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GOVERNMENT GAZETTE

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KAAPSTAD, 23 MEI 1980

[No. 7009

DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 987. 23 May 1980.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 55 of 1980: Trade Practices Amendment Act, 1980.

No. 987. 23 Mei 1980.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 55 van 1980: Wysigingswet op Handelspraktyke, 1980.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Trade Practices Act, 1976, so as to further define the expression "trade practice"; to extend and further define the powers of the Trade Practices Advisory Committee; to extend the powers of the Minister in relation to the prohibition or regulation of certain trade practices and advertisements; to further regulate the publication of certain notices; to regulate certain defences in trials under the said Act; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 5 May 1980.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. Section 1 of the Trade Practices Act, 1976 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "trade practice" of the following definition:

Amendment of section 1 of Act 76 of 1976, as amended by section 1 of Act 78 of 1978.

5 "trade practice" does not include any trade practice which
10 in the opinion of the Minister is a **[monopolistic condition referred to in section 2 (1) of the Regulation of Monopolistic Conditions Act, 1955 (Act No. 24 of 1955)]** restrictive practice as defined in section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979)."

15 2. The following sections are hereby inserted in the principal Act after section 4B:

Insertion of sections 4C and 4D in Act 76 of 1976.

"Additional powers of committee.

4C. The committee may also—

- 20 (a) at the request of the Minister or of its own accord, investigate and consider any matter subject to control, restriction or prohibition under this Act and make a written recommendation in respect thereof to the Minister;
- 25 (b) for the purposes of any such investigation, hear evidence from any person desiring to give evidence before it;
- 30 (c) for the purposes of any such investigation—
 - (i) of its own accord or at the request of the Minister subpoena any person who is believed to be able to furnish any information on the subject of the investigation or to have in his possession or under his control any book, document or other object which has any bearing upon that subject, to appear before the committee at a time and place
 - 35 specified in the subpoena, to be interrogated

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or to produce such book, document or other object; and

- (ii) interrogate any such person under oath or affirmation administered by the chairman, and examine or retain for examination any such book, document or other object: Provided that any person from whom any book, document or other object has been taken in terms of this subparagraph which is so retained, shall, so long as such book, document or object is in the possession of the committee, at his request be allowed, at his own expense and under proper supervision, to make copies thereof or to take extracts therefrom at any reasonable time.

Subpoena procedure.

4D. (1) A subpoena to appear before the committee shall be signed by the chairman of the committee and shall be in the form determined by him and shall be served in the manner prescribed by the Minister by notice in the *Gazette*.

(2) Any person who has been subpoenaed to appear before the committee and who, without sufficient cause, fails to attend at the time and place specified in the subpoena or to remain in attendance until he is excused by the chairman from further attendance, or, having attended, refuses to be sworn or to make an affirmation after he has been asked by the chairman to do so, or, having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him, or fails to produce any book, document or other object in his possession or under his control which he has been subpoenaed to produce, shall be guilty of an offence.

(3) Any person who, after having been sworn or having made affirmation, gives false evidence before the committee on any matter, knowing such evidence to be false or not knowing or not believing it to be true, shall be guilty of an offence.

(4) The law relating to privilege as applicable to a witness giving evidence before, or subpoenaed to produce a book, document or other object to, a provincial division of the Supreme Court of South Africa shall apply in relation to any person subpoenaed under this section.

(5) In a prosecution under subsection (2) there shall not be an onus on the State to prove the absence of sufficient cause for any act or omission alleged in the charge."

3. Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The secretary may, from time to time, in respect of any matter specified in this Act, by notice in writing, sent by post or delivered, order any person to furnish in writing, before a date specified in the notice, the secretary with any information requested in such notice and relating to the business of such person or to a **business** trade practice or to a trade coupon: Provided that any information desired with a view to the exercise of any power conferred upon the Minister or the committee under this Act, may only be requested on the instructions of and on behalf of the Minister or at the request of and on behalf of the committee, as the case may be."

4. Section 11 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) If the Minister is of the opinion that **the sale, delivery or giving as contemplated in** any act, conduct or practice permitted by subsection (1) **[(c), (e) or (f), of any**

Amendment of section 6 of Act 76 of 1976, as amended by section 3 of Act 78 of 1978.

Amendment of section 11 of Act 76 of 1976, as amended by section 4 of Act 78 of 1978.

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document or token or any category of documents or tokens] is not in the interest of the relevant purchasers, lessees or persons making use of any service or engaged in the sale or leasing of any goods, the Minister may, subject to the provisions of section 16, by notice in the *Gazette* prohibit such [sale, delivery or giving] act, conduct or practice or impose in respect [of such sale, delivery or giving] thereof such conditions as he may deem fit.”

5. Section 14 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: Amendment of section 14 of Act 76 of 1976.

“Subject to the provisions of section 16, the Minister may by notice in the *Gazette* prohibit any advertisement or kind of advertisement or prescribe the particulars (including indications, descriptions or depictions) which in respect of—”

6. The following section is hereby substituted for section 16 of the principal Act: Substitution of section 16 of Act 76 of 1976, as amended by section 5 of Act 78 of 1978.

“Prerequisites for the publication of certain notices.

16. (1) Before the publication of any notice under section 11 (2), 12, 14 or 15 the Minister shall, unless the committee has already made a relevant recommendation to him under section 4C (a), request the committee to investigate and consider, in the manner contemplated in section 4C, the matter in regard to which the notice is proposed to be issued, and to make a recommendation in respect thereof to him.

(2) If the Minister, after receipt of a recommendation in terms of subsection (1) of this section or section 4C (a), intends or still intends to publish a notice under section 11 (2), 12, 14 or 15, as the case may be, the Minister shall, without deviating in any material respect from such recommendation, cause to be published in the *Gazette* a provisional notice—

(a) stating the purport of the notice which he intends to publish under the section in question; and

(b) in which all interested persons are requested to lodge objections or representations regarding the proposed notice in writing with the committee before a date specified in the provisional notice, which shall be a date not earlier than thirty days after the date of publication of the said provisional notice.

(3) If any objections or representations are lodged with the committee in terms of subsection (2), it shall make in respect thereof a further written recommendation to the Minister.

(4) After consideration of any recommendation made in terms of subsection (3), but not later than six months after the date upon which the said recommendation was made by the committee, or, if no objections or representations were lodged with the committee in terms of subsection (2), not later than six months after the publication of the provisional notice in terms of the said subsection, the Minister may publish the notice in question in the *Gazette* under section 11 (2), 12, 14 or 15, as the case may be: Provided that, if the Minister publishes any such notice, the purport of such notice shall not in any material respect differ from the purport of any recommendations that may have been made by the

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committee under section 4C (a) or subsection (1) of this section and subsection (3) of this section in respect thereof.”.

7. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of section 17 of Act 76 of 1976, as substituted by section 6 of Act 78 of 1978.

- “(1) The Minister or the secretary may, on the recommendation of the committee and in accordance with such recommendation and for a period not exceeding [six] nine months, by notice in the *Gazette*—
- 10 (a) prohibit or impose conditions in respect of [the sale, delivery or giving, as contemplated in section 11 (1) (c), (e) or (f), of any document or token or any category of documents or tokens,] any act, conduct or practice permitted by section 11 (1), if the committee is
- 15 satisfied that such [sale, delivery or giving] act, conduct or practice is not in the interest of the relevant purchasers, lessees or persons making use of a service or engaged in the sale or leasing of any goods; or
- 20 (b) prohibit or impose conditions in respect of—
- (i) the giving or supply of any benefit in connection with the sale or leasing of any goods or the rendering or provision of any service; or
- (ii) any trade practice which, in the opinion of the committee, may directly or indirectly injure—
- 25 (aa) the relations between businesses and persons engaged in the sale or leasing of any goods or in the rendering or provision of any service; or
- (bb) the relations between businesses and consumers,
- 30 if the committee is satisfied that, in the interest of such persons or consumers or businesses, it is necessary or expedient to prohibit or control such trade practice; or
- (c) (i) prohibit any advertisement or kind of advertise-
- 35 ment; or
- (ii) prescribe the particulars (including indications, descriptions or depictions) which in respect of—
- 40 **[(i)]** (aa) the nature, properties, advantages or uses of any goods or service; or
- [(ii)]** (bb) the manner in, conditions on or prices at which goods may be purchased, hired or otherwise acquired or any service is rendered or provided,
- 45 shall form part or shall not form part of any advertisement in which such goods or services are advertised,
- 50 if a notice under section 11 (2), 12, 14 or 15, as the case may be, has not yet been published in respect of such act, conduct, practice, sale, delivery, giving, benefit, particulars or trade practice.”.

8. The following section is hereby substituted for section 18 of the principal Act:

Substitution of section 18 of Act 76 of 1976.

“Special defences.

- 55 18. (1) Subject to the provisions of subsection (2), no person shall be convicted of any offence under this Act if he proves that the act or omission with which he is charged and which constitutes such offence is due to **[(a) a reasonable mistake by him in respect of the relevant facts; or (b)]** the fact that he relied reasonably upon any information given to him by **[any other] a person named by him.**
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5 (2) Any person charged with any offence under this Act and who intends to allege at his trial that **[(a)]** the act or omission with which he is charged and which constitutes such offence is due to the fact that he relied reasonably on information given to him by **[any other] a person named by him [or (b) such offence was committed by any other person]** shall advise the prosecutor, at least seven days before the date of his trial, in writing of his intention together with any information at his disposal which may identify, or be of aid in the identification of, such **[other] person**: Provided that the court trying **[such person] the accused** may condone the failure to advise the prosecutor in the said manner.

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15 (3) No person shall be convicted of any offence under section 9 (a) if he proves—
20 (a) that it is his occupation or business to publish or display **[or cause to be published or displayed]** advertisements; and
25 (b) that he published or displayed **[or caused to be published or displayed]** the advertisement in question in good faith and in the ordinary course of business and that he did not know and could not reasonably be expected to have known that such advertisement was false or misleading in material respects.”.

9. This Act shall be called the Trade Practices Amendment Act, Short title. 1980.