

(30 April 2015 – to date)

CONSUMER PROTECTION ACT 68 OF 2008

(Gazette No. 32186, Notice No. 467 dated 29 April 2009. Commencement date - 24 April 2010 of Chapters 1 and 5, section 120 and any other provision authorising the Minister to make regulations, and Schedule 2, in terms of Schedule 2, item 2(1))

PRESCRIPTION OF THE CONSUMER GOODS AND SERVICES INDUSTRY CODE AND ACCREDITATION OF THE ALTERNATIVE DISPUTE RESOLUTION SCHEME ADMINISTERED BY CONSUMER GOODS AND INDUSTRY OMBUD AS AN ACCREDITED INDUSTRY OMBUD IN TERMS OF SECTION 82 OF THE CONSUMER PROTECTION ACT, 2008 (ACT NO. 68 OF 2008)

Government Notice R271 in Government Gazette 38637 dated 30 March 2015. Commencement date:

30 April 2015.

I, Dr Rob Davies, Minister of Trade and Industry, after having considered comments made in relation to Notice 69 of 2014, published in Government Gazette No.38058 on 3 October 2014 on the application for accreditation of the Consumer Goods and Services Industry Code of Conduct made in terms of Section 82 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) (the Act) and acting on the recommendations thereto made by the National Consumer Commission in terms of Section 82(3) of the Act, do hereby prescribe the code in the attached schedule as the Industry Code for the Consumer Goods and Services Industry and accredit the Consumer Goods and Services Ombud as an accredited industry Ombud in terms of Section 82(6)(b) of the Act.

This notice will come into effect 30 days after publication in the Government Gazette.

(Signed)

Dr Rob Davies (MP)

Minister of Trade and Industry

13 March 2015

THE CONSUMER GOODS AND SERVICES OMBUD

THE CONSUMER GOODS AND SERVICES INDUSTRY

CODE OF CONDUCT

The Consumer Goods and Services Ombud

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The Consumer Goods and Services Industry Code of Conduct and the Office of the Consumer Goods and Services Ombud are the Industry Code and Ombud Scheme for the Consumer Goods and Services Industry set up in accordance with and accredited in terms of section 82 (6) of the Consumer Protection Act, 2008 (Act No. 68 of 2008).

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SECTION A

1. PREAMBLE

The Consumer Goods and Services Code of Conduct ("Code") and the office of the Consumer Goods and Services Ombud ("CGSO") are the Industry Code and Ombud Scheme for the Consumer Goods and Services Industry set up in accordance with and accredited in terms of section 82 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) ("CPA").

The Code and the CGSO were established to guide Industry as to what is considered the minimum standards of conduct expected when engaging with Consumers and to assist in resolving Disputes that arise between Consumers and Industry in terms of the CPA.

In light of the Code being recognised under the CPA, the Code shall be enforceable against Consumer Goods and Services Industry Participants.

This Code shall be enforceable by the CGSO in line with the Terms of Reference herein.

A failure to comply with this Code amounts to a contravention of section 82(8) of the CPA. Any provision of this Code that is inconsistent with the CPA is invalid.

SECTION B

2. PURPOSE AND OBJECTIVES

2.1 The Code for the Industry is an industry code drafted by the Industry.

2.2 The Code regulates interaction between Participants conducting business within the Industry and the Consumer, and provides for an alternative Dispute resolution mechanism as described in section 82 (6) of the CPA should there be a Dispute between a Participant and Consumers.

2.3 The Purpose of the Code is to:

2.3.1 Raise the standards of good conduct in the Industry without endangering the vitality and growth of business;

2.3.2 Generate growth in the Industry by increasing the level of certainty for all Participants;

2.3.3 Offer guidance to Participants in the Industry as to the implementation of and the compliance with the CPA and what constitutes fair business practices to be followed when operating within the Industry;

2.3.4 Educate Consumers as to their rights and redress available to them should a Participant breach the CPA or the Code; and

2.3.5 Provide for a scheme of alternative dispute resolution as described in section 82 (6) of the CPA.

2.4 The Participants within the Industry are required to pursue the objectives as set out in section 3 of the CPA, especially to:

2.4.1 Reduce and ameliorate any disadvantages experienced by Consumers in accessing the supply of any Goods and Services;

2.4.2 Promote fair business practices;

2.4.3 Protect Consumers from:

2.4.3.1 Unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and

2.4.3.2 Deceptive, misleading, unfair or fraudulent conduct.

2.4.4 Provide for a consistent, accessible and efficient system of consensual resolution of Disputes arising from consumer transactions.

2.5 The Code contains reference to certain principles, practices and legislation and for the purposes of application these need to be referred as to their interpretation and application where quoted in the Code.

3. INTERPRETATION

3.1 In this Code, unless inconsistent or otherwise indicated by the context, the following words and expressions will have the meanings set out below:

3.1.1 "**Business Day**" has the meaning given to it in terms of section 2 (6) of the CPA;

3.1.2 "**Board**" means the Board of the CGSO incorporated under the Companies Act, 2008 (Act No. 71 of 2008) as a not-for-profit company as more fully dealt with in terms of the CGSO's memorandum of incorporation which can be found on the CGSO's website;

3.1.3 "**CGSO**" means the Consumer Goods and Services Ombud, an Ombud Scheme set up in accordance with and accredited in terms of section 82 (6) of the CPA which is enforceable against Participants;

- 3.1.4 **"Code"** means this accredited Industry Code for the Consumer Goods and Services Industry as amended from time-to-time;
- 3.1.5 **"Complainant"** means a Consumer or Consumer's representative, including an accredited, recognised Consumer Protection Group referred to in section 78 (1) of the CPA, making a Complaint in respect of any Goods or Services provided by the Participant concerned;
- 3.1.6 **"Complaint"** means an expression of dissatisfaction made by a Consumer to a Participant related to its Goods and/or Services or the complaints-handling process pursued or alternatively embarked on thus far by the Consumer, the essence of which falls within the ambit of the CPA;
- 3.1.7 **"Confidential Information"** has the meaning given to it in terms of CPA Regulations, Regulation 43 (1) as published in Government Notice R.293 in *Government Gazette* 34180 of 1 April, 2011 which includes any information containing or consisting of:
- 3.1.7.1 trade secrets;
 - 3.1.7.2 financial, commercial, scientific or technical information, if disclosure of the information is likely to cause harm to the commercial or financial interests of a person; or
 - 3.1.7.3 information supplied in confidence by a person, if the disclosure of the information could reasonably be expected to:
 - 3.1.7.3.1 put that person at a disadvantage in contractual or other negotiations; or
 - 3.1.7.3.2 prejudice that person in commercial competition;
- 3.1.8 **"Consumer"** has the meaning given to it in terms of section 1 of the CPA;
- 3.1.9 **"Consumer Goods and Services"** means the Goods and Services provided to Consumers by Participants within the Industry
- 3.1.10 **"Consumer Goods and Services Industry"** means all Participants and/or entities involved in the Supply Chain that provides, markets and/or offers to supply Goods and Services to Consumers, unless excluded in terms of clause 4.4 hereof;
- 3.1.11 **"Consumer Goods and Services Ombud"** means the office of the Consumer Goods and Services Ombud and shall also be termed **"CGSO"**;
- 3.1.12 **"Consumer Goods and Services Ombudsman"** means the person who:

3.1.12.1 is appointed and acts in accordance with "Matters Relating to the Appointment, Tenure and Powers of the Ombudsman" as more fully described in Annexure "A" hereto; and

3.1.12.2 is appointed as Ombudsman and the head of the Office of the CGSO from time-to-time by the Board.

3.1.13 **"CPA"** means the Consumer Protection Act, 2008 (Act No. 68 of 2008), the Regulations thereto and any amendments that are effected from time-to-time;

3.1.14 **"Consumer Protection Group"** has the meaning given to it in terms of section 1 of the CPA;

3.1.15 **"Designated Officer"** means a person responsible for the complaint resolution within the Participant's organisation as identified by the Participant and communicated to CGSO;

3.1.16 **"Dispute"** means a disagreement, arising from a Complaint submitted to a Participant in relation to Goods and/or Services provided to a Consumer of that Participant, which have not been resolved by the Parties;

3.1.17 **"Distributor"** has the meaning given to it in terms of section 1 of the CPA;

3.1.18 **"Facilitate, Facilitation and Facilitated Settlement"** means a Dispute resolution method in which the Dispute resolver, being the CGSO, communicates its initial position to the Parties and a settlement is sought through making one or more offers or counter offers;

3.1.19 **"Goods"** has the meaning given to it in terms of section 1 of the CPA;

3.1.20 **"Importer"** has the meaning given to it in terms of section 1 of the CPA;

3.1.21 **"Industry"** means the Consumer Goods and Services Industry as defined in clause 3.1.10 above and shall have the meaning prescribed therein;

3.1.22 **"Internal Complaints-Handling Process"** means a complaints-handling process as adopted by a particular Participant;

3.1.23 **"Juristic Person"** has the meaning given to it in terms of section 1 of the CPA;

3.1.24 **"Manufacturer"** means any Participant that makes, fabricates, or produces any Goods regardless of scale either to a Consumer or any other person operating in the Supply Chain;

- 3.1.25 **"Mediation"** means the active participation of a Dispute resolver, being the CGSO, intended to assist the Parties to identify the issues, to generate options, to consider alternatives and to endeavour to reach an agreement;
- 3.1.26 **"Minister"** has the meaning given to it in terms of section 1 of the CPA;
- 3.1.27 **"MOI"** means the Memorandum of Incorporation, including the schedules attached thereto, as amended from time-to-time, under which the office of the CGSO is established and as published on the CGSO's website;
- 3.1.28 **"Ombud with Jurisdiction"** has the meaning given to it in terms of section 1 of the CPA;
- 3.1.29 **"Participant"** means any entity operating within the Industry bound by the Code unless expressly excluded by clause 4.1 hereof;
- 3.1.30 **"Parties"** means the Consumer and Participant;
- 3.1.31 **"Person"** includes Juristic Person;
- 3.1.32 **"Producer"** has the meaning given to it in terms of section 1 of the CPA;
- 3.1.33 **"Recommendations"** means a Dispute resolution method in which the Parties are given written suggestions on how factual, legal and other issues should be resolved, on possible outcomes and how they can be achieved;
- 3.1.34 **"Retailer"** has the meaning given to it in terms of section 1 of the CPA;
- 3.1.35 **"Service"** has the meaning given to it in terms of section 1 of the CPA;
- 3.1.36 **"Service Provider"** has the meaning given to it in terms of section 1 of the CPA;
- 3.1.37 **"Supplier"** has the meaning given to it in terms of section 1 of the CPA;
- 3.1.38 **"Supply Chain"** has the meaning given to it in terms of section 1 of the CPA;
- 3.1.39 **"Terms of Reference"** shall mean the terms of reference for the CGSO as set out in Section E of this code.

3.2 Unless the context clearly indicates otherwise:

- 3.2.1 all words and expressions will have such meaning as may be given to them in the CPA unless expressly defined or referenced in this Code.

3.2.2 all references to:

3.2.2.1 a singular noun will be deemed to include the plural and vice versa;

3.2.2.2 a masculine gender will be deemed to include the other gender and vice versa;

3.2.3 the provisions of any law will be deemed to include amendments or substitutions thereof that will be effected from time-to-time.

3.2.4 All section headings and arrangements contained in this Code are intended for reference purposes only and will not affect or be taken into account in the interpretation of any of the paragraphs or sections to which they relate.

4 APPLICATION, SCOPE AND TYPE OF PARTICIPANT

- 4.1 The Code applies to all Participants, unless they are regulated elsewhere by other public regulation, a Code prescribed by the Minister in terms of section 82 of the CPA and/or where a complaint falls within the jurisdiction of an Ombud with Jurisdiction, or an Industry Ombud accredited in terms of section 82 (6) of the CPA.
- 4.2 It is mandatory for all Participants above to comply with the provisions of this Code, to register with the CGSO in accordance with the procedures provided on the CGSO website from time-to-time, and contribute towards the funding of the CGSO in accordance with the funding model as set out in clause 6.2 below.
- 4.3 This Code shall not be construed as to diminish a Consumers rights under the CPA or any other law but it shall enhance the Consumers rights to be equivalent to or better than the provisions of the CPA.
- 4.4 This Code excludes: transactions that are not covered by the CPA and/or that are governed by other public regulation; the automotive industry, Electronic Communication Service as defined in section 1 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) and transactions with organs of state or financial institutions.

SECTION C

5. CONSUMER AND INDUSTRY AWARENESS

5.1 The Participants under this Code are required to:

5.1.1 Establish an effective Internal Complaints-Handling Process that is accessible and understandable to all Consumers, which process includes but is not limited to:

- 5.1.1.1 process of internal complaints-handling;
- 5.1.1.2 design of the internal complaints-handling procedure; and
- 5.1.1.3 monitoring processes for the internal complaints-handling procedure and effectiveness.
- 5.1.2 Display prominently on all their trading premises by means of the CGSO decal and on their website, a prescribed notice that states that they are a Participant to this Code and are bound by it.
- 5.1.3 The prescribed notice must provide Consumers with the contact details of the CGSO and the Participant and/or his staff shall notify the Consumer of their right to refer Complaints to the CGSO in the event that they are unsatisfied with the Participant's Internal Complaints-Handling Process.
- 5.1.4 Ensure that a copy of this Code and/or summary hereof and their Internal Complaints-Handling Process is made available to any Consumer upon request and/or the Consumers are directed as to where to obtain a copy of the Code and/or their Internal Complaints-Handling Process.
- 5.1.5 Ensure that the relevant staff and agents in their business have adequate knowledge of the CPA and the Regulations issued thereunder, including the Code and their own Internal Complaints-Handling Process.
- 5.1.6 Ensure, where possible, that they keep proper records for a minimum of 3 (three) years of the Complaints that are received with the following details captured:
 - 5.1.6.1 details and nature of the complaint;
 - 5.1.6.2 the business unit, division, branch and/or brand that the Complaint is against;
 - 5.1.6.3 the type of Complaint;
 - 5.1.6.4 the number of similar Complaints;
 - 5.1.6.5 details of how the Complaint was resolved;
 - 5.1.6.6 the time taken to deal with the Complaint;
 - 5.1.6.7 the type of remedy provided;
 - 5.1.6.8 details of why the Complaint was not resolved;

5.1.6.9 details of potential remedies offered but not accepted by the Consumer; and

5.1.6.10 recording that a Consumer was referred to the CGSO for assistance in resolving the Complaint if the Complaint remained unresolved.

5.1.7 The data captured in 5.1.6 above shall be used, where possible, to highlight recurring complaints that have arisen and this feedback, where possible, is to be shared with management, staff and Industry in an attempt to continually uphold compliance with the CPA, this Code and Internal Complaint-Handling Process.

5.1.8 Provide, where possible, relevant information reasonably required by CGSO and/or the NCC on any aspect of their business for the purposes of assisting in the resolution of individual Complaints, subject to considerations of confidentiality, as set out under section G of this Code.

5.1.9 Endeavour to resolve Complaints and Disputes in accordance with the law, the spirit and provisions of this Code and the CPA as expressed under section B and with regards to their own Internal Complaints-Handling procedures.

5.1.10 Ensure that they, their staff members and their agents refrain from influencing or attempting to influence or harassing the CGSO, staff of the CGSO or any Consumer.

5.1.11 Co-operate with all reasonable requests made by the CGSO in a timely manner. Any failure to co-operate with the CGSO may be taken into consideration by the NCC and the Tribunal when issuing a compliance notice or proposing or determining an administrative fine.

5.2 The CGSO will determine a strategy for fostering awareness of the Code and the contents thereof by way of: information brochures, guidelines and workshops, and guidance regarding compliance particularly aimed at smaller Participants as agreed to and as can reasonably be funded from time-to-time by the CGSO, which includes the following:

5.2.1 information brochures, guidelines and workshops;

5.2.2 the display of the Code on the CGSO website and other social networking sites;

5.2.3 the publication of relevant matters on the CGSO website;

5.2.4 the facilitation of induction workshops for new employees in the Industry, on the principles and procedures contained in the Code; and

5.2.5 partnering with the Provisional Consumer Protection Authorities and other relevant bodies on awareness campaigns.

5.3 The CGSO will produce annual reports on the implementation and application of the Code. These reports will be made available to all interested parties, including but not limited to Participants, Consumers, the NCC and the Minister.

5.4 Performance indicators will be developed with reference to the criteria in 5.1.6 and 5.3 above and implemented as a means of measuring the Code's effectiveness.

5.5 The application of the Code will be reviewed annually by the Board to ensure that the standards of the Code meet identified objectives and consumer expectations. The review report will be made available to the NCC and the Minister, and be made available on the CGSO website.

SECTION D

6. ESTABLISHMENT AND POWERS OF THE CGSO

6.1 The CGSO shall adhere to the Terms of Reference of this Code.

6.2 Sustainable Funding Model:

6.2.1 Participants shall contribute to the funding of the operations of the CGSO by means of the payment of a joining fee and an annual levy and (if necessary) a special levy, as shall be determined from time-to-time by the Board of the CGSO.

6.2.2 In determining the joining fee, annual levy and special levy, the Board may have regard to the relative market share of the Participants, the anticipated number of complaints to be dealt with by the CGSO annually and the costs of operating the CGSO.

6.2.3 With reasonable notice to the Participants, a special levy may be raised when deemed necessary by the Board to provide for unanticipated expenditure incurred by the CGSO due to increased caseloads or any other reason acceptable to the Board.

6.2.4 The Board shall from time-to-time determine the scale of fees to be charged to any entity which falls outside of the CGSO's jurisdiction and with which the CGSO has entered into an agreement to render dispute resolution services.

6.2.5 The mechanisms for calculating the fees and levies and the current level of fees and levies for Participants shall be published on the CGSO website.

6.2.6 The CGSO shall be entitled to take legal action to recover any outstanding fees or levies owed by a Participant.

6.3 Complaints-Handling Procedure

6.3.1 The Ombudsman shall ensure an ethical complaints-handling, as outlined in section F below.

SECTION E

7. INTRODUCTION: TERMS OF REFERENCE AND OPERATING PROCEDURE FOR THE CGSO

7.1 The terms of reference seek to establish the appropriate operating procedures so as to meet the objects of the preamble of the Code.

7.2 These operating procedures are aimed at:

7.2.1 describing the manner in which the CGSO operates;

7.2.2 assisting staff members of the CGSO to carry out their duties; and

7.2.3 ensuring that Complaints are dealt with, both timeously, consistently and effectively.

7.3 The CGSO may enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services in resolving a Dispute or carrying out its functions.

8. MAINTAINING THE INDEPENDENCE OF THE CGSO

8.1 The CGSO may assist in resolving any Disputes arising within the Industry.

8.2 The CGSO is controlled by the Board. The Board is appointed in accordance with the provisions of the MOI and the composition of the Board shall be in terms of the MOI.

8.3 The Ombudsman shall act independently and objectively in resolving Disputes. The Ombudsman enjoys security of tenure and can only be dismissed in accordance with fair administrative procedures, as provided for in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), on the grounds of incompetence, gross misconduct, or inability to effectively carry out his or her duties.

8.4 The independence of the CGSO and the Ombudsman is further assured by the fact that the Ombudsman and employees of the CGSO are:

8.4.1 entirely responsible for the handling and determination of complaints;

8.4.2 accountable only to the Board; and

8.4.3 adequately resourced to carry out their respective functions.

8.5 The CGSO shall:

8.5.1 act honestly, independently and objectively;

8.5.2 have regard to fairness, justice, equity and the provisions of the CPA and the Code;

8.5.3 balance the rights of the Consumers on the one hand and the rights of the Participant and Industry on the other hand;

8.5.4 avoid discriminating against anyone on the grounds contemplated in section 9 (3) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and section 8 of the CPA; and

8.5.5 take reasonable steps to accommodate the needs of persons with disabilities and to eliminate obstacles that may unfairly limit or restrict persons with disabilities from using the services of the CGSO.

8.6 The criteria to be used in resolving Disputes includes:

8.6.1 the law, especially the CPA and the Code (in all cases where there is a conflict between the interpretation of the CPA and the Code, the CPA shall prevail);

8.6.2 applicable industry codes, guidelines; and

8.6.3 fairness in all circumstances.

9. FUNCTIONS OF THE CGSO

9.1 The CGSO's functions include the following:

9.1.1 upon receipt of a Complaint, investigating and evaluating alleged contraventions of the Code;

9.1.2 attempting to facilitate a settlement between the Parties;

9.1.3 making a recommendation as to how the Dispute should be settled by the Parties;

9.1.4 at the request of a Party to a Dispute, recording the resolution of a Dispute in the form of an order in terms of section 70 (3) (a) of the CPA;

- 9.1.5 at the request and at the costs of the Parties to a Dispute, submitting the order to the Tribunal or High Court to be made a consent order, in terms of section 70 (3) (b) of the CPA;
 - 9.1.6 with the consent of a Complainant, including in the consent order an award of damages to the Complainant in terms of section 70 (4) of the CPA;
 - 9.1.7 terminating the process by notice to the Parties in terms of section 70 (2) of the CPA;
 - 9.1.8 educating the general public, Consumers, Participants, staff of Participants and any other interested parties regarding the existence of the CGSO, its procedures, where and how to lay a Complaint, the relevant time period, the resources available and how to obtain feedback on the status of the Complaint and providing all necessary assistance to the Parties;
 - 9.1.9 providing access to information in accordance with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); and
 - 9.1.10 striving for continual improvement of the complaints-handling process and the quality of the service provided by the office, by amongst other things, regularly testing the levels of satisfaction of Complainants with the complaints-handling process.
- 9.2 In particular, the CGSO shall:
- 9.2.1 receive and deal with Complaints and Disputes free of charge;
 - 9.2.2 determine whether or not a complaint falls within the CGSO's jurisdiction;
 - 9.2.3 decline to deal with or discontinue dealing with those matters:
 - 9.2.3.1 that do not fall within the CGSO's jurisdiction; or
 - 9.2.3.2 in which the Complainant has failed to respond to requests from the CGSO for information or comments within the time reasonably stipulated by the CGSO; or
 - 9.2.3.3 that are trivial, frivolous or vexatious; or
 - 9.2.3.4 in which the Complaint does not allege any facts which, if true, would constitute grounds for a remedy under the Code or CPA; or
 - 9.2.3.5 and terminate the process by notice to the parties.
 - 9.2.4 refer Complaints that would more appropriately be dealt with by another body to that body;

- 9.2.5 explore any reasonable prospect of resolving a Complaint by a Facilitated Settlement acceptable to both Parties and, where appropriate, make a suggestion or Recommendation to the Parties regarding how the matter should be settled;
- 9.2.6 request a Participant or his agent involved in a Complaint or Dispute to provide any relevant information to the CGSO, which in the view of the CGSO relates to that Complaint and its necessary resolution;
- 9.2.7 set and on good cause shown extend time limits relating to any issues involved in attempting to resolve the Dispute after giving due regard to any objection from either of the Parties and to the urgency of the matter and to any other relevant circumstances;
- 9.2.8 inform Complainants of further options available to them, if their Complaints are not resolved following the assistance provided by the CGSO;
- 9.2.9 report any non-compliance with the CPA or the Code by a Participant to the NCC, in order for it to investigate the allegations;
- 9.2.10 report any attempts to influence or harass the Ombudsman or the staff of the CGSO or any Consumer by a Participant to the NCC;
- 9.2.11 compile an annual report within 6 (six) months of the close of its financial year regarding the operations and effectiveness of the CGSO and make the report available to stakeholders, including the NCC, through the CGSO website and other suitable means. This report must include data regarding:
 - 9.2.11.1 Complaint type;
 - 9.2.11.2 business complained about;
 - 9.2.11.3 the type and frequency of the Complaint;
 - 9.2.11.4 how the Complaint was resolved;
 - 9.2.11.5 time taken to deal with Complaints;
 - 9.2.11.6 type of sanction(s) imposed; and
 - 9.2.11.7 financial statements and audit reports.

- 9.2.12 collect data about the cause of the Complaints, identify systematic and recurring problems which Participants need to address; make recommendations to Participants as to how to deal with these recurring problems and identify ways of increasing compliance;
- 9.2.13 produce annual reports on the operations and effectiveness of the Code, which shall be made readily available to all stakeholders and interested Parties. The reports should provide important feedback for management and staff within the Industry or continually improve compliance with the CPA;
- 9.2.14 address each Complaint in an equitable, objective and unbiased manner through the complaints-handling process;
- 9.2.15 engage the services of an interpreter for Consumers who may require such assistance as and when required;
- 9.2.16 classify and analyse all Complaints in order to identify systematic, recurring and single incidents and trends;
- 9.2.17 develop internal rules, forms and procedures that are not in conflict with the provisions of the Code or CPA.

10. THE JURISDICTION OF THE CGSO

10.1 Eligible Complainants

- 10.1.1 Subject to 10.3 below, the CGSO may consider a Complaint brought by or on behalf of a Consumer who is:

10.1.1.1 a private individual; or

10.1.1.2 a juristic person.

10.2 The CGSO can deal with:

- 10.2.1 Disputes arising in terms of the Code between Complainants on the one hand and Participants on the other hand; and/or
- 10.2.2 Complaints concerning alleged contraventions of the CPA or the Code.

10.3 Limits to the CGSO's jurisdiction

- 10.3.1 *Amounts Involved:* In line with the threshold (limit) determined by the Minister under section 5 (2) (b) of the CPA, the CGSO may not consider a Complaint or Dispute that relates to a Juristic Person as a Consumer whose asset value or annual turnover equals or exceeds the threshold amount determined from time-to-time by the Minister in terms of section 6 (1) of the CPA.
- 10.3.2 *Time Limit:* The CGSO may not consider a Complaint or Dispute that relates to an act or omission which occurred before 1 April 2011 or in any event more than 3 (three) years prior to the date when the Complaint was lodged with the CGSO in order to ensure that such claims do not become prescribed by law. The period of 3 (three) years commences on the date on which the Complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first. If the Complaint or Dispute is older than two years, the CGSO should advise the Complainant of the danger of it prescribing.
- 10.3.3 *Other Processes:* After a preliminary assessment of the Complaint, or Dispute, or at any stage during the process that any of the factors referred to below become apparent, the CGSO shall not further consider a Complaint or Dispute that in the opinion of the Ombudsman:
- 10.3.3.1 falls within the jurisdiction of any other Ombud with Jurisdiction as per its enabling legislation; or
 - 10.3.3.2 is based on the same event and facts as any matter which is, was, or becomes, the subject of any proceedings in any court, tribunal or regulatory body or any Ombud with Jurisdiction of any jurisdiction, unless the CGSO has considered it appropriate to intervene and is not prohibited from doing so under any law; or
 - 10.3.3.3 could more appropriately be dealt with by the police, a court of law, by any regulatory body or through any other dispute resolution process.
- 10.3.4 *Excluded:* After a preliminary assessment of the Complaint or Dispute, or at any stage during the process that any of the factors referred to below becomes apparent, the CGSO shall not further consider a Complaint or Dispute that in the opinion of the Ombudsman:
- 10.3.4.1 is being pursued in an unreasonable, frivolous, vexatious, offensive, threatening or abusive manner or if the Complainant fails to co-operate with the process;
 - 10.3.4.2 does not allege any facts which, if true, would constitute grounds for a remedy under the Code or CPA;
 - 10.3.4.3 is lacking in substantive merit;
 - 10.3.4.4 has been substantially dealt with by the CGSO;

10.3.4.5 is based on the same events and facts as any matter which is, was or becomes, the subject of any proceedings in any court or other independent dispute-resolving body;

10.3.4.6 is under consideration by a legal practitioner on behalf of a Consumer, whether or not with a view to institute legal proceedings, unless the Ombudsman determines that the involvement of a legal practitioner is appropriate in the circumstances.

10.3.5 *Termination by the Complainant:* A Complainant may at any time terminate the CGSO's handling of the Complaint and resort to litigation or another dispute resolution process by withdrawing the Complaint in writing to the CGSO.

SECTION F

11. THE COMPLAINTS PROCESS

STAGE 1: LAYING THE COMPLAINT

11.1 Referral to Participant:

11.1.1 *Refer Complaint:* A Complainant may first refer the matter in Dispute to the Participant to be dealt with, in accordance with the Participant's Internal Complaints-Handling Process. Should the Consumer initiate his or her Complaint at the CGSO, without having referred it to the Participant first, the CGSO shall refer the Consumer back to the Participant.

11.1.2 *Time Limits for Logging the Complaint:* The Complainant must refer the Complaint to the Participant as soon as practically possible after the Complainant has become aware of it as contemplated in clause 10.3.2 above.

STAGE 2: REFERRAL TO THE OFFICE OF THE CONSUMER GOODS AND SERVICES OMBUD

11.2 Complaining to the CGSO:

11.2.1 *Referral to CGSO:* A Complainant who referred a Complaint to the Participant concerned, and who is dissatisfied with the manner in which the Participant is dealing with it, or how it has been dealt with, or the outcomes thereof, may, if a matter is not resolved by the Participant within 15 Business Days or such extended period as agreed between the Parties, refer the Complaint to the CGSO within a reasonable time in the form or format as presented in Annexure "B" or such other form or format adopted by CGSO from time-to-time, by calling its call centre on 0860 000 272 or by such other means acceptable to the CGSO. The Complaint

form may be submitted by hand, mail, fax, email or in any other format acceptable to the CGSO at the following addresses:

11.2.1.1 *Physical Address:* Association House, Bond Street Business Park, cnr Bond Street and Kent Avenue, Ferndale, Randburg; or

11.2.1.2 *PO Box* 168, Randburg, 2125; or

11.2.1.3 *Fax:* 086 206 1999; or

11.2.1.4 *Email:* info@cgso.org.za

11.2.2 *Time Limits for Complaining:* The Complainant must refer the Complaint to the CGSO as soon as is reasonably possible and within the time limits specified in clause 10.3.2

11.2.3 *Acceptance of Complaint:* The Complaint with the supporting information shall be recorded and issued a unique identifiable code. The recordal should identify the remedy sought by the Complainant and any other information necessary for the effective handling of the Complaint. Receipt of each Complaint shall be acknowledged within 2 (two) business days either via email, fax or telephone call to the Complainant.

11.2.4 *Initial Assessment of the Complaint:* After receipt, each Complaint shall be initially assessed to ascertain whether it falls within the jurisdiction of the CGSO. It will also be assessed in terms of severity, safety implications, complexity, impact and the need and the possibility of immediate action.

11.2.5 *Time Limits of Complaint Resolution:* The CGSO shall make every effort to resolve all Complaints within 60 (sixty) business days of receipt by it, failing which it will refer the Complaint to the NCC or motivate to the NCC for an extension of this time limit.

11.2.6 *Tracking the Complaint:* The Complaint shall be tracked from the time of receipt through the entire process until the matter has either been finalised by the CGSO, or the Consumer has been referred to the NCC or elsewhere. An up-to-date status report shall be made available to the Complainant upon request and at regular intervals, at least at the time of pre-set deadlines.

11.2.7 *Processing of Complaint: Referral:*

11.2.7.1 When the CGSO receives a Complaint that **does not fall within the CGSO's jurisdiction**, the CGSO shall decide which other body (including the NCC), if any, would be best able to assist the Complainant and shall inform the Complainant either by fax, telephone or email.

- 11.2.7.2 The discretion to refer the Complaint to alternative bodies vests in the CGSO. If it decides to do so, the CGSO will give the Complainant a copy of the referral letter which it sends to such alternative body. Once the decision has been made to refer the Complaint, it must be referred to the relevant body within 2 (two) Business Days of it being received by the CGSO.
- 11.2.7.3 If the Complaint is one that appears to fall within the **CGSO's jurisdiction** and the Complainant **has not taken the matter up directly with the Participant as a first step in trying to resolve the matter**, the CGSO will advise the Complainant to refer the matter to the Participant to give the Participant the opportunity to resolve the Complaint. Alternatively, the CGSO may directly refer the matter to the Participant with the permission of the Complainant;
- 11.2.7.4 The CGSO may refer a Complainant to either the Retailer or Manufacturer, or both, as the CGSO deems appropriate in the circumstances.
- 11.2.7.5 Any Complainant who is advised to refer the matter to the Participant will also be informed that he or she can again approach the CGSO, if the Complaint is not resolved to the satisfaction of the Complainant within 15 (fifteen) Business Days or such extended period as agreed between the Parties.
- 11.2.7.6 If it would, in the CGSO's opinion, with particular reference to section 3 (1) (b) of the CPA (vulnerable consumers), cause a Complainant undue hardship or inconvenience to refer to the Participant before obtaining the CGSO's assistance, the CGSO may deal with the Complaint as if the Complainant has approached the Participant.
- 11.2.7.7 If the Complaint is one that appears to fall **within the CGSO's jurisdiction** and the Complainant **has already taken up the matter with the Participant**, the CGSO shall inform the Designated Officer, in writing, that a Complaint has been lodged with the CGSO and that the Participant shall have 15 (fifteen) Business Days from receipt of the communication to investigate and attempt to resolve the Dispute with the Complainant or to provide the CGSO with its reasons for repudiating the Complaint. The Participant may upon request and at the discretion of the CGSO, be permitted additional time to resolve the matter.
- 11.2.7.8 The CGSO will provide the Participant concerned with full details of the Complaint, including copies of the relevant documentation submitted to CGSO, to the extent the CGSO considers it necessary, by fax or email.
- 11.2.7.9 The Participant must acknowledge receipt of the notification within 2 (two) Business Days and may do so by letter delivered by hand, fax or email.

STAGE 3: COMPLAINT RESOLUTION BY THE PARTICIPANT

11.3 Intervention by the Participant:

11.3.1 If a Complainant is referred to a Participant by the CGSO in terms of clause 11.2.7.6 above, the Participant shall:

- 11.3.1.1 contact the Complainant to clarify any issue, to ascertain the essence of the Complaint and to attempt to settle the Complaint to the reasonable satisfaction of the Complainant;
- 11.3.1.2 if able to resolve the Complaint, provide CGSO with reasonable proof that the Complaint has been settled and that any undertaking made by the Participant has been complied with;
- 11.3.1.3 undertake any investigation that is necessary; the level of investigation shall be commensurate with the seriousness, frequency of occurrence and severity of the Complaint;
- 11.3.1.4 if the Participant is unable to resolve the Complaint referred to it by the CGSO in terms of clause 11.2.7.6 it shall provide the CGSO with a report outlining the investigation that it undertook and the reasons that the matter was not resolved and its reasons for repudiating the Complaint;
- 11.3.1.5 if the participant fails to provide the report referred to in 11.3.1.4, this shall not prevent the CGSO from making a Recommendation based only on the information before it;
- 11.3.1.6 if the CGSO is of the view that the Participant has provided the assistance sought by the Complainant or provided an acceptable explanation for its conduct complained of, the CGSO may inform the Complainant and Participant of this fact and indicate that the file will be closed unless the Complainant challenges the view, or provides new information to CGSO within 10 (ten) Business Days;
- 11.3.1.7 during the times set in terms of clause 11.2.7.6 above, the CGSO may facilitate a settlement between the Participant and the Complainant if the CGSO considers that it would be appropriate and helpful to do so.
- 11.3.1.8 When dealing with Complaints, the Participant should make readily available to customers, complainants and other interested parties information concerning the Internal Complaint-Handling Process, including the CGSO's brochures and the member's pamphlets, or electric-based information. Such information should be

provided in plain language and, so far as it is reasonable, in formats accessible to all, so that no complainants are disadvantaged. The following are examples of such information:

- where Complaints can be made;
- how Complaints can be made;
- the Complaints process.

11.3.1.9 If the Participant is not able to resolve the matter within 15 (fifteen) Business Days or such extended period as agreed between the Parties, the Participant shall advise the Complainant of the right to refer the matter to the CGSO and provide the Complainant with the CGSO's contact details.

STAGE 4: INVESTIGATION AND COMPLAINT RESOLUTION BY THE CGSO

11.4 Investigation by the CGSO:

11.4.1 The CGSO may, if it decides that it requires these for the purpose of arriving at the resolution of a matter:

11.4.1.1 require the Designated Official of the Participant to provide it with records of the transaction or process that gave rise to the Dispute, including:

11.4.1.1.1 sales records (including recorded transactions);

11.4.1.1.2 advertising copy;

11.4.1.1.3 inspection or repair records.

11.4.1.2 require, the Designated Officer of a Participant to provide it with a statement from any technical, legal, sales, marketing, complaints-handling and other personnel working on behalf of the Participant, as appropriate to the Complaint;

11.4.1.3 require comment or clarification from either the Complainant or the Participant (both Retailer and Manufacturer if considered appropriate) on any other matter, including information provided by the other Party;

11.4.1.4 require the Complainant or Participant, whichever is appropriate, to provide it with the Goods to which the Complaint or Dispute relates for inspection or testing, if the Goods are still available;

- 11.4.1.5 the CGSO may consult any person it considers suitably qualified to assist it in resolving the Complaint;
- 11.4.1.6 the Complainant or the Participant must make every effort to comply with the requests made by the Ombudsman with 10 (ten) Business Days, unless good cause can be shown.

11.5 Facilitation by the CGSO:

- 11.5.1 The CGSO may, in order to settle a Complaint speedily, make an assessment of its merits without doing an investigation and suggest to the Parties how the matter should be settled.
- 11.5.2 The CGSO may, after collecting relevant records and information, form an initial view on the matter with respect to the Participant's potential liability and the remedies, if any, it believes the Complainant is entitled to. The possible outcomes include:
 - 11.5.2.1 resolving the matter as requested by the Complainant;
 - 11.5.2.2 providing some but not all of the remedies requested; or
 - 11.5.2.3 providing none of the remedies requested and advising the Complainant of other options available to the Complainant.
- 11.5.3 The CGSO shall communicate its view to the Participant and to the Complainant as soon as the decision is taken and invite their responses;
- 11.5.4 The Participant and the Complainant must advise the CGSO within 10 (ten) Business Days of receiving the said communication as to whether they accept the terms of the recommendation or not;
- 11.5.5 If the matter is resolved as a result of both Parties to the Dispute accepting the CGSO's proposed resolution, or acquiring the CGSO's assistance in arriving at a mutually acceptable compromise settlement, the resolution must be recorded and carried out. The CGSO may at the request of the Parties to a Dispute record the resolution of the Dispute in the form of an order in terms of section 70 (3) (a) of the CPA;
- 11.5.6 If a resolution is not agreed upon at this stage, the CGSO shall inform the Parties of further options available to them, including a Recommendation by the Ombudsman.

11.6 Mediation by the CGSO:

11.6.1 The CGSO may, without doing an investigation, in its discretion, mediate any matter that the Ombudsman believes is appropriate for mediation, taking into consideration the wishes of the Parties and the nature of the Complaint. The involvement of legal representatives shall not be permitted except at the discretion of the mediator.

11.7 Recommendation by Ombudsman:

11.7.1 The Ombudsman may, in any case where a matter has not been settled through Mediation or Facilitation, make a written recommendation setting out how the matter should be resolved and the reasons for the Recommendation. Where the matter has been referred to both the Retailer and Manufacturer, the Recommendation should state which of the two, if either, the Ombudsman consider to be liable;

11.7.2 Prior to making a Recommendation and subject to the considerations of Confidentiality, the Ombudsman shall, to the extent considered appropriate, permit each of the Parties to comment on the information provided to the CGSO by the other during the investigation, Mediation or Facilitation stage;

11.7.3 The Participant and the Complainant must advise the Ombudsman in writing within 10 (ten) Business Days from receiving the Recommendation whether they accept the terms of the recommendation or not;

11.7.4 Neither a Complainant nor Participant shall be bound to accept a Recommendation made by the Ombudsman, but if a Participant does not accept a Recommendation that has been accepted by the Complainant, the number of those cases and those details thereof that the Ombudsman considers appropriate shall be published in the CGSO's annual report and by other means that the Ombudsman considers appropriate;

11.7.5 If the Complainant rejects the Recommendation or fails to respond within the time limit set in 11.7.3, the Recommendation will fall away and the file may be closed;

11.7.6 If the matter is resolved as a result of both Parties to the Dispute accepting the Ombudsman's Recommendation, the CGSO may, at the request of the Parties to the Dispute, record the resolution of the Dispute in the form of an order in terms of section 70 (3)(a) of the CPA;

11.7.7 If both Parties accept the terms of the Recommendation, they must comply with its provisions within the period of time prescribed in the Recommendation. If either Party fails to comply, the CGSO shall inform the Parties of further options available to them, including a referral to the NCC or Tribunal, and the recording of the resolution of the Dispute in the form of an order and having made an order of court or the institution of legal proceedings, both of the last two mentioned options are at the Parties' own expense;

11.7.8 If a resolution is not agreed upon at this stage or if a Party fails to comply, the CGSO shall inform the Parties of the further options available to them, including a referral to the NCC and the institution of legal proceedings at the Parties' own expense, if so advised.

SECTION G

12. CONFIDENTIALITY

- 12.1 Subject to any other law, personally identifiable information shall be kept confidential by the CGSO and be protected, except to the extent that it is necessary to provide it to a Party for the sole purpose of resolving a Dispute, or unless disclosure is required by law, or consent for disclosure is obtained from the Party concerned.
- 12.2 If any Party to a Complaint supplies information to the CGSO and requests, in writing, that it be treated as Confidential Information, the CGSO shall determine whether the information should be treated as Confidential Information.
- 12.3 If the CGSO determines that the information should be treated as Confidential Information, the CGSO may nevertheless use the information to reach a decision adverse to the Party to whom the Confidential Information was denied.
- 12.4 If the CGSO determines the information should not be treated as Confidential Information, the CGSO shall inform the disclosing Party that the CGSO is not entitled to use the information to reach a decision adverse to the Party to whom the Confidential Information is denied, unless the objecting Party consents to that information being provided to the other Party.
- 12.5 Subject to the other provisions of this clause, as far as it is practical and at the sole discretion of the CGSO, all documentation should be provided to both Parties to a Dispute, provided that the CGSO may provide Parties with written notice indicating that the documents or information are available on request.

MATTERS RELATING TO THE APPOINTMENT, TENURE AND POWERS OF THE OMBUDSMAN

1. APPOINTMENT OF THE OMBUDSMAN

- 1.1 The Board will appoint the Ombudsman whom is expected to have the following personal qualities, qualifications, skills or expertise to be eligible for appointment:
 - 1.1.1 be independent;
 - 1.1.2 be fit and proper person;
 - 1.1.3 demonstrate high levels of competency, capability and financial soundness;
 - 1.1.4 have sound leadership qualities;
 - 1.1.5 be able to manage and lead a service-driven organisation;
 - 1.1.6 have at least 10 (ten) years of experience in a senior executive role relating to alternative dispute resolution or an ombudsman office; or
 - 1.1.7 be legally qualified and be admitted as an Attorney or Advocate; or
 - 1.1.8 be qualified and experienced in economics, commerce and industry and public affairs.
- 1.2 No person who has been employed by a Participant within a 3 (three) year period prior to applying for the post of Ombudsman, may be appointed.
- 1.3 No person who has any direct or indirect business interest in any Participant may be appointed as Ombudsman.
- 1.4 The Process for the appointment of the Ombudsman shall be conducted in an open and transparent manner.
 - 1.4.1 The Board shall appoint a special sub-committee for the Ombudsman's recruitment process. This sub-committee will be called the "Recruitment Committee". The Recruitment Committee shall consist of the chairperson of the board, one Industry representative, one consumer body representative and one association representative.
 - 1.4.2 The Recruitment Committee shall advertise the position of Ombudsman at least two times in at least two national newspapers. A short list of the most suitable candidates will be compiled and

such candidates will be interviewed by the Recruitment Committee. Once the Recruitment Committee has made a decision on the most suitable candidate it shall submit a fully motivated written recommendation in this regard to the Board. The Board will make their final decision on the appointment of the candidate by way of a majority vote.

- 1.4.3 The Ombudsman will be required to sign an employment contract stating the terms of his or her employment and same will be subject to an annual performance review.
- 1.5 The Ombudsman will be appointed for a fixed period of 3 (three) years. Once this 3 (three) year term has ended, the Ombudsman will be eligible for reappointment for a further 3 (three) years by majority vote of the Board. Should the Board decide to extend the Ombudsman's term for a further 3 (three) years, then no formal recruitment and application process needs to be followed. The decision as to whether or not to reappoint the Ombudsman must be communicated in writing to the Ombudsman at least 1 (one) year prior to the term of his or her office ending.
- 1.6 The Ombudsman may only be dismissed in accordance with the provisions of clause 8.3 of the Code.
- 1.7 Any decision to dismiss the Ombudsman must be taken by majority vote of the Board and the dismissal procedure must comply with clause 8.3 of the Code.
- 1.8 The Ombudsman will declare in writing to the Board should there be any actual or perceived conflict of interest which may exist or arise after or at the time of his or her appointment. This will include, but not be limited to, instances where an immediate family member such as parent, sibling or children of the Ombudsman are in the permanent employ of, or have business interests in a Participant.
- 1.9 There shall at all times be 1 (one) Ombudsman. If requested by the Ombudsman, the Board shall be entitled to appoint a deputy Ombudsman. The appointment and election of the deputy Ombudsman will take place by majority vote of the Board.
- 1.10 The Ombudsman may resign by giving 60 (sixty) days' written notice to the Board.

2. POWERS OF THE OMBUDSMAN

- 2.1 The Ombudsman is vested with the authority to bind the CGSO and only the Ombudsman is vested with the authority to make Recommendations relating to Complaints and Disputes.
- 2.2 The Ombudsman shall have the overall responsibility for the conduct of the day-to-day administration and business of the CGSO. In this regard the Ombudsman shall appoint employees and determine their terms and conditions of employment. The Ombudsman shall do anything that is necessary and expedient for the running of the CGSO, including issuing guidelines for the implementation and application of rules.

2.3 The Ombudsman shall be vested with the power to do what is necessary to give effect to the primary objectives of the CGSO. These powers will be exercised in accordance with the Terms of Reference and procedures determined by the Board and approved by the Minister. More particularly to:

2.3.1 prepare and submit to the Board an annual report detailing the activities and finances of the CGSO for the year under review;

2.3.2 prepare and submit reports to the Board on current matters and activities;

2.3.3 promote and publicise the services provided by the CGSO through the media and consumer bodies;

2.3.4 identify and bring to the attention of the Participants undesirable practices to which a Participant might be a party, and to report to the Board such matters where the Participant is unable or unwilling to take remedial action;

2.3.5 appoint personnel to ensure the efficient management of complaints;

2.3.6 enter into agreements of purchase and sale and letting and hiring of property reasonably required for the purpose of the functioning of the CGSO;

2.3.7 open bank and other accounts necessary for the CGSO to perform its functions;

2.3.8 make recommendations to the Board for any necessary amendments to the Code and MOI of the CGSO.

2.3.8.1 any amendments to the Code as accepted the Board shall be forwarded to the NCC, to enable it to act in terms of section 82 (5) (c) of the CPA.

3. THE OMBUDSMAN STAFF

The CGSO's staff members and any other persons conducting alternative dispute resolution on its behalf should ideally have, appropriate to the subject matter of the complaint and the level of the CGSO process at which they are rendering the service:

3.1 qualifications and experience in law, commerce, industry and dispute resolution;

3.2 knowledge of the technical aspects of the goods and services provided in the Industry or access to technical assistance or expertise in this regard; and

3.3 an understanding of the CPA.

CGSO COMPLAINTS FORM

IF YOU REQUIRE ASSISTANCE IN COMPLETING THIS FORM OR WOULD PREFER TO TELL SOMEONE ABOUT YOUR COMPLAINT CALL 0860 000 272

1. Record Information (for official use)

Contact Method:	
Reference:	
Agent:	
Date:	
Time:	
Status:	
Voiced:	
Category	
Sub-category:	
Other:	

2. Consumer Information (Please complete neatly)

Title:	
First Name:	
Surname:	
Identification Number:	
Cell Number:	
Work:	
Home:	
Fax:	
Email:	
Postal Address:	
Physical address	

3. Previous Complaint/s made to us by you

Previous Reference:	
Previous Complaint	

4. Company/Participant Details

Supplier Company:	
Company Address:	

5. Details of Complaint

Details of Complaint: (date of purchase/ agreement, what was the transaction, what went wrong and when did you notice?	
Nature of Complaint:	
Products available for collection/inspection	
Details of steps taken by you to resolve Complaint:	

6. Documents

List of documents relevant to the Complaint (Fax or scan and send. Do not send originals unless requested)	

7. Miscellaneous

What outcome to the complaint do you hope to achieve?	

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I agree that the information provided may be used and disclosed as necessary in the CGSO's processes for the purposes of an attempt to resolve my complaint.