

RECOMMENDATION

1. Dispute identification

Complaint No. : **201703-0012601**

Nature of dispute : **Error in price: third party**

Adjudicator : **N Melville**

Date : **14 March 2017**

2. Summary of the complaint

There was an advertisement in the January 2017 edition of an outdoor magazine for the gazebo in question. The price in the magazine was for R399. When the complainant went to the store he was asked to place an order as he wanted 10, so he did. He was then contacted to come and pay a deposit. When he went to the store there was some issue as the magazine made an error. The store did not want to give him the 10 items as advertised.

3. Details of steps taken to resolve the complaint

After the complainant spoke to the supplier, the editor of the magazine contacted him and apologised. The director of the magazine then contacted him via email and admitted that it was not the store's fault but theirs. No mention was made of how the matter would be rectified and whether the complainant would get the items as advertised.

4. Outcome proposed

The complainant would like the 10 items at R399 each as advertised.

5. The response of the supplier

The supplier deferred to the outdoor magazine, which replied as follows:

I believe we made a genuine error in publishing the incorrect price of a gazebo available from [the supplier].

My sincere apology, it is rare that we make such an error. While every effort is made to filter out spelling, grammar and a slip of the typing finger occasionally something gets through our net - like one word in a million that go into compilation of a magazine. This bears no reflection on [the supplier] trying to mislead the public, or us for that matter.

A more common problem is due to the fact that because of magazines long lee times between researching, writing, printing and the on-shelf sale date prices can change. While we take every effort to check before going to print circumstances and common errors do cause mayhem. My point is mistakes can happen and that ultimately and most importantly - the price you see in store is the price you pay!

Even here it can go wrong, I have seen mischievous little boys changing the sticker on an item... My sincere apology again, this an error purely on our part and not the store.

The outdoor magazine explained elsewhere that the gazebo was mentioned not in a paid advertisement but in a feature in its publication.

This office established that the correct price for the gazebo was R3499.

6. Defining of issue

It is necessary to decide whether the supplier is liable to supply the items at the price published in the outdoor magazine in terms of the provisions of the Consumer Protection Act (CPA).

7. Consideration of the law and facts

The incorrect pricing of or advertising of the price of goods is a frequently recurring theme of complaints to this office and consequently the issue has been closely considered in several determinations.¹ For this reason, the associated legal research will not be repeated here.

In summary, the legal position is:

Under the common law, when a supplier advertises goods or services to the public by some method of mass communication such as the media, circulars or catalogues,

¹ See for example: Case 20145261021 at p 14, *Compendium of cases_15_SEPTMBER_2016* at <http://www.cgso.org.za/downloads/>.

this is generally considered to be an invitation to treat or do business, or a mere puff and is not binding on the supplier.

CPA section 23(6) prohibits a supplier from charging more than the lowest price displayed section but this is mitigated to the benefit of the supplier in the case where the price as displayed contains an inadvertent and obvious error (section 23(9)) if, upon discovering the error, the supplier:

- corrects the error; and
- takes reasonable steps in the circumstances to inform consumers of the error and the correct price.

This office has held that section 23 applies to displayed prices and section 30 governs the advertisement of goods in the media.

Section 30(1) prohibits a supplier from advertising goods as being available at a specified price in a manner that may result in consumers being misled or deceived. Sub-section (2) binds the supplier to provide the goods at the advertised price if the advertisement expressly places a limitation on the number of goods available.

Given the factual situation presently under consideration, the question is, would the price of R 399 have misled the reasonable person. A reasonable person would not have been misled by such a massive error.

In the Singaporean case of *Chwee Kin Keong and others v Digilandmall.com Pte Ltd*² [our courts may consider foreign cases], when Digilandmall.com mistakenly priced a printer at Singapore (SGD) \$66 rather than around SGD \$3854, at least six people placed multiple orders. At para 145 of the case, Judge Rajah JC concluded:

If the price of a product is so absurdly low in relation to its known market value, it stands to reason that a reasonable man would harbour a real suspicion that the price may not be correct or that there may be some troubling underlying basis for such a pricing. He would make some basic enquiries to ascertain whether there is anything faulty with the product in an attempt to seek an explanation for or understanding of the basis for the price discrepancy; he might alternatively try and ascertain whether perhaps the price differential is part of some spectacular promotional exercise. If there appears to be no reasonable explanation for an absurd price discrepancy, it is axiomatic that any hasty conduct, such as the plaintiffs', in "snapping up" products, should be punctiliously scrutinised and dissected. What amounts to "snapping up" is a question of degree that will incorporate a spectrum of contextual factors: what is objectively and subjectively known, the magnitude of the transaction(s), the

² [2005] 1 SLR(R) 502; [2005] SGCA 2.

circumstances in which the orders are placed and whether any unusual factors are apparent.

In, short, the incorrect price was not binding. Of particular relevance to the present case is the feature of multiple orders being placed (the complainant ordered 10 gazebos). This fact linked to the massive discrepancy between the advertised price and the true price (R 399 as opposed to R3 499 precludes the possibility of the reasonable person being misled. There is accordingly no basis for holding the advertised price to be binding even where this office to hold that the supplier was vicarious liable in terms of section 113 for the actions of outdoor magazine as its agent (something which is hotly contested). In view of the above finding, it is not necessary to further consider the possibility of vicarious liability. There was not in any event a transaction between the complainant and the outdoor magazine.

8. Conclusion

Accordingly, there is no legal basis for recommending that the supplier supplies the gazebos at the mistakenly published price.