

# There was an old lady who swallowed a horse...

 By [Chris Charter](#)

8 Mar 2013

Consumers have been encouraged by the acting Consumer Commissioner to "seek redress" under the Consumer Protection Act (CPA) concerning the content of their meat products. Certainly the CPA is concerned with what suppliers put in their products, as well as how they describe them - but consumers looking for a payday will be most likely be disappointed.



(Image: Wikimedia Commons)

As a general proposition, the CPA outlaws false, misleading or deceptive representations. In terms of section 41 of the CPA, a supplier (which in this context would include a retailer as well as manufacturers and producers) must not express or imply a false, misleading or deceptive representation concerning a material fact to a consumer.

To mislead most likely requires some deliberate act of falsehood, so a retailer that markets a product in good faith, without knowledge or reasonable suspicion that it may be something other than what it purports to be is probably not misleading the consumer. However, the meat supplier is being misleading if he fails to disclose the marsupial content of his meat products. Furthermore, now that retailers are on warning that their products are not always what they seem, there is arguably a positive obligation to correct an apparent misapprehension on the part of the consumer.

Although section 52 of the CPA does allow a court to make certain orders regarding transactions concluded as a result of false or misleading representations, this is limited in scope to requiring a supplier to cease such practice and at best for the consumer, a refund of the price paid for the offending product.

Section 76 contains a more general power of the courts to enforce consumer rights. This may include ordering a supplier to alter conduct inconsistent with the CPA so that manufacturers and retailers may be directed to take positive steps to ensure that meat is properly labelled as to the ingredients. Although the courts have the power to award damages (to individuals or classes of consumers), there is little prospect of consumers being awarded damages for any alleged emotional trauma as a result of inadvertent equine dining - however hard that is to swallow.

## The situation changes if damage is caused

The situation is of course different if damage is caused as a result - in which case consumers can seek redress under section 61 (liability for damage caused by goods). However, reports are that the products sold are safe for consumption.

The CPA caters more specifically for product labelling at section 24, which provides that a person must not "knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description."

A trade description includes any indication of the ingredients of which any goods consist. This requirement applies to manufacturers as well as retailers. Retailers have the added duty to not offer goods where the retailer knows, or has reason to suspect, that a trade description is likely to be misleading. Prior to the widespread media reports, a retailer may have been able to allege that he did not know that the goods were mislabelled - but now a retailer is probably required to take reasonable steps to ensure that labels are accurate.

## A major threat to the meat supply chain's reputation and integrity

Therefore, it appears that the best prospect for "redress" is for the National Consumer Commission (NCC) to conduct an

investigation into whether suppliers at any level of the value chain have been deliberately misleading. If this is found to be the case, the matter can be settled in terms of which suppliers might agree to put safeguards in place to ensure proper manufacturing practice and labelling. If the matter cannot be settled, the NCC has the option of prosecuting the matter at the Consumer Tribunal or issuing a compliance notice detailing what steps suppliers should take to ensure proper disclosure and labelling. If suppliers fail to adhere to the compliance notice, then an administrative penalty may be levied.



(Image: Wikimedia Commons)

Ultimately, the scandal poses a major threat to the integrity and reputation of the meat supply chain in South Africa and the incentive to correct the situation lies in re-building consumer trust rather than any draconian punishment to be imposed under the CPA - it is not that kind of an Act. The golden rule of compliance with the CPA is voluntary consumer-orientated conduct by suppliers; open communication and the taking of proactive steps to correct problems in the supply chain will be in keeping with consumer rights and also obviate the need for the NCC to issue compliance notices or prosecute the matter before the Tribunal. If suppliers fail to do this, the NCC will need to invoke its considerable powers to ensure that consumers get what they pay for.

In the meanwhile, consumers should be aware that while the CPA affords them with rights, the paradigm can only shift if consumers also exercise their responsibilities to be more vociferous in demanding that retailers act in a consumer-oriented manner. Consumer activism does not only mean running to the NCC, but involves making shopping decisions based on supporting retailers that are open and honest and which take steps to educate the consumer about the products they are consuming.

## ABOUT CHRIS CHARTER

Chris Charter is director in the competition and regulatory practice at Cliffe Dekker Hofmeyr business law firm. Contact Charter on tel: +27 (0)11 562 1053 or email [chris.charter@dlacdh.com](mailto:chris.charter@dlacdh.com)

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