

# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 500

Pretoria, 9 February 2007  
Februarie

No. 29600

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## GENERAL NOTICE

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### NOTICE 107 OF 2007

#### DEPARTMENT OF TRADE AND INDUSTRY

#### NOTICE IN TERMS OF SECTION 12 (6) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, ACT No. 71 OF 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. 28138, dated 13 October 2005, which report and proposed regulation was published in Notice 456 of 2006 in Government Gazette No.28687 dated 30 March 2006 and Notice 586 of 2006 in Government Gazette No 28785 dated 26 April 2006, respectively, 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

1. In this notice, unless the context indicates otherwise:
  - 1.1 **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 or the existence, nature, availability, properties, advantages or uses of, conditions on or prices at which products may be purchased, leased or otherwise acquired.

- 1.2** *Authorised distributor* means a distributor duly authorized by or on behalf of the trademark owner of a branded product.
- 1.3** *Branded product* means an imported product which bears, on the product and/or the packaging thereof, the registered trade mark of the originator of such product.
- 1.4** *End-users* mean any person including a consumer who purchases a product for his/her own use and not for resale.
- 1.5** *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.
- 1.6** *Sellers* are persons who promote, display, offer for sale or sell any branded product to end-users.
- 1.7** *Unauthorized branded product* means a branded imported product imported without the express authorization given by or on behalf of the owner of the trademark and includes any tangible object or product promoted or offered in the ordinary course of business for sale or supply to end users.
- 1.8** *Business practice* means:
- 1.8.1.** the business practice whereby branded products imported without the trade mark owner's authority 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 designated by or on behalf of the trade mark owner 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.

**1.8.2** 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 is applicable."

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

(a) refrain from applying the business practice;

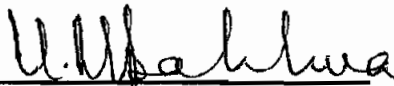
(b) refrain at any time from applying the business practice.

**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  
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Email: ebimo@thedti.gov.za



**MANDISI MPAHLWA, MP**  
**Minister of Trade And Industry**

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