

No. S 000

**CONSUMER PROTECTION (FAIR TRADING) ACT
(CHAPTER 52A)**

**CONSUMER PROTECTION (FAIR TRADING)
(OPT-OUT PRACTICES) REGULATIONS 2007**

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In exercise of the powers conferred by section 20 of the Consumer Protection (Fair Trading) Act, the Minister for Trade and Industry hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations 2007 and shall come into operation on 2007.

Definitions

- 2.—(1) In these Regulations, unless the context otherwise requires —

“free trial basis”, in relation to the supply of goods or services, means an arrangement whereby goods or services are supplied free of charge for a specified period;

“free trial period”, in relation to goods or services supplied on a free trial basis, means the specified period during which the goods or services are supplied free of charge;

“unsolicited goods or services” means goods or services that are supplied in relation to a consumer transaction to a consumer who did not request them, but does not include goods or services supplied to a consumer who knew or ought to have known that they were intended for delivery to another person [unless it was reasonable to believe that the goods or services, if delivered to that other person, would have been unsolicited goods or services].

(2) A request for goods or services (for the purposes of the definition of “unsolicited goods or services” in paragraph (1)) or an intention to accept and pay for goods or services (for the purposes of regulations 3(1), 5(9)(b) and 6(1)) or consent to a material change (for the purposes of regulation 4(2)) shall not be inferred only from the passage of time or from the consumer’s —

- (a) payment for the goods or services;
- (b) use of, dealing with or disposal of the goods or services;
- (c) request to purchase another similar good or service; or
- (d) inaction.

Unsolicited goods or services

3.—(1) Unless and until the consumer expressly acknowledges to the supplier in writing his intention to accept and pay for the unsolicited goods or services, the consumer may use, deal with or dispose of the goods or services as if they were an unconditional gift to him from the supplier.

(2) Unless the consumer has given the acknowledgment referred to in paragraph (1), the supplier shall not have a cause of action for any loss, use, misuse, possession, damage or misappropriation in respect of the goods or services or the value obtained by the use of the goods or services.

(3) If it is alleged that the supplier supplied unsolicited goods or services, the burden of proof that the goods or services were not unsolicited shall be on the supplier.

Supply on continuing basis

4.—(1) Regulation 3 shall not apply to goods or services supplied to a consumer on a continuing basis under a contract between the consumer and supplier, unless the goods or services are deemed to be unsolicited goods or services under this regulation.

(2) If a consumer is being supplied with goods or services on a continuing basis and there is a material change in the goods or services, or in the supply of the goods or services, the goods or services shall be deemed to be unsolicited goods or services from the time of the material change unless the supplier is able to establish that the consumer consented in writing to the material change.

(3) For the purposes of paragraph (2), a supplier does not establish a consumer’s consent by providing notice to the consumer to the effect that the supplier will supply the materially changed

goods or services to the consumer unless the consumer instructs the supplier not to supply those goods or services.

(4) For the purposes of paragraph (2), a “material change” does not include —

- (a) a change to the price of goods or services or a renewal of an existing supply of goods or services, if the goods or services are not otherwise changed; or
- (b) a change that a reasonable person in the position of the consumer would not view as being material.

Supply on free trial basis

5.—(1) If goods or services (whether or not unsolicited) are supplied to a consumer on a free trial basis, in relation to a consumer transaction, the supplier shall give a reminder notice to the consumer in accordance with this regulation.

(2) The reminder notice shall be given to the consumer —

- (a) at least 3 days (excluding Saturdays, Sundays and public holidays) before the end of the free trial period; and
- (b) not earlier than 14 days (excluding Saturdays, Sundays and public holidays) before the end of the free trial period.

(3) Subject to paragraphs (5)(a) and (6)(a), the reminder notice shall be sent to the address to which the goods or services are supplied.

(4) The reminder notice shall contain the following information presented in a clear and conspicuous manner:

- (a) the date when the free trial period ends; and
- (b) the address or telephone number at which the consumer may notify the supplier before the end of the trial period whether the consumer wishes to continue to receive the supply of the goods or services.

(5) If the goods or services are supplied to the consumer at an electronic mail address, the reminder notice shall —

- (a) be sent to that electronic mail address; and
- (b) specify an electronic mail address or an Internet location address for the purposes of paragraph (4)(b).

(6) If the goods or services are supplied to the consumer at a telephone number, the reminder notice shall —

- (a) be sent to that telephone number; and

(b) specify a telephone number for the purposes of paragraph (4)(b).

(7) An electronic mail address, an Internet location address or a telephone number specified for the purposes of paragraph (4)(b) must be valid and capable of receiving communications in reasonable numbers from the consumers to whom reminder notices are sent.

(8) This regulation does not prevent the supplier from providing any other additional means for the consumer to notify the supplier whether the consumer wishes to continue to receive the supply of goods or services.

(9) A consumer who pays for goods or services supplied on a free trial basis may give to the supplier a demand, in writing, for a refund of any payment made for such goods or services (whether supplied during or after the free trial period) if —

- (a) the supplier failed to give the consumer a reminder notice in accordance with this regulation; and
- (b) the consumer did not, at any time after the commencement of the supply of the goods or services to him on a free trial basis, expressly acknowledge to the supplier in writing his intention to accept and pay for the goods or services.

(10) Regulation 6(2) to (7) shall apply to a demand made under paragraph (9) in like manner as it applies to a demand under regulation 6(1) except that references to unsolicited goods or services shall be taken to refer to goods or services supplied on a free trial basis.

(11) This regulation shall apply without prejudice to any rights or obligations of the consumer under regulation 3 in the case of unsolicited goods or services.

Consumer's remedy

6.—(1) A consumer who pays for unsolicited goods or services may give to the supplier a demand, in writing, for a refund of any payment made for such goods or services if the consumer did not expressly acknowledge to the supplier in writing his intention to accept and pay for the goods or services.

(2) A demand under paragraph (1) is sufficient if it indicates, in any way, the intention of the consumer to demand a refund of a payment made for unsolicited goods or services.

(3) A demand under paragraph (1) shall be made within 12 months after the payment sought to be refunded was made.

