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Navigating Direct Marketing in the business environment



Marketing plays a critical role in a business's success, with Direct Marketing being one of the most popular forms of marketing used by Companies.

This form of marketing is regulated by various laws, including the *Consumer Protection Act* 68 of 2008 (the "CPA") and the Protection of Personal Information Act 4 of 2013 ("POPIA").

One often feels overwhelmed by all these rules and the need to comply with legislation.

Bearing this in mind, it is much easier to comply with legislation knowing that your business, in doing so, acts reputably and ethically and that your customers hopefully share the same values as those of your company.

In a previous blog, we discussed '*How does the commencement of the POPI Act affect direct marketing*' - this article forms part of a 4 part series where we will clarify a few definitions and basic rules for Direct Marketing in the business environment.

What is Direct Marketing?

- Direct Marketing is defined by both the CPA and POPIA and can be interpreted as approaching any person, either physically or through electronic communication, with the direct or indirect intention of promoting goods or services sold in their ordinary course of business or requesting any kind of donation for whatever reason.
- Electronic communication is data generated, sent, received or stored by electronic means. This includes voice on automated transactions, as well as a stored record. The exact scope of Direct Marketing through electronic communications, as well as other modern forms of Direct Marketing will be discussed in the next blog in our series on Direct Marketing.

POPIA is applicable to both natural and juristic persons. When interpreting legislation aimed at Direct Marketing, it is therefore important to remember that such legislation also applies to a juristic person. For purposes of this blog, the term “customer”, “client” or “person” includes both natural and juristic persons, unless expressly excluded.

The marketing attempt must be aimed at a specific person in order to qualify as Direct Marketing and cannot be aimed at the general public. Billboards and posters are marketing strategies aimed at the public in general.

What are the rules for Direct Marketing?

According to section 12(2) of the CPA, Direct Marketing may only occur Monday to Friday from 8:00 to 20:00 and on Saturday from 9:00 to 13:00. No person may be contacted on Sundays or Public Holidays with the intention of Direct Marketing.

Section 69(1) of POPIA requires that the person to whom direct marketing is directed must consent to receive such marketing or be a customer of that responsible party. Section 69(3) of POPIA states that a customer may only be contacted if the responsible party had obtained their details in the context of a sale for the purpose of marketing their own similar product or services and if there had been a reasonable opportunity to object to receiving marketing material.

Direct Marketing strategies and collection of Personal Information from the public domain

Personal Information can often be found in the public domain in the form of business cards, social media, electronic signatures and community forums, to name a few. May you use Direct Marketing strategies on a person if you had collected their Personal Information from the public domain? Section 69(2) specifically states that a person may only be approached once in order to obtain consent for purposes of Direct Marketing. It is important that such person had not previously withheld consent. The consent must be in the prescribed manner and form. If consent was not provided, no further contact may be made.

It is important to note that a customer should have the opportunity to object to receiving Direct Marketing material at the time their information is collected, as well as every occasion thereafter where they receive communication from the responsible party. The objection should be free of charge and without any unnecessary formalities.

Tips to consider when making use of modern or traditional direct marketing methods:

- Always include an “opt-out” option in all your direct marketing efforts;
- Ensure that you have systems in place to accommodate and opt-out requests. Any further contact is prohibited by the CPA and POPIA;
- Section 16 of the CPA provides for a 5-day cooling-off period for the return of any goods, without cause of penalty, purchased as a result of Direct Marketing;
- A single message cannot contain Direct Marketing material and service-related communication; and
- *Guidelines as per Section 12 of the Consumer Protection Act* provides that Direct Marketing may not occur during the following times:
 - Sundays, or public holidays provided for in the Public Holidays Act, 1994
 - Saturdays before 09:00 and after 13:00
 - All other days between the hours of 20:00 and 08:00 the following day, except to the extent that the consumer has expressly or implicitly requested or agreed otherwise.

Conclusion

Although each industry is subject to different laws regulating Direct Marketing, it is important to note that the legislation providing the most protection to a customer will prevail.

The scope of protection against Direct Marketing no longer applies only to natural persons, as POPIA also extends some protection to juristic persons. There are certain rules that every Company should bear in mind when implementing Direct Marketing strategies. In our next article in this series about Direct Marketing we will be exploring which forms of electronic communication constitute Direct Marketing, as well as “Opt-in” and “Opt-out” options and the difference between Direct Marketing and service-related messages.

SERR Synergy assists businesses in ensuring that Personal Information is processed according to legislation, while simultaneously serving the needs your business may have in respect of such data. We provide a full range of Information Compliance service offerings by compiling Assessment and Due Diligence Reports, drafting the required Privacy policies, updating your agreements to deal with data considerations, advising on internal data-handling requirements or understanding exactly what data privacy role you fulfil.

About the Author: Demi-Lee Preston completed her BA Law and LLB degrees at the University of Pretoria. She joined the SERR team as an Information Compliance Advisor. She specialises in POPIA and PAIA compliance and has a special interest in Consumer Protection Law.

Sources:

Consumer Protection Act 68 of 2008

Electronic Communications and Transactions Act 25 of 2002

Protection of Personal Information Act 4 of 2013

Public Holidays Act, 1994

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