



COMPETITION & CONSUMER PROTECTION
COMMISSION



Be a Smart Consumer:

SAY NO TO UNSUITABLE AND DEFECTIVE PRODUCTS.



1. INTRODUCTION

Consumers are sometimes supplied with products that fail to function as expected, are unsuitable for indicated purpose, are damaged or have flaws that render them unsafe to use. Such products are said to be defective and consumers usually face challenges in obtaining redress from a person or an enterprise that supplied them. It is important that consumers know what constitutes a violation of their rights under the Competition and Consumer Protection Act No. 24 of 2010 (“the Act”) regarding supply of defective products and how they can seek redress as they interact with traders and enterprises.

The Act established the Competition and Consumer Protection Commission (“the Commission”) which is a statutory body under the Ministry of Commerce Trade and Industry (MCTI) mandated to enforce the Act by safeguarding and promoting competition and protecting consumers against unfair trading practices.

Section 49(1) of the Act prohibits a person or an enterprise from supplying a consumer with goods that are defective, not fit for the purpose which they are normally used or for the purpose that the consumer indicated to the person or an enterprise. This brochure provides an overview of Section 49(1) (2)(3)(4) under Part VII of the Act. However, this brochure is not a substitute for the Act and the regulations and orders made under it, nor a definitive interpretation of the law. If you are not sure about how the law applies in the context of your particular situation, you may wish to contact the Commission for more information on the same.

2. What is a defective or unsuitable product and how do I check if the product is not defective?

Defective goods are consumables, commercially produced and distributed goods that are unfit for their intended use, dangerous or harmful for normal use or is inherently dangerous due to the nature of the design, assembly, or manufacture or have a malfunction

In order for you to know that a product is not defective or it is suitable for intended purpose, it must be of functional and of satisfactory quality, that is:

- It must be safe to use, durable, and function without any flaws.
- It must look acceptable.
- It must do all the things someone would normally expect it to do.
- It must function according to the purpose it was purchased for.
- It must be of acceptable quality in relation to the cost and the type of product.

3. Can I buy any item from anyone or anywhere?

It is recommended that consumers purchase products from reputable retailers who have a consumer redress mechanism in place such as service guarantee, product guarantee and an established time period for handling consumer complaints.

4. Do I need a receipt after every purchase?

Yes, as a Smart Consumer, you ought to always demand for a receipt. A receipt is proof of purchase that one has made the purchase. In the event that a product is found to be defective, a consumer can use the receipt as proof. A receipt will also help you receive quick redress. In the event that the case goes to court evidence of purchase is required. However, the Commission has been known to use serial numbers and any other sources of evidence in the event that a consumer was not issued a receipt.

5. Steps the consumer must take when the product you purchased is defective or unsuitable;

- Do not temper with the product by attempting to repair it
- Package it in its original state
- Return it to the supplier together with the receipt of purchase within the shortest possible time
- Report the trader to the Commission only after they have refused to redress you.
- For perishable items like food stuffs, take them to the nearest public health office or local authority office.

6. What does the Commission do if I have been sold a defective or unsuitable product by a trader?

When the Commission investigates and establishes that the trader supplied you with a product which is defective or is not fit for the purpose which you indicated to them at the time of purchase, it will:

- Order the trader to refund you the amount paid for the product or if you so wish replace the product with the one which is functioning properly.
- Upon conviction, fine the trader
- Recall the product from the market

7. Can I still lodge a complaint if an item I bought develops a fault after some time?

- One of your principal rights as a consumer under the Act is the expectation that the item will be of reasonable quality. This includes fitness for purpose specified, safety and durability. The failure of the product to meet any one of these criteria enables you to return to the retailer, even after some time of use. If the fault or defect has not been caused by wear and tear or misuse, your seller should be the first point of contact.
- It is expected that an enterprise shall disclose full information to the consumer on the warranty or guarantee of goods and services before a transaction is made. Its validity period depends on the nature of the product. The warranty implies that if a product fails to perform as expected (under normal use) within the stated warranty period, the enterprise is obligated to repair it, replace or refund the consumer. The Guarantee implies a formal assurance that a product is good and that specified conditions will be fulfilled, especially that a product will be returned to the supplier if not of a specified quality.
- It must be known that if a fault develops after some time from the date of purchase; say after six months, the Commission may need to seek expert assessment, opinion or evidence to indicate that the fault or defect on a product was not as a result of misuse, negligence, mishandling or normal wear and tear.

8. Are traders allowed to refuse to refund, repair, replace or exchange defective products that they supplied to a consumer?

- Section 48(1) of the Act prohibits a trader from displaying any inscription or statement to deny responsibility for anything that happens to the goods or services supplied to a consumer. This implies that a consumer can return goods to a supplier within a reasonable time if the goods fail to satisfy the agreed standards and requirements (which state that the goods must be in good working order, free of defects and so on as provided for under section 49(1) of the Act. This return must take place without penalty or charge on a consumer.
- The supplier must either repair or replace the failed, unsafe or defective goods, or refund the consumer.

9. Do I always have the right under the Act to return a product to a trader?

As a consumer you cannot return the product to a trader if;

- You were aware of the defect before you bought it; that is you buy on “as is basis”.
- You do not have proof of purchase from the trader.
- You bought it from a private buyer on a non-commercial basis (not a shop).
- You were invited to carry out a thorough inspection of the product and failed to spot a defect which that inspection ought to have revealed.
- You simply changed your mind.
- The item is not returned in a merchantable condition that is you scratched it, it is dirty or you had attempted to repair it.

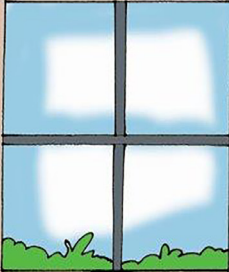
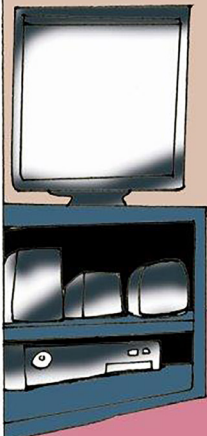
10. How do I become a smart consumer when making a purchase?

Whenever you make a purchasing decision as a consumer, you need to;

- Be sure of the product you want to buy and its use.
- Take your time and shop around to compare prices and quality.
- Inspect the products carefully in the presence of the trader (have the item tested before purchasing.
- Ask about the quality of the product and instructions of use.
- Ask about warranties / guaranties.
- Request for invoices/ warranties and guarantee document as well as receipts upon buying.

"A TRADER SHOULD NOT
SALE A PRODUCT THAT IS
NOT FIT FOR PURPOSE OR
THAT TURNS OUT NOT TO
BE WORKING ACCORDING TO
SPECIFICATIONS"

" THE TRADER
TOLD ME THIS TV
WAS WORKING BUT
IT IS NOT"



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