The Committee further recommends that the importing, advertising, marketing, promotion, distribution and selling of the nappy/diaper making machines and should be prohibited.

  
**PROF T WOKER****CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE****3 SEPTEMBER 2010**