

SOUTH AFRICA / JUDGMENT

Incorrect price advertised: price not binding (Case 2) (20121024315)

[2003] ZACGSO 1 (24 June 2003)

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COURT

Consumer Goods and Services Ombud

BEFORE

N Melville

CASE / FILE NUMBER

20121024315

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Incorrect price advertised: price not binding (Case 2)

Complaint ref : 20121024315

Adjudicator :

N Melville

Date : 24 June 2003

1. Summary of the complaint

The supplier advertised a 6 drawer units for R19.99 but when the Complainant and her friend went to the till to pay, the cashier rang a different price, R219.99. The store manager Mr S was called but he told them that it was a printing error and the item would not be sold at that price advertised on the pamphlet. Complainant would like to have the item at the price advertised and have Mr S apologise plus compensate them for cost of travel.

2. The response of the supplier

The correct price with an apology was put up in the store.

3. Summary of outcome

Summary of outcome There are various unclarified factual issues that preclude a firm factual finding. In the interests of fairness and a speedy and cost effective resolution of this matter, it is suggested that the supplier provides the consumer with a R 100 voucher on a without prejudice basis as compensation for transport costs and inconvenience suffered.

4. Attempts to resolve complaints

The manager called the customer and apologised. The file was closed although the Complainant was not satisfied. The newly appointed ombudsman, Advocate N Melville, reviewed the file and he has determined it to be appropriate to reconsider the decision in this file.

5. Investigative findings

Owing to the value of the claim, no investigation has been undertaken.

6. Legal considerations/Applicable provisions of the Code of Conduct

Code:

8.1 The criteria to be used in resolving disputes includes:

8.5.1 the law, especially the Act and the Code (in cases where there is conflict between the interpretation of the Code or the Act, the Act will always prevail);

8.5.2 applicable industry codes or guidelines;

8.5.3 Fairness in all the circumstances.

Applicable provisions of the CPA:

23(6) Subject to subsections (7) to (10), a supplier must not require a consumer to pay a price for any goods or services—

- (a) higher than the displayed price for those goods or services; or
- (b) if more than one price is concurrently displayed, higher than the lower or lowest of the prices so displayed...
- (9) If a price as displayed contains an inadvertent and obvious error, the supplier is not bound by it after—
 - (a) correcting the error in the displayed price; and
 - (b) taking reasonable steps in the circumstances to inform consumers to whom the erroneous price may have been displayed of the error and the correct price.

30(1) A supplier must not advertise any particular goods or services as being available at a specified price in a manner that may result in consumers being misled or deceived in any respect relating to the actual availability of those goods or services from that supplier, at that advertised price.

- (2) If a supplier advertises particular goods or services as being available at a specified price, and the advertisement expressly

states a limitation in respect of the availability of those goods or services from that supplier at that price, the supplier must make those goods or services available at that price, to the extent of the expressed limits.

Section 30 refers to adverts, which is what this case is about, while section 23 applies to displayed prices. Unlike section 26, section 30 does not provide how errors are to be dealt with nor what the position is if a limit was not placed on the numbers available.

7.

Conclusion

Based on the information provided by the parties, there was an error in the price advertised for a unit of drawers and the supplier refused to honour the advertised price. On a plain interpretation of section 30, if the advertisement specified a limitation on the number available, it would be bound to provide the unit at the advertised price up to the limit advertised, irrespective of any notice subsequently placed in the store. A failure to comply may lead to the imposition of an administrative fine.

There are various unclarified factual issues that preclude a firm factual finding in this instance.

8. Suggested resolution

In the interests of fairness and a speedy and cost effective resolution of this matter, acting in terms of paragraph 11.5 of the Code (attached), it is suggested that the supplier provides the consumer with a R 100 voucher on a without prejudice basis as compensation for transport costs and inconvenience suffered. If the supplier is agreeable, this suggested resolution will be conveyed to the consumer.

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