

# **An Overview of Consumer Protection Laws in Singapore**

by

**Assafa Endeshaw**

PhD LLM (London) LLB (Addis Ababa)

**Lecturer in Law**

Nanyang Business School (B1A-18)

Nanyang Technological University

Nanyang Avenue

Singapore 639798

Fax.No. (65) 791 3697

E-Mail: AEndeshaw@NTU.EDU.SG

## **Summary**

Singapore is racing to break into the league of industrial and commercial nations in the realm of consumer protection too. Having borrowed a residue of laws from England, which was the colonial power, Singapore has put in place a relatively comprehensive regime of consumer protection laws. The increasing advances have been achieved through an apparently piecemeal process. Existing laws cover misleading trade descriptions in all their forms, the provision of safety requirements regarding the preparation and sale of food and medicinal products, the control of prices and supply of essential goods when these have been determined to be necessary.

There are still areas in Singapore which have as yet not been covered by legislation either comprehensively or partially: consumer credit law, save the Hire-Purchase Act, the Pawnbroker's Act and the Moneylender's Act which are limited in their significance; product liability; and services in general. Totally new areas are fair competition standards and rules.

The article reviews, first, the state of consumer protection laws in Singapore and, then, the administrative and legal environment for their enforcement.

# An Overview of Consumer Protection Laws in Singapore

## 1. Introduction

The legal protection of consumers is something that is taken for granted in all the major industrial countries where mass production and distribution of goods as well as the supply of services have long become facts of life. Such countries have already put in place an array of laws and institutions that work towards the protection of the consumer. Countries such as Singapore which are racing to break into the league of industrial and commercial nations have also embarked on developing the same kinds of tools for the protection of consumers.<sup>1</sup>

The legal and institutional advances made in Singapore along this path have been greatly influenced by its historical past, namely the period of association with Britain.<sup>2</sup> The end of that period left, in independent Singapore, a residue of consumer laws that had been introduced in England as part of the drive to limit the effects, on consumers, of *laissez faire* economic policies in the supply of goods and services as well as the use of financial credits and securities. Moreover, the legal and administrative measures for the protection of consumers that resulted from the rising influence of consumer pressure groups in Britain and the

---

<sup>1</sup> An example is Malaysia where constant progress is being made in this direction. For a good survey of general conditions in consumer protection, the state of the relevant law in Malaysia and a review of the policy considerations, see S. Sothi Rachagan, *Consumer Law Reform: a Report*, Kuala Lumpur: Selangor & Federal Territory Consumers' Association, 1992.

<sup>2</sup> For a general discussion of the legal tradition that Singapore borrowed from Britain and the continuity of the resulting influence, see Myint Soe, *Principles of Singapore Law (including Business Law)*, Institute of Banking and Finance, 3<sup>rd</sup> ed., 1996, at 2-67.

European Community countries from the 1960s onwards continued to provide impetus for Singapore to do likewise.

The flow or, better perhaps, transplantation of English law, and not just only consumer law, into Singapore continued until about 1993. However, the wholesale extension of English laws to Singapore that started in 1826 was tempered and modified greatly through Civil Law Ordinance No. IV of 1878. That Ordinance affirmed the continued reception of English law but sought to identify the type of statutes that would be so received into Singapore law. Section 6 of that Ordinance stated that these were “the law to be administered in England in the like case” concerning “partnerships, joint-stock companies, corporations, banks and banking...and with respect to mercantile law generally”.

The 1878 Ordinance was later repealed in 1909 and re-enacted again with some changes; the last of the amendments on that law (renamed in 1936 as the Civil Law Act, Cap 42) were effected in 1979. The uncertainty of the type of “mercantile laws” presumably allowed to be imported into Singapore, as the Civil Law Act specified in section 5, eventually prompted a new act-- the Application of the English Law Act (AELA) of 1993 (Cap 7A). It is probable that an additional factor for change was the government’s determination to thwart the likely flow of EEC legislation into Singapore via the United Kingdom which had joined the EEC in 1972.<sup>3</sup> The AELA has arguably clarified<sup>4</sup> the confusion prevalent till then as regards the nature

---

<sup>3</sup> *Ibid.*, at 65.

<sup>4</sup> Soe thinks that it has ended the confusion; see *ibid.*, at 65-6. Phang too holds that the AELA has achieved this although he doubts whether there could be a ‘cutoff’ date for the application of the common law and equity as specified in section 3 of the AELA. See, Andrew Phang Boon Leong, *Cheshire, Fifoot and Furmston’s Law of Contract: Singapore and Malaysian Edition*, Butterworths, 1994, at 16-26.

of permitted importation of laws of a mercantile character by attempting to plug any loopholes. Consequently, no new UK statutory authorities can be introduced into Singapore other than those listed specifically in the Schedule to the 1993 AELA. The subsequent indigenisation, from 1995, of the names and numbers of the statutes that used to be referred to earlier in their original English titles suggests that the plug is definitive.

The discontinuation of the importation of statutes from the UK which became more pronounced after 1979 and total after 1993 has left a noticeable gap in particular areas of consumer legislation in Singapore, namely in consumer credit (partly), product liability and consumer safety.<sup>5</sup> It is tempting to view the existence of gaps as proof of insufficiency, even lack, of consumer protection laws in Singapore.<sup>6</sup> Such a view might appear plausible since no serious study of the state of the consumer laws has been done in Singapore. The only two booklets that bear the word “consumer” in their titles (regarding Singapore law)<sup>7</sup> were very limited in their objectives and unable to give that title the breadth it would deserve. This article seeks to remedy that deficiency by putting together a comprehensive picture. While the subject would certainly require more detailed study eventually, the author chooses to fill the indicated lacuna through a broad sketch of the state of laws, partly as a methodological framework for the future.

The article is organised in 4 sections. Section 2 attempts to state the rationale for and scope of

---

<sup>5</sup> The pertinent laws in the UK are the Consumer Credit Act 1974, the Consume Protection Act 1987.

<sup>6</sup> See, for example, Benny S Tabalujan (*Singapore Business Law*, Thomson Information, 1996) who comments (at note 8, on page 315) that Singapore has a “limited degree of consumer protection”.

<sup>7</sup> Namely, Catherine Tay Swee Kian and Tang See Chim, *Your Rights as a Consumer*, Times Books International, 1986; and *Guide to the Consumer Protection Act*, produced by CASE (Consumer Association of Singapore), no date.

consumer law in general but within the context of the common law system to which Singapore belongs. Section 3 then takes up the gamut of legislation in Singapore that provide protection for consumers, whether partially or fully. Section 4 considers the regulatory environment in which consumer protection legislation in Singapore is being implemented. Section 5 outlines the existing forms of consumer access to legal redress. The conclusions underscore how far Singapore has come in protecting consumers and suggest future paths for development of the laws as well as practices in the same field.

## **2. Consumer Law: Rationale and Scope**

Consumer law relates essentially to the prescription of safety, labelling, advertising and service standards and the provision of redress (civil, administrative and criminal) in cases where businesses fail to meet those standards. The underlying objective is to prevent or reduce losses and injuries that buyers might suffer from unfair trade practices and unsafe products. In a sense, this may amount to instituting an equitable distribution in the society of such losses (distributive justice). By protecting the poor, elderly and children in particular, a form of subsidy is put in place to provide a safety-net in cases where these group of people become affected by those malpractice or shortfalls from prescribed standards.

It may also be argued that such intervention of the state in the market through legislation will improve the economic efficiency because it will correct market failures. It has become accepted that the free market can be disrupted by monopoly and the resulting lack of competition as well as the erection of barriers to market entry. Besides, there is an inherent imbalance in information available to consumers as against that possessed by suppliers of goods and services. This means that the nature and consequences of transactions consumers

might desire to enter into may not be fully clear to them, hence the possibility for them to make informed decisions will be diminished thereby reducing the efficiency of the market. Furthermore, the cost involved, time consumed and uncertainty surrounding the redress individuals might seek through the private law system reinforce the same negative consequences on the market. Therefore, government intervention and the use of administrative and criminal sanctions and alternative forms of conflict resolution would be needed to correct this.

An added significance of government intervention is the prevention of disparity between national policies and laws in relations to banned or regulated goods. Where this is not done and unsafe or untested drugs are dumped on countries with deficient laws, the impact on the society cannot be doubted. National laws will consequently be required to keep pace with developments elsewhere to prevent such occurrences.

#### *Contributions of the common law*

In terms of substance, the development of consumer law owed more to criminal and administrative law than to civil law.<sup>8</sup> The common law was slow to react or came too late for consumers; statutes therefore seemed more suitable than accumulating precedents. This is not to say that the common law did not provide any solutions at all. Indeed, it contributed to the protection of consumers through the requirements gradually imposed on traders of supplying

---

<sup>8</sup> For an introduction to the evolution of consumer protection law in the UK, see Gordon J. Borrie, *The Development of Consumer Law and Policy—bold spirits and timorous souls*, London:Stevens, 1984.

goods that are of merchantable quality and reasonably fit for the buyer's purpose.<sup>9</sup> In the supply of services too, judges evolved a requirement that any work be undertaken in a proper and workmanlike manner.<sup>10</sup> Judges further reacted by rejecting restrictions of liability where there was no adequate notice given to affected parties;<sup>11</sup> in particular reliance on exemption clause was considered ineffective if a trader sought to escape from liability arising from his fundamental breach of a contract he had entered into. First pronounced in 1964 by Pearson LJ,<sup>12</sup> this doctrine was confirmed in the *Suisse Atlantique* case<sup>13</sup> although the House of Lords did not apply it to the actual case since the appellants had already affirmed the contract when they claimed before the courts on the grounds of fundamental breach by the respondents.

A major contribution to the development of consumer protection was furnished by the landmark decision of the British House of Lords in *Donoghue v Stevenson*.<sup>14</sup> The House of Lords held that even if the claimant had no contractual nexus with the original manufacturer of a defective drink which the claimant had consumed, the manufacturer was liable to the claimant under the tort of negligence. It has thus become an established law, since *Donoghue v Stevenson*, that manufacturers, repairers and the like would have a duty to care towards

---

<sup>9</sup> *Laing v Fidgeon* (1815) 128 English Reports 974; and *Jones v Bright* (1829) 130 English Reports 1167, respectively.

<sup>10</sup> *Bolan v Friern Hospital Management Committee* [1957] 2 All E.R. 118.

<sup>11</sup> See *Parker v South Eastern Railways* (1877) 2 CPD 416; and *Thornton v Shoe Lane Parking Ltd* [1971] 1 All E.R. 686.

<sup>12</sup> *UGS Finance Ltd v National Mortgage Bank of Greece SA* [1964] 1 Lloyd's Reports 446.

<sup>13</sup> *Suisse Atlantique Société D'Armement Maritime S.A. v N.V. Rotterdamsche Kolen Centrale*, House of Lords, [1967] 1 AC 361-438.

<sup>14</sup> [1932] AC 562.

consumers as a whole, whether or not the consumers were in a contractual nexus with any of them; should any of them fail to take adequate measures to prevent accidents, injuries or losses to the consumers, they would be liable in negligence. The damages awarded in such situations have also expanded to cover non-pecuniary losses (distress, disappointment and the like).<sup>15</sup>

Unfortunately, the redress available to consumers under *Donoghue v Stevenson* has its limitations. Although a plaintiff may be assisted by discovery rules, inspection and interrogatories, proving liability (that is failure of the defendant manufacturer or repairer to prevent harm occurring according to the standards in the respective industry) could be difficult. This was the main reason for the imposition of strict product liability through legislation in the EEC and elsewhere.<sup>16</sup>

The common law rules of contract that govern the supply of non-committal information, that is information without any intention to create legal relations among the supplier and recipient of information, generally hold sway in Singapore as in England.<sup>17</sup> Sales literature, catalogues and price lists may therefore be treated as mere invitation to treat or just a puff. Of course, any of the information so supplied may amount to a misrepresentation if it contains a false statement of fact.

The rights of parties in respect of advertising with which they were supplied, but did not become a basis for committing them into a contract, may be asserted in certain situations only.

The common law avenues of protection from false claims of endorsement or attribution are

---

<sup>15</sup> *Heywood v Wellers (A Firm)* [1976] 2 WLR 101, Court of Appeal.

<sup>16</sup> The UK achieved this through the introduction of the Consume Protection Act 1987.

<sup>17</sup> The leading authorities in this field remain *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* [1952] 2 QB 795; and *Partridge v Crittenden* [1968] 2 All E.R. 421

provided in laws of defamation<sup>18</sup> or that of passing off.<sup>19</sup> On the other hand, tortious acts such as affixing advertisements on land, buildings and the like may be considered as trespass, or public or private nuisance.

There have been other case-based laws which serve to cushion the consumer from aggressive, misleading or deceptive marketing. The evolution of such concepts in contract law as unconscionability, misrepresentation and economic duress operated to protect the consumer as well as other contractual parties. Yet the development of these laws was slow and their boundaries very much uncertain.

#### *Early forms of statutory intervention*

Consumer law can be regarded as a derivative of sales law (narrowly conceived) or of marketing law (in a broader sense).<sup>20</sup> It is commonly understood that sales law expanded greatly after the industrial revolution when mass production of goods became possible and previous notions of intimate knowledge between seller and buyer disappeared and the relations became more and more de-personalised. The notion of *caveat emptor* embedded in early sales law became less and less relevant when not only mass production but mass marketing and packaging of goods made it difficult for the buyer to inspect, examine or try the goods before

---

<sup>18</sup> *Tolley v JS Fry & Sons Ltd* [1931] AC 333.

<sup>19</sup> *Morris Motor Ltd v Lilley* [1959] 3 All E.R. 737 ; *Erven Warnick BV v J Townend & Sons (Hull) Ltd* [1979] AC 731.

<sup>20</sup> JG Collinge and BR Clarke, *Law of Marketing in Australia and New Zealand*, Butterworths, Sydney--Wellington, 2<sup>nd</sup> ed. 1989, at 5. For a brief discussion of policy considerations in the law of marketing, see *ibid.*, at 3-26.

taking them home.

It is well known that the English Sale of Goods Act (SGA), first issued in 1893 and later revised in 1979, attempted to codify the law regarding sale transactions in light of the vast changes brought about by the industrial revolution. Later adopted in Singapore and recently renamed as Cap 393 as well as amended,<sup>21</sup> the Sale of Goods Act made provisions for the protection of consumers by requiring sellers to take on board certain obligations as to description, quality and title. But then, those provisions could be conveniently set aside by the wily seller who would exclude either their validity or his liability towards the consumer on account of them. In other words, the efficacy of those important provisions in the Act (as far as consumers are concerned) depended on whether the seller did not include anything in the contract of sale that might displace them (as alternatives). That the SGA enabled protection of the consumer only when the seller failed to stipulate anything meant that it was open for the seller to pre-empt such protection by including his own requirements and, consequently, wiping out the remedies that the common law as codified would have offered to the consumer.

The introduction of the Unfair Contract Terms Act 1977 (UCTA), Cap 396, has put a stop to the possibility for the seller to manoeuvre himself out of possible obligations towards consumers that the SGA recognised. The UCTA stipulates that if one of the parties is a consumer or, to use the exact terms, “dealing as a consumer”, the liability of the seller for lack of title, merchantability or fitness for purpose cannot be excluded or restricted. Moreover, it

---

<sup>21</sup> The Sale of Goods (Amendment) Act 1996, No.43 of 1996, has made some changes, in line with the recommendations of the English Law Commission, in the concept, e.g., of merchantability and replacing it with “satisfactory quality”. We have to wait and see whether the changes are merely cosmetic or expand the protection already available in the Sale of Goods Act.

allows no exclusion of liability for death of or injury to persons. In all other situations, the law allows exclusion from liability where it is reasonable to do so, pursuant to such a determination based on Section 11 and Schedule 2 of the UCTA. Although the latter may not be clear or simple to apply, the fact that businesses have been spared of a strict liability across the board suggests that a compromise approach was preferred in the interests of businesses.

Apart from the SGA, and indeed preceding it, the 1677 English Statute of Frauds had served for a rather long time as a limited source of protection not necessarily exclusively for consumers but also others for different purposes (such as the transfer of property, wills). Only 2 of the 25 sections had relevance to contracts. Section 17 of that Statute (later replaced by section 4 of the 1893 Sale of Goods Act) had required contracts relating to the sale of goods of the value of £10 upwards to be in writing. Although the Statute was criticised<sup>22</sup> and eventually repealed in 1954 by the Law Reform (Enforcement of Contracts) Act, its purpose was to prevent fraud in areas that were then considered vulnerable.

### *Rise and scope of consumer laws*

Overall, it is widely accepted that consumer law, properly so called, emerged in the post-1960s to redress the natural imbalance between ordinary consumers and sellers or suppliers of goods and services. By correcting the imbalance in economic power between individual buyers and the collectives of producers or sellers, in other words, by making inroads into the doctrine

---

<sup>22</sup> See Phang, note 4, above, at 320-322.

of “freedom of contract”, consumer law operates as a buffer for those lacking the ability to make independent judgement or who cannot get hold of the full facts surrounding a transaction. As traditional legal formulae developed over the centuries, the common law system did not embrace new changes fast enough nor could it provide the necessary support for the consumer in the wake of the rising complexity of trade and abundance of marketing devices deployed especially by big businesses. The requisite intervention had to be by the state in the form of statutes or codes. Thus it is understandable why the most significant developments in consumer protection came about through statutory rules that introduced standards of liability together with the means of enforcing those standards. Just like the changes brought about in product liability law through statutory intervention, the limits within which businesses can stipulate contract terms that may deprive the consumer or other contracting parties in general have been spelt out in the Unfair Contract Terms Act 1977 (UCTA), Cap 396.

Furthermore, the range of legislation has not been limited to the civil type but included criminal plus administrative forms. Thus beside national laws that sought to regulate the forms of marketing and the supply of information to the consumer, there have been regional and even multinational attempts. Since 1975, the EU has made progressive use of legislation to curb what have been seen to be unfair practices to the consumer (product liability, advertisements and even the carving up of market sectors). Consumer protection was made a distinct concern of all the member countries of the EU under 3s of the 1992 Maastricht Treaty.<sup>23</sup> At the international level, the *UN Guidelines for Consumer Protection of 1985*<sup>24</sup> provide a

---

<sup>23</sup> Vivienne Kendall, *EC Consumer Law*, (Wiley Chancery, [1994?]), at 5-7.

<sup>24</sup> Resolution 39/248 of the UN General Assembly, New York, 1986.

framework for developing nations, in particular. The *UN Guidelines* lay down minimum standards that are supposed to be legislated into law by the member nations.

The issue of substantive laws that provide more secure protection for consumers in any country would require putting in place enforcement mechanisms accessible to consumers. The most important mechanisms are that the regulation of standards of conduct prescribed by statutes or case law be conducted through criminal law, administrative control and self-help mechanisms. The failure of businesses to keep within given guidelines or standards may generally amount to civil infractions. However, there may also be matters better left to the police and therefore subject to the latter agency's determination of what is criminal according to the usual stringent rules of criminal law. Some may also fall in-between and require administrative action by the pertinent authorities.

The advantages of using criminal sanctions to enforce civil and commercial standards are obvious. The imposition of criminal sanctions on errant businesses turns what would have been considered civil infractions into more strict liabilities and subject to no defence of lack of fault. The fact that such actions will be handled by public officials operating independently of the police and without the need to prove *mens rea*, an important ingredient in ordinary criminal law, makes such avenues formidable means of enforcement of consumer rights. Public officials need only show that the reprehensible act has been caused by the defendant business regardless of whether, in the final analysis, the perpetrator was the employee or that the employer had no knowledge of the actual circumstances or whatever. In other words, it is a strict liability where punishment follows automatically upon the plaintiff merely proving the offence and linking it to the defendant's act or omission. The ultimate impact of this weapon in the hands of consumers is the deterrence against disregard for standards because the defences

are absolutely minimal: that either the defendant did not do the reprehensible act or that it was not the culprit.

### **3. Statutory Protection of Consumers in Singapore**

We have already suggested that, apart from a few gaps still remaining to be filled, there operate in Singapore a spectrum of laws that protect consumers. A brief review of legislation that provide for criminal sanctions and administrative regulations in enforcing rights of consumers, or conversely duties of businesses, will be attempted here.

#### *Regulation of trade descriptions*

The most important piece of legislation of interest to consumers in Singapore is the Consumer Protection (Trade Description and Safety Requirements) Act 1975 (Cap 53). The Act (hereafter, CPA) defines “trade description” as any statement, indication, description regarding quantitative and qualitative aspects of goods e.g. weight, composition, performance, testing, approval, place and date of manufacture etc., producer or processor of goods, previous ownership.<sup>25</sup> Unless appearing as part of an advertisement, any description would be excluded from consideration under the Act if it were published in newspaper, book or periodical or film. It also defines goods broadly as movables, including ships, aircraft, animals and plants. The CPA covers only goods and Singapore has yet to embrace services within the Act or alongside it in some other law. Thus all references in the CPA are to goods only.

---

<sup>25</sup>The Consumer Protection (Trade Description and Safety Requirements) Act 1975 (CPA), s 2(1).

The CPA basically prohibits the use of misleading trade descriptions and false representations about goods. The major emphasis is understandably on the first type of descriptions as they would obviously be the more frequent of the two. It therefore makes it an offence to apply false trade descriptions to any goods or supplying those to which such description has been applied.<sup>26</sup> It is also an offence to use a false representation as to the supply or approval of goods (by any person including government departments or international bodies, agencies whether in Singapore or abroad) in the course of any trade or business.<sup>27</sup>

The reference to false trade description includes those actually placed on goods (plus alterations, additions or effacement) or omitted from them. It is however a requirement of the CPA that, for the trade description to be reprehensible, it must be false or likely to mislead in a material respect as regards goods themselves or in relation to them. Likewise, the claim or indication that goods comply with a certain standard or are recognised by any person should be false. The law creates the presumption that if no person or standard exists or is recognised or implied as claimed by the representor, the representation will be deemed to be false. One might pose the question at this stage whether endorsements of goods by an unidentified person, as is so often increasingly used, could be considered false and liable to prosecution? It might be that if the representor made a fictitious reference to a person, it would be easy to establish a falsehood.

A further requirement in establishing the offence is that there be an “applying” of the description. This is defined in many ways, no doubt to shut the door firmly against all forms of

---

<sup>26</sup> *Ibid.*, s 4.

<sup>27</sup> *Ibid.*, s 14.

“applying” false descriptions. The first is marking on, affixing or annexing to goods themselves or anything with which goods are supplied, e.g., packages and manuals. One might raise here the problem whether this includes receipts or invoices which are routinely adorned with all sorts of business messages about the qualities of goods? They would appear to be likely to be included so long as they accompany the goods. However, would the fact that the receipts despatched after the goods arrive (as might happen in mail order or credit sales) carrying descriptions be subject to the same determination of offence? There are no clear solutions in the CPA.

The second form of “applying” follows closely the first, namely placing goods in containers or other things on which trade descriptions were already affixed, marked or incorporated. Similarly, supplying goods in response to a request describing goods would be deemed to be applying the trade description. A further mode of applying is using a trade description when referring to goods. The fact that the reference is an oral statement will not be a defence as this is taken in the CPA as likely to amount to the use of a trade description.<sup>28</sup>

All these requirements as to the use or application of trade description apply equally to advertisements on any class of goods. Neither do the goods have to be in existence at the time of advertisement. The determination of the link between any description or advertisement with the class of goods in question should be made by reference to time, place, manner and frequency of publication and other matters which might indicate people would associate such advertisement with the goods.<sup>29</sup> This may not be difficult in one specific case. A trade description which is part of a registered trademark may be considered a false trade description

---

<sup>28</sup> *Ibid.*, s 6.

<sup>29</sup> *Ibid.*, s 7.

when used in connection with goods which are not among the class of goods the mark was registered for or by a non-owner.<sup>30</sup>

The details for the implementation of the CPA are left for the Minister of Trade and Industry. The Minister is empowered to issue regulations laying down further conditions in the supply of information and provision of safety requirements by businesses. Thus the Minister may issue regulations on marking of goods or supply of information or instructions regarding them if he sees it to be *necessary or expedient*.<sup>31</sup> The Minister may similarly issue regulations regarding inclusion of or reference to any information in advertisements;<sup>32</sup> for protecting the safety of customers by specifying requirements as to composition, contents, construction, markings of warnings or instructions etc.<sup>33</sup> We will take this up again, below, when we discuss safety standards for consumer protection.

The defences available to a business that falls foul of the CPA are not too many. The defence of lapse of time, that is if 3 years have passed since the offence was committed, is an obvious one.<sup>34</sup> Where the offence was committed by a body corporate with the consent or connivance of officers in charge or on their behalf--such persons will be jointly liable with the body corporate.<sup>35</sup> On the other hand, if the offence is due to the act or default of another person, that person would be chargeable whether or not proceedings have been initiated against the

---

<sup>30</sup> *Ibid.*, s 8.

<sup>31</sup> *Ibid.*, s 9.

<sup>32</sup> *Ibid.*, s 10.

<sup>33</sup> *Ibid.*, s 11.

<sup>34</sup> *Ibid.*, s 16.

<sup>35</sup> *Ibid.*, s 17.

first person.<sup>36</sup> The relatively stronger defence is proof of mistake on the defendant's part or his reliance on supplied information, the act or default of a third party, an accident or something beyond his control; nevertheless, to be successful such a person must show that he took all reasonable steps and exercised due diligence to avoid the commission of the offence; he must also identify the other person to the prosecutor.<sup>37</sup> The same kind of defence is available to anyone who would prove that they had or could not have had any knowledge, despite reasonable diligence to ascertain, that the supplied goods did not conform to the description or that the description had been applied to goods.<sup>38</sup> The relevant defence for false advertisements is proof that a person's business is to publish or arrange publication of advertisements and that he received such an advertisement in the ordinary course of business, did not know or had no reason to suspect that publication would amount to an offence.<sup>39</sup>

### *Safety Standards*

The setting up of minimum safety standards to prevent harm to persons from unsafe products or services is an aspect of consumer protection. The surveillance of consumer products on the market to identify problems, regulating and testing them both before and during marketing, intervening to remove those that might pose danger to consumers and to ban them, all these are practical necessities. Although there are other allied issues of concern to the public such as health and environmental matters, we intend as far as possible to concentrate on the consumer

---

<sup>36</sup> *Ibid.*, s 18.

<sup>37</sup> *Ibid.*, s 19.

<sup>38</sup> *Ibid.*, s 19(3).

<sup>39</sup> *Ibid.*, s 20.

aspects of such standards as have been established in Singapore.

While common law rules, the tort of negligence and the Sale of Goods Act remain the main sources of law relating to product liability in Singapore, the lack of statutory authority is being bridged gradually through the issue of safety standards and regulations (envisaged under the CPA), however intermittent they might be. The regulations routinely provide for sanctions of both a civil and criminal character.

Basic laws have already been on the statute books on particular aspects of safety of products. Thus provisions on safety requirements regarding the preparation and sale of food have been incorporated in the Sale of Food Act 1973 (Cap 283). Accordingly, the sale of adulterated food without information as to the adulteration supplied to the purchaser, the sale of food containing banned substances listed in the relevant regulations or in circumstances which make such food unfit or unsound is a criminal offence.<sup>40</sup> 'Adulteration' is defined as mixing, diluting, omitting or extracting nutritive or other benefits of food.<sup>41</sup> In addition, food sold in a package is required to have all information regarding weight, volume, quality, strength purity and the particulars of the manufacturer and trader.<sup>42</sup> False labelling or advertisement of the value, merit or safety of any food;<sup>43</sup> or the sale of a different quality of food than requested by the buyer<sup>44</sup> are punishable offences. The Food Regulations No.1 of 1<sup>st</sup> October 1988 specifies detailed standards of labelling and the type and amount of information to be disclosed to

---

<sup>40</sup> The Sale of Food Act 1973, ss. 11-15.

<sup>41</sup> *Ibid.*, s 21.

<sup>42</sup> *Ibid.*, s 16.

<sup>43</sup> *Ibid.*, s 17.

<sup>44</sup> *Ibid.*, s 18.

buyers. Sell-by dates are also required to be affixed to food products listed in the Third Schedule (most of the 19 items being types of food ready for immediate consumption).<sup>45</sup> The use of chemicals such as additives and preservatives is also strictly regulated.

The Environmental Public Health Act 1987 (Cap 95) consolidates the law in this area and, therefore, reinforces the protection provided to consumers by the Sale of Food Act. The operations of, among others, food establishments (including hawkers), markets, waste collectors and public amenities are regulated with a view to ensuring public safety and hygiene and dealing with public nuisances and dangers to health.

Safety of medicinal products is covered under the Drugs Act 1970 (Cap 282) and the Medicine (Advertisements & Sale) Act (Cap.161). These Acts combine to protect consumers of these products. In much the same way as the Food Act, the Sale of Drugs Act prohibits the sale of adulterated drugs, those carrying false or misleading drugs or containing a prohibited substance.<sup>46</sup> As well, those not containing the composition prescribed by regulations are prohibited.<sup>47</sup>

The Consumer Protection (Warning Against Danger of Smoking) Regulations 1980 issued under the CPA makes it obligatory on advertisers that target smokers or consumers to insert the usual “Government Warning” and display it prominently. Further requirements have been issued under the Consumer Protection (Labelling of Tobacco Product Containers) Regulations of 1989. The Regulations require the printing or marking, in a prominent place in English on

---

<sup>45</sup> The Food Regulations No.1 of 1988, r 10.

<sup>46</sup> The Sale of Drugs Act, s 10.

containers of all types, of the health risk that attach to smoking, adding the words “Government Warning”. Moreover, the nicotine and tar content will have to be disclosed. Manufacturers, importers and distributors are also required to furnish to the Director of Consumer Protection a statement regarding the amount of cigarettes that they produce or sell. Failure to fulfil any of these requirements is a punishable offence. The Customs and Excise Department is required to enforce the same Consumer Protection (Labelling of Tobacco Product Containers) Regulations.

Product safety is also taken care of under the Electric Lamp and Electric Appliances Act (Cap 243) whereby the Public Utilities Board (PUB), under the Ministry of Trade and Industry, vets electrical appliances and approves or rejects them. The Regulations that the PUB issued on 1 January 1975 pursuant to its powers under the Electrical Workers and Contractors Licensing Act allow it to control contractors through the issue or denial of licenses for carrying on electrical work.

Moreover, a number of regulations have been issued by the Minister of Trade and Industry, pursuant to the powers given to him in the CPA. One of them is the Consumer Protection (Safety Requirements) Regulations No.2 of 1<sup>st</sup> June 1991 (which replaced the previous one). The Regulations prohibit the supply or advertisement for purposes of supply of selected types of goods unless they have been approved by the Safety Authority<sup>48</sup> (which is for the moment the Singapore Productivity and Standards Board<sup>49</sup>). Persons dealing with unapproved goods

---

<sup>47</sup> *Ibid.*

<sup>48</sup> Consumer Protection (Safety Requirements) Regulations No.2, r 3.

<sup>49</sup> This is by virtue of s 6(1)(f) of the Singapore Productivity and Standards Board Act 1995.

are hence criminally liable. An approval by the Authority (which must be kept in a Register<sup>50</sup>) remains valid for three years only.<sup>51</sup> The types of goods specified in the Schedule that need to be approved include liquefied petroleum gas, cooking devices, hairdryers and other consumer electronic goods—all in all 30 types of goods. Considering that electronic goods may also be subject to the powers of the PUB, it will become apparent that its power overlaps with that of the Standards Board.

### *Regulation of Advertisements*

Statutory intervention to regulate advertising in Singapore has been, as indicated above, largely through the Consumer Protection (Trade Descriptions and Safety Requirements) Act 1975. An entirely novel regulatory regime was added to that Act when the Singapore Broadcasting Authority (SBA) issued Guidelines for Internet Service and Content Providers in July 1996; SBA has also produced a Code of Practice relating to standards of programmes and advertisements broadcast by licensees on the Internet. Nevertheless, we do not need to discuss SBA's Guidelines or the Code of Practice<sup>52</sup> as the focus of both has not been trading practices as such but the dissemination of political, religious or socially offensive information that are considered “undesirable”.

In sum, therefore, apart from the proscription of misleading trade descriptions and false representations about goods in the CPA, there have been no positive requirements that advertisers will have to comply with. The CPA contemplated the introduction of such

---

<sup>50</sup> Consumer Protection (Safety Requirements) Regulations No.2, r 11.

<sup>51</sup> *Ibid.*, r 8.

standards but left it to the discretion of the Minister of Trade and Industry. To date, there has been nothing in that direction. As a result, aside from the vestiges of legal control existent in the common law, the control of advertising material has been left to a self-regulatory code of practice under the Advertising Standards Authority of Singapore (ASAS).

The ASAS is not a government outfit although its name contains the appellation “authority”. It is an organisation set up jointly by representatives of advertisers, advertising agencies, the media and governmental departments concerned. Its function is to provide advice as to the appropriateness of any advertising prior to publication although it does not seek to approve all advertisements.<sup>53</sup> While responsibility for any publication and compliance with the Code rests with the advertiser or advertising agency, ASAS has powers to require any advertisement to be amended, withheld or withdrawn.<sup>54</sup> It also has power to mediate in and decide upon any dispute between the respective associations of advertisers, agents and owners alike.<sup>55</sup> Sanctions against parties which breach the Code are “withholding of advertising space or time from advertisers, and the withdrawal of trading privileges from advertising agencies” as well as publicity.<sup>56</sup> It is noteworthy that public or consumer complaints arising from breach of the Code are also entertained by ASAS. Any such complaint will have to be addressed to the Chairman. A simple letter detailing the basis of the complaint with examples of the kind of

---

<sup>52</sup> Republic of Singapore, *Government Gazette Extraordinary*, July 15, 1996, Vol.38, No.37.

<sup>53</sup> *Singapore Code of Advertising Practice*, at iv.

<sup>54</sup> ASAS reportedly received 169 advertisements for review in the fiscal year 1995/6; 8 of them were ordered to be withdrawn and 1 to be modified while 78 were referred to the relevant authorities. See CASE, *Annual Report 1995-1996*, at 17.

<sup>55</sup> *Ibid.*, at v-vi.

<sup>56</sup> *Ibid.*

breach will suffice.<sup>57</sup>

The 1976 Singapore Code of Advertising Practice owes its origin in the British Code of 1962 and the subsequent Malaysian and Singapore Code. Its basic concerns are the setting up of fair dealing and honest trading standards for advertisements.<sup>58</sup> Hence, legality, decency, honesty, truthfulness and conformity with fair competition principles are the declared yardsticks for acceptability of advertisements. These are dealt with extensively in the “General Principles” (part II). Advertising through comparisons, the use of another person’s name and goodwill, imitations or testimonials, the exploitation of living persons without permission, also form a large part of that section. Part III covers specific categories of advertisement such as those referring to alcohol, employment and instructional courses, money matters, franchises, “sales” and other promotions. Advertising relating to health and medicinal matters is given prominence by a detailed treatment under part V. The problems that surround advertising in certain areas of importance are taken care of in a large Appendix: Children and young people (Appendix B), slimming (C), mail order (E), “Sales” (F), hair and scalp products(H), alcoholic drinks (K).

### *Control of consumer credit*

Singapore has yet to adopt consumer credit legislation. Current statutes deal with certain aspects of credit, in particular that of pawnbroking (providing money in exchange for some form of security); hire-purchase which involves a measure of increased money obligations in

---

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*, Preamble.

return for the long period of payment allowed to the hirer; and money lending where money is lent upon a promise to return the principal with interest. We shall look at them separately.

**The Pawnbrokers Act (Cap 222):** The Act is administered by the Ministry of Law through the Registrar of Pawnbrokers. The consumer is protected by the fact that there is a ceiling to the amount involved in the transaction (namely, sums less than \$ 1,000) and that a pawn ticket would be required to be given as evidence. Moreover, the interest to be paid on the loan cannot be more than one and a half percentage per month. The Pawnbrokers Rules No.1 of 1st December 1977 further state that an applicant seeking to obtain a licence to operate as a pawnbroker will be subject to a clearance from the Police; at the same time, he must be free from any adverse public comment about his financial standing. To ensure that an applicant satisfies these requirements, a notice of his application is sent to the Police while a copy of the same notice is posted on the public notice board of the Registry of Pawnbrokers.<sup>59</sup> The applicant himself is required to advertise about his application in one English and one Chinese newspaper for two consecutive days and to place a notice on his premises for three weeks.<sup>60</sup> At the same time, the Police or the Registrar may inspect his premises before a licence is granted. In addition, the pawnbroker is required, after the grant of the licence, to furnish “information and data relating to his business as a pawnbroker”.<sup>61</sup> Any neglect or failure on his part will be an offence.

The stringency in the granting process and the publicity surrounding it are additional safeguards for those who entrust their property as guarantee for borrowing money. The likely

---

<sup>59</sup> The Pawnbrokers Rules No.1, r 5.

<sup>60</sup> *Ibid.*, r 4.

denial of a licence for people who might not have had a reputation for financial prudence might conceivably reduce the chance of pawnbrokers running away with property surrendered to them as security.

**The Hire-Purchase Act (Cap.192)** is applicable only to transactions involving the transfer by an owner of motor vehicles and consumer electronics such as TVs, fridges and washing machines<sup>62</sup> to a hirer, on instalment purchase, with an option given to the latter to keep the goods on completion of payment.<sup>63</sup> The Act requires the owner to give a prospective owner a written statement, per the Second Schedule, detailing the price of the goods, all the attendant charges such as for insurance, freight etc. and the amount of instalment payment.<sup>64</sup> However the hirer may specify his own requirements and terms. Nevertheless, the agreement in the end will have to be in a written form and in the English language, signed by the parties and specify in detail all the charges and conditions of payment.<sup>65</sup> An owner who enters an agreement without complying with these conditions becomes guilty of an offence.<sup>66</sup> A contract in unwritten form is not enforceable<sup>67</sup> nor will a contract that omits the particulars of the charges and conditions of payment stand.<sup>68</sup> The court may intervene where the omission has not

---

<sup>61</sup> *Ibid.*, r 10.

<sup>62</sup> The Hire-Purchase Act, s 1(2) and First Schedule.

<sup>63</sup> *Ibid.*, s 2(1).

<sup>64</sup> *Ibid.*, s 3 (1) and Second Schedule.

<sup>65</sup> *Ibid.*, s (3).

<sup>66</sup> *Ibid.*, s (4).

<sup>67</sup> In addition, as s 30 seems to suggest mysteriously, one might add, an agreement which does not specify the minimum amount of deposit is void.

<sup>68</sup> *Ibid.*, s 5 (2-3)

prejudiced the hirer and dispense with them.<sup>69</sup> Furthermore, the courts may intervene in any proceeding concerning a hire-purchase agreement where it appears to them that the transaction is harsh and unconscionable and pronounce such judgement as they deem appropriate.<sup>70</sup>

A hirer is to be guaranteed quiet possession of the goods and freedom from any encumbrance or charge. Moreover, the usual implied terms in a sale of goods transaction (title, satisfactory quality and fitness for purpose) will operate in favour of the hirer.<sup>71</sup> The hirer may also request and obtain copies of documents showing the status of his payments and the like.<sup>72</sup> The "term charges" in the agreement (that is the payment for a fixed time) cannot exceed the amount to be reached through the formula presented in the Sixth Schedule to the Act. Moreover, any exclusions of rights granted to the hirer in the Act, the imposition of greater liability on the hirer than under the Act, the imposition of interest more than 9% per annum calculated on a daily basis, unfettered access by the owner to enter the hirer's premises are considered void.<sup>73</sup>

**The Moneylenders Act (Cap 188)** regulates the circumstances under which money can be borrowed. At the outset it makes it clear that any lending activity that has not been by a licensed moneylender or not evidenced in writing in the English language according to the given format is unenforceable against the borrower.<sup>74</sup> The requirements that have to be met by

---

<sup>69</sup> *Ibid.*, s 5 (3).

<sup>70</sup> *Ibid.*, s 32.

<sup>71</sup> *Ibid.*, s 6.

<sup>72</sup> *Ibid.*, s 8.

<sup>73</sup> *Ibid.*, s 33.

<sup>74</sup> The Moneylenders Act, ss. 15 and 16, respectively.

a moneylender for obtaining license are furnishing satisfactory evidence demonstrating that he is of “good character”, with nothing produced against him suggesting that he is not a fit and proper person.<sup>75</sup> Previous conduct of the would-be moneylender such as a court ruling against him might also be a basis to deny him a licence. However, barring any court rulings, it is not apparent whether any evidence as to "good character" that an applicant tenders can be verified through an objective process since such evidence would only reflect the applicant's personal appeal to other people of his own choice.

Any person engaged in money lending activities without having obtained a licence or who does so not in his own name commits a criminal offence.<sup>76</sup> Indeed, a licence taken in a name other than the moneylender's true name is void.<sup>77</sup> Any licence given may be revoked where the licensee ceases to carry on moneylending, is no longer fit and proper or has been convicted of dishonesty or moral turpitude in a court of law or, if a company, has gone into liquidation.<sup>78</sup>

A moneylender is obliged to provide or use his authorised name in all communications including advertisements,<sup>79</sup> supply information (as well as copies of documents) to the borrower regarding the state of the loan.<sup>80</sup> He is prohibited from pretending to be in a banking business,<sup>81</sup> soliciting borrowers of money to transact with him,<sup>82</sup> demanding compound

---

<sup>75</sup> *Ibid.*, s 9.

<sup>76</sup> *Ibid.*, s 8.

<sup>77</sup> *Ibid.*, s 6(2)

<sup>78</sup> *Ibid.*, s 10 (1).

<sup>79</sup> *Ibid.*, s 11. See also s 13 (2).

<sup>80</sup> *Ibid.*, s 20.

<sup>81</sup> *Ibid.*, s 12.

interest or increase in interest because of default in payment.<sup>83</sup> When proceedings are brought before the court for recovery of money lent, and there is evidence of the harshness of the interest imposed on the borrower, the court may intervene to provide redress and make adjustments in the respective claims.<sup>84</sup> The Act provides a fall back provision where the parties have not indicated the rate of interest to be charged on the loan. The Moneylenders Rules of 1 December 1972 further elaborate on the requirements on a moneylender when applying for a licence to produce evidence that he is a fit and proper person.<sup>85</sup> The licence fee is set at \$800 per year.<sup>86</sup>

### *Control of prices and goods*

The control of prices and of certain designated articles in a relatively limited form has been practised in Singapore for a long time now. Singapore remains committed to free market principles and such controls are not done across the board. Although, the two separate statutes, namely the Price control Act 1974 (Cap 244) and the Control of Essential Supplies Act (Cap 55), provide a general framework for doing this, their application and the specific requirements to be put in place depend on undisclosed considerations. There are no clear indications as to whether or when control of prices will be introduced nor when and whether certain articles will be earmarked for control. Although one might suspect that Singapore's dependence on imported foodstuff and raw materials will make the availability of such laws

---

<sup>82</sup> *Ibid.*, s 13.

<sup>83</sup> *Ibid.*, s 18.

<sup>84</sup> *Ibid.*, s 22.

<sup>85</sup> The Moneylenders Rules, r 3.

<sup>86</sup> *Ibid.*, r 5.

necessary to prevent adverse consequences to the consumer should supply be constrained for any reason, it is not possible to state firmly how the laws came about and what their intended purposes might be.

Whatever the circumstances for the introduction of price control according to the Price Control Act 1974, businesses will be required, when they happen and if they are in possession of the “price-regulated” goods, to display the prices in English and other languages specified by the Price Controller. Such display should be “in a prominent manner and in a conspicuous position”.<sup>87</sup> There are no limits to the power of the Controller as to the type of goods that he may order a business to exhibit the price for.<sup>88</sup>

Where such price has been fixed, selling above the maximum price fixed for goods and services is an offence; purchasing or offering to purchase above such a price is also an offence. Similarly, any refusal to sell goods or falsely denying having goods in possession, or refusing to sell in reasonable quantities is an offence. The only defences are where purchases are effected “with intention of procuring evidence for prosecution”;<sup>89</sup> or when the purchaser is not willing or unable to make immediate payment for goods in cash<sup>90</sup>--something like a credit transaction where one might presume a small increase over the regular price because of the extension of time allowed to the buyer.

In practice, the kind of goods which have been subject to price control, as declared in the

---

<sup>87</sup> The Price Control Act, s 7.

<sup>88</sup> *Ibid.*, s 8.

<sup>89</sup> *Ibid.*, s 9.

<sup>90</sup> *Ibid.*, s 10.

succession of orders published in the Gazette, as “Price Control (Display of Prices) Order” have been various. The first one, that of 24th May 1974, was in regard to titbits, staples (such as rice) and dairy products as well as tea and coffee. The net prices for these are required to be displayed.<sup>91</sup> Pre-packaged goods should have correct descriptions of contents.<sup>92</sup> Articles sold in bottles or such other containers are required to have the price displayed on the container very clearly; if the mark can be wiped, the use of adhesive tape on the containers is recommended.<sup>93</sup> The price of wet or dry goods sold normally in small units of measure from a container or heap is to be displayed in such a way as to be easily read from a distance of two metres.<sup>94</sup> The requirement of display of a unit price is quite in tune with consumer’s need to know exactly what they are buying and to be able to compare offers by different sellers. However, the lack of any requirement as to what the basic unit in terms of quantity should be might reduce the value of the unit price requirement.

Other Orders were issued in regard to the import and export and wholesale trading of specific goods. Thus the Price Control (Rice) (Fees) Order of 22<sup>nd</sup> August 1988 imposed an obligation of obtaining a licence on those intending to engage in the import or export or wholesale trade in rice, thereby extending the control over price display for rice (pursuant to the 1974 Order already mentioned) to include its actual movement in the market. Concern for the adequacy and, perhaps, quality of the supply to consumers of this important staple produce must have prompted this move. This is suggested by the fact that another Order (of 1 October 1990) explicitly declared “rice” to be a controlled article with the usual requirement for licence to

---

<sup>91</sup> Price Control (Display of Prices) Order of 1974, r 2.

<sup>92</sup> *Ibid.*, r 4.

<sup>93</sup> *Ibid.*, r 6.

<sup>94</sup> *Ibid.*, r 7.

import, engage in wholesale trading, storage or stockpiling. The same measure was adopted in regard to trading in pigs, another important food source for the population: The 28<sup>th</sup> May 1990 Order declared pigs to be “controlled articles”. It goes without saying that failure to comply with the requirement of licence is an offence under both orders.

In comparison to the control of prices, the control of supplies appears to have more importance and possibly also of greater impact in the country. It seems that only the President has powers through an order published in the Gazette to declare any supplies subject to control under the Control of Essential Supplies Act (Cap 55).<sup>95</sup> A “controlled article” is defined as any article or food or other (including a rationed article) declared to be controlled.<sup>96</sup> Hence anything can be covered and there are no apparent exceptions. Perhaps this is as it should be considering that the purpose may be to avoid any unexpected pressures in the supply of goods in the market.

Once the President has ordered the type of commodity to be a “controlled article”, the Minister may also issue regulations to prohibit or restrict, partially or fully, the purchase or sale, import or export of that controlled article.<sup>97</sup> Furthermore, the Controller of Supplies regulates wholesale or retail trade in controlled articles through the issue or withdrawal, or renewal of licences or permits.<sup>98</sup> The Supplies Controller has the same powers of entering premises, seizures, obtaining information etc. as that of the Price Controller.<sup>99</sup>

---

<sup>95</sup> Control of Essential Supplies Act, s 5.

<sup>96</sup> *Ibid.*, s 2.

<sup>97</sup> *Ibid.*, s 6.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*, ss. 8-12.

The Control of Essential Supplies Act has been followed by a number of orders which specified the type of supplies that were earmarked for control. Regulation No.1 of 3rd February 1986 thus singled out petroleum and liquefied petroleum gas as controlled supplies. The Regulations specified that selling above the maximum price declared by the Controller (through an Order of 31 January 1986), withholding or concealing petroleum were offences. The volume of petrol to be purchased and the manner of use were also restricted. Later, on 1 December 1989, the maximum price for the sale of petroleum for any grade was removed by the Controller through a public notice. No other Regulations specifying essential supplies to be subject to control appeared to have been issued afterwards.

The regulation of second hand dealers (under the Secondhand Dealers Act Cap 288) has got a lot more to do with the prevention of theft and illegal transactions than the control of prices. This becomes evident when one looks at the Secondhand Dealers (Fees and Forms) Rules of 13<sup>th</sup> September 1985 where the fees for licensing and the requirement to keep records are the main emphases. The intention appears to be to trace the sellers or buyers of second hand goods and to ensure the conduct of the business in a legitimate fashion. Consequently we do not deal with them here any further.

#### *Control of “unfair” trading practices*

The concern for consumers in terms of false or misleading pricing has already been addressed in the CPA. However, the special circumstances of the second-hand goods market and the problems surrounding door-to-door sales have been taken care of through the Second-hand Dealers Act (Cap 288) and the House to House and Street Collections Act (Cap 128),

respectively. The latter Act covers sale and exchange for consideration rather than pure charity. Dealers as well as door-to-door sellers must register with the police and acquire licence before starting operations. Any refusal of licence by the police is subject to appeal to the Minister of Home Affairs.

The problems that flow from multi-level marketing arrangements and affect not only the consumer but also individuals intent on doing business, albeit through the apparent shortcut provided by such arrangements have been dealt with in Singapore under the Muti-level Marketing & Pyramid Selling (Prohibition) Act (Cap 190). The prohibition against pyramid selling arises from the fact that it involves merely the sale of “opportunity” where there is no certainty that the opportunity will materialise; it is therefore akin to the prohibition of gambling. The Muti-level Marketing & Pyramid Selling (Prohibition) Act makes it unlawful for any person to promote or participate in such a business or to hold itself out as doing so.<sup>100</sup> Businesses which engage in such an arrangement cannot be registered and those which have done so after registration would be guilty of an offence (together with the officers). There is a little room left for exceptions: distribution and sale of commodities under any scheme where none of the elements are in the definition or if permitted by Minister through a regulation.<sup>101</sup>

A major problem of the Act is the definition of pyramid selling. The Act provides a long definition<sup>102</sup> jumbling together the multi-level marketing scheme and pyramid selling as being one and the same thing. A pyramid selling scheme is shown as being one where “commodities” that is “goods, services, rights or other property” are distributed by a person in return for gratuity or consideration to be obtained from one or more additional participants and part of

---

<sup>100</sup> *Ibid.*, s 3.

<sup>101</sup> *Ibid.*, s 11.

the benefits are passed on to another participant (up the chain). The difficulty of applying this definition was demonstrated in the appeal case, *Tan Un Tian v Public Prosecutor*.<sup>103</sup> The defendant argued, on the one hand, that he had prior legal advice as to the propriety of the business and that it would not be caught by the Act; on the other hand, that the business package it was distributing had been a success in the USA and was quite unlike pyramid selling schemes. However, none of these arguments was accepted by the court.<sup>104</sup> A commentator has already made the valid points that the definition in the Act is too wide and the court's application of it was too literal.<sup>105</sup>

The elasticity of the definition is illustrated by the fact that it has crossed the minds of some that it might have an impact on franchise chains.<sup>106</sup> However that would be taking it too far. The main reason is that franchises do not sell uncertain opportunities as such; the fact that they would have a track record which could be verified more easily than in pyramid sales and that franchising involves payment of money to launch a business owned and operated by the franchisee makes it distinctly different.

#### **4. Administrative Leverages for Consumer Protection**

---

<sup>102</sup> *Ibid.*, s 2.

<sup>103</sup> [1994] 3SLR 33-50.

<sup>104</sup> *Ibid.*, at 42.

<sup>105</sup> Edwin Lee Peng Khoon, "Pyramid Selling--The Need for Regulations", (1995) 7 *Singapore Academy of Law Journal* 412-20, at 416-7.

<sup>106</sup> B. S. Tabalujan, Low Kee Yang and Toh Thian Ser, "The legal framework of franchising in Singapore", *Journal of International Franchising & Distribution Law*, Vol. 10, No.3, 1996, at 84-5.

The regulation of trade practices particularly in view of the need to protect consumers from unethical businesses is undertaken by administrative departments. Officials which check upon the trading standards of businesses operate in various government departments.

The need to regulate trade practices arises basically from the possible use of such apparently innocuous activities as, to mention the most important, price display to dupe customers, to disguise the true cost of a credit purchase. Where businesses are at liberty to put or not to put up prices and to change them as often as they wish, the unwary consumer may lose out, if no adequate safeguards are in place and administrative monitoring of compliance by businesses is lacking. Frequent practices of varying sizes and packaging of the same item will make it impossible for consumers to undertake their own comparisons and come to informed decisions. On the other hand, abuse of practices such as “manufacturers suggested list price” or “manufacturer’s recommended price” as well as the neglect of unit prices may conceal traps for unsuspecting consumers. That there are gaps in the implementation process of consumer protection laws will be illustrated by an assessment of existing statutory-based powers of administrative organs.

### *The Director of Consumer Protection*

The potentially powerful authority of all is the Director of Consumer Protection established under the CPA. The Director, appointed by the Minister of Trade and Industry and currently serving at the same time as a Trade Minister, has powers to compound any offence by accepting up to \$2,000.<sup>107</sup> Other than that he has the regular police powers, namely to

- a) require free samples of goods for testing and analysis or information about them

---

<sup>107</sup> CPA, s 21.

- (s.22, CPA);
- b) enter premises and inspect any goods (s.23, CPA);
  - c) require any documents or books relating to trade or business and take copies of any entry in them (s.23, CPA);
  - d) seize and detain documents where he has reason to believe they might be required as evidence in court (s.23, CPA)
  - e) seize and detain goods if he has reasonable cause to believe an offence has been committed (s.23, CPA);
  - f) require a person with authority to break open a container or any vending machine (s.23, CPA).

Any goods seized in exercise of the powers given the Director under the CPA will be forfeited if they were found to be in violation of the prohibited acts.

Despite the breadth of powers given the Director and the multifarious activities open to him to protect consumers, the role of the office of Consumer Protection is not much in evidence. From the publicity given in the local press to consumer complaints, it is other agencies and entities (such as the Consumer Association of Singapore and the media) that have constantly come out in the open to champion consumer interests.

### *The Price Controller*

The Price Controller, appointed by the Minister of Trade and Industry under the Prices Control Act (Cap 244), has powers to implement the Act by himself without referring any of his actions to the Minister. The most important power of the Controller is that he may order

the exhibition of price for any goods at all.<sup>108</sup> He is empowered further to

- a) fix maximum prices for sale of goods (including delivery) or maximum charge for services (s.4);
- b) determine wholesale or retail quantity of goods (s.4);
- c) declare in the Gazette any goods or class of goods as controlled articles (s.5);
- d) prohibit purchase, sale or barter, import or export or limit retail sale or wholesale of same (s.5)

There appear to be no clear guidelines or criteria for him to base his judgements upon. Nevertheless, the police powers of the Price Controller in many ways resemble that of the Director of Consumer Protection. Just like the latter he may enter and inspect premises; examine books and other documents; and require any information in relation to trade or business (s.11). He may arrest any person without warrant where he reasonably suspects that person of having committed offences and seize the relevant articles. The Price Controller may issue rules to ensure keeping of books of accounts and other records to satisfy requirements of the Act. (s.18)

### *The Controller of Essential Supplies*

In marked departure from the power of the Price Controller, the Controller of Supplies receives the list of “controlled articles” via an order of the President who appears to have exclusive power in this regard. The scope of articles that may be designated as subject to

---

<sup>108</sup> The Price Control Act, s 8.

control is not limited either. Furthermore, the Controller depends on the Minister for detailed regulations to prohibit or restrict, partially or fully, the purchase or sale, import or export of any controlled article.<sup>109</sup> The power of the Controller of Supplies is limited to regulating the wholesale or retail trade in controlled articles through the issue or withdrawal, or renewal of licences or permits.<sup>110</sup> Other than that, the Controller has the usual powers of entering premises, seizures, obtaining information etc. as that of the Price Controller.

### *The Safety Authority*

Safety standards are entrusted to the Singapore Productivity and Standards Board pursuant to the Singapore Productivity and Standards Board Act 1995. Section 6(1) (f) of that Act details one function of the Board as being “to promote and facilitate the adoption of practices that enhance the safety, efficiency and quality of products, processes and technology in industry.” Although the limitations of such a power (from the point of view of consumers protection) are apparent, in that safety is required to be assured during the stage of processing or manufacturing with no follow-up measures afterwards (in the marketplace and at the consumers' end) to verify that it has been done, the fact that the Board has been entrusted to take care of this vital function under the Consumer Protection (Safety Requirements) Regulations No.2<sup>111</sup> suggests otherwise. On the other hand, the overlap in the powers of the PUB and the Standard's Board, particularly in the approval process for electronic goods, does not seem deliberate. We have already referred to the PUB's power of testing electrical installations and connections; licensing and regulating contractors and approving articles to

---

<sup>109</sup> Essential Supplies Act, s 6.

<sup>110</sup> *Ibid.*

ensure compliance with safety requirements.

Indeed, the fact that the Board was designated a Safety Authority under a subsidiary law issued by the Minister of Trade and Industry, the Consumer Protection (Safety Requirements) Regulations No.2 of 1<sup>st</sup> June 1991, rather than an Act of Parliament suggests that this area of the law is still in the making.

### *The Food Control Department*

Another important office of administrative control is the Food Department in the Ministry of the Environment which administers the Sale of Food Act (Cap 283), the Food Regulations 1988, the Environment Public Control Health Act 1987 (Cap 95) and Regulations. The Food Control Department licenses and controls all eating establishments, supermarkets, swimming pools, and food manufacturing businesses. It issues an Artificial Sweetening Agent Licence; controls the import of agar-agar and crockery as well as the use of radiation checks for food.

Again, the Department issues certificate of health for food exports and registers pre-packed food imports. More ubiquitous is its apparently free offer of advice to all concerned on food standards, specification, labelling and advertisement requirements. Although the first two appear to be in its domain of activities, the latter two obviously have more similarities with the task of the Minister of Trade and Industry, notwithstanding that the food aspect would be its concern. Moreover, it seems strange that the Department deals with complaints of public health nuisance, a task one would have thought more appropriate for the Ministry of Health.

---

<sup>111</sup> Consumer Protection (Safety Requirements) Regulations No.2, r 3.

*Gaps and overlaps in the administration of consumer protection*

A certain level of disparity and overlaps is not only apparent in the functions of the Food Control Department and other ministries, as just mentioned. Indeed, there are hosts of instances where tasks and powers are shared without any clear rationale. Thus, one might expect that unfair trading activities would be the province of the Director of Consumer Protection. Yet, the Singapore Tourist Promotions Board (STPB) routinely sanctions what are considered to be “errant” traders. The STPB does this through “blacklisting” of such traders and publicising their activities to tourists. Recent reports of the same sort of sanction (“blacklisting”) being used by the Consumer Association of Singapore (CASE) adds to the mystery. It was reported recently that blacklisting and then banning of advertisements by furniture retailers accounted for halving of complaints to CASE in 1995.<sup>112</sup> Although publicity of errant traders’ actions is used by self-regulatory bodies as a main sanction in England too,<sup>113</sup> the undertaking of such a task by the STPB and now CASE without any legal delegation of powers by the Director of Consumer Protection or any formal rules issued by the Minister of Trade and Industry boggles the mind.

Otherwise, STPB’s “normal” task would have been the approval and licensing of travel agents

---

<sup>112</sup> See Claudette Peralta, “Furniture complaints decrease drastically”, *The Straits Times* [Singapore], 18 February 1997, at 30.

<sup>113</sup> The Advertising Authority and the Committee of Advertising Practice in England issue reports which are further disseminated through the press and by government departments. See Philip Circus and Tony Painter, *Sales Promotion Law: a practical guide*, (Butterworths, 1989) at 7.

(under the Travel Agents Act Cap 334); conducting investigations into unlicensed businesses and handling complaints. Note also that, here again, the Minister has power to institute regulations regarding advertising in the travel industry: on the nature and form of information required to be given in advertisements plus on the manner of displaying them. None appears to have been issued so far but, were that done, the possibility of instituting requirements for advertisements in the tourist trade that are different from other areas would not be totally unexpected.

Another proof of the profusion in the number of departments that deal with consumer complaints against unfair trading practices can be the role of the Public Transport and Inspection Section (Ministry of Communication) in receiving complaints against taxi, bus and other drivers; enquiries on fares etc.

Indirectly, the overlapping role of government departments may be beneficial to consumers. However, the breadth of protection available to consumers suggested by the possibility of many government departments being involved in their implementation may be offset by the very fragmentation of the statutory instruments that give rise to them. A good proof is furnished in Appendix J of the Advertising Code of Practice which sought to list all the relevant statutes and sections of relevance to advertising. One simply is awed by the sheer number, running into five pages, of such statutes or bits of them!<sup>114</sup> Were one to compile all the statutes relevant to consumers, there can be no doubt that one would have an unmanageable abundance. The difficulty that this will present to consumers in terms of permitting their access to the pertinent laws and, far more important, marshalling them for

---

<sup>114</sup> See *Singapore Code of Advertising Practice*, at 45-49.

their proper use in their day to day life is plain enough.

## **5. Enhancing Legal Access to the Consumer**

A major factor that has to be taken into account in measuring the efficacy of any country's consumer protection laws and institutions is the extent to which the consumer has access to legal redress. It has become a fact of life that the regular courts involve huge costs and much time. Even the relatively small amounts that consumer complaints relate to might present endless litigation and not necessarily lead to decisions satisfactory to the consumer. Some countries have attempted to reduce the burden of the legal process on consumers by devising legal aid schemes and/or instituting fast-track judicial forums.

### *Legal aid*

In Singapore, the Ministry of Law runs a legal aid scheme pursuant to the Legal Aid and Advice Act (Cap 160). The Legal Aid Bureau established in 1958 helps those who cannot afford to hire their own lawyers. Persons eligible to apply for help with their legal problems had to have an annual disposal income ceiling of \$3,000 until 1995 when an amendment raised it to \$7,000. At the moment, the Bureau has eight full time legal officers and the services of a panel of 355 lawyers in private practice.<sup>115</sup> The Bureau pays the lawyer's taxed bill and half of the amount allowed by the court for the lawyer's and client's costs. The Bureau's expenditure for the financial year 1996 came to about \$3 million. The contributions of claimants (which amounts to not much) is paid into the Legal Aid Fund established in 1978. This is because,

---

<sup>115</sup> Indrani Nadarajah, "More people qualify for legal aid now", *The Straits Times* [Singapore], April 11, 1997, at 38.

according to the Legal Aid and Advice (Fees) Regulations 2 of 1st April 1994, applicants would pay a token fee of \$1 (including General Services Tax).

At the moment, the assistance provided by the Bureau is limited to domestic problems (matrimonial, divorce, tenancy and wrongful dismissal cases). It may take a while before full legal aid may be available for a more extended range of disputes. Till then, consumers may have to resort to the Consumers' Association of Singapore (CASE).

#### *The Consumers' Association of Singapore (CASE)*

CASE has been helping consumers since its establishment in 1971 by providing advice and support. Its possession of independent status both from the government and businesses allows it to offer advice, education and guidance to the general public and to represent consumer concerns to the government. No doubt because of this, it receives complaints from the public and raises them with the alleged offender(s). CASE has intervened on many occasions to thwart price increases whether generally or in specific areas such as coffee shops, cinemas, drinks, pork, bread and electric power. Safety of consumers and the availability of information to them have also been causes for its activities through publications and the exposure of misdeeds.

The most important group of complaints received by CASE from local residents in 1995-6 were about defective goods (23%) followed by pricing (7%). Tourists appeared to have been affected mainly by defective goods, pricing and misrepresentation.<sup>116</sup> Lately CASE has started

---

<sup>116</sup> See CASE, *Annual Report 1995-1996*, at 38.

to advance from its standing as a complaints receiving body to one able to intervene on behalf of consumers and to ensure that its views matter. Thus it has embarked on issuing a “black list” of errant businesses which practise false advertising or use unethical practices. Thus CASE blacklisted four companies in 1996 dealing with household services such as renovation contractors, plumbers and home removal businesses on the basis that they undertook “shoddy work”, used “delaying tactics” and resorted to “disappearing acts and misrepresentation”.<sup>117</sup> It has also been expressed that CASE would start independent testing of goods in order to provide independent advice to consumers. In actual fact, CASE has had a product testing unit from 1976; it is not clear therefore why it had not done testing for so long.

### *The Small Claims Tribunal*

While CASE is still searching for ways to make a difference, the Small Claims Tribunal established under the Small Claims Tribunal Act (Cap 308) provides redress at relatively insignificant costs. The relatively quick and inexpensive nature of the Tribunal is shown by the amount that an individual consumer pays to initiate legal action (only \$10). Even a non-consumer (business) will only pay \$50. Far more important perhaps for the consumer is that legal representation is not allowed; which means that parties appear in their own capacity. Thus the consumer will appear on his own while the corporate defendant will not be able to send its highly experienced legal counsel as would happen in the regular courts.

Any claims brought before the Tribunal should involve less than \$5,000; it is possible for this

---

<sup>117</sup> CASE, *The Consumer*, April-June 1996, at 6.

to go up to \$10,000 if the parties so agree.<sup>118</sup> The types of disputes that can be brought to the Tribunal are those arising from sale of goods, supply of services and damage caused to property. As regards the time period, claims can be initiated within one year from occurrence of a cause of action; otherwise, the consumer will have to use the regular courts.

As might have become evident from what was said already, the Tribunal engages in very little that may pass as legal procedure. Above all, it attempts to mediate between the disputing parties and, if that fails, it issues orders. This makes it a convenient forum for those who cannot possibly find the time or the resources to mount legal battles to obtain redress.<sup>119</sup> Any party that is dissatisfied by the decision of the Referee (a legally qualified person with the same powers as a Magistrate hearing the case) can appeal to the High Court only on matters of law.

## **6. Conclusion**

There is plenty of evidence for the relative comprehensiveness of consumer protection laws in Singapore. There have been increasing advances in all areas of concern for consumers in Singapore. The apparently piece-meal process covers misleading trade descriptions in all their forms, the provision of safety requirements regarding the preparation and sale of food and medicinal products, the control of prices and supply of essential goods when these have been determined to be necessary.

---

<sup>118</sup> This may change soon if the recommendation reportedly made by the Chief Justice Yong Pung How to the Government to raise the minimum to \$10,000 becomes law. See "Small claims limit may go up to \$10,1000", *The Sunday Times* [Singapore], January 5, 1997, at 19.

<sup>119</sup> For a succinct account of the workings of the Tribunal, see, George TSL Shenoy and Toh See Kiat, *Legal Aspects of Doing Business in Singapore*, Addison-Wesley, 1996, at 321-325.

There are still areas in Singapore which have as yet not been covered by legislation either comprehensively or partially; thus there is no occupier's liability as such although preventing an unhealthy environment may be a basic obligation under the Environmental Public Health Act 1987. There is no consumer credit law either, save the Pawnbroker's Act, the Hire-Purchase Act and the Moneylender's Act which are limited in their significance. There is no product liability statute as such and no mention of any reform in that regard; as pointed out above, product liability continues to be based on common law rules, namely the tort of negligence, and the combined impact of the Sale of Goods Act and the UCTA. The twist given by the UCTA to implied terms under the Sale of Goods Act which transformed them into strict liability obligations of businesses still remains short of the extant legislation in other countries in this regard.

Above all, while the supply of food and the activities of food establishments are properly taken care of, Singapore has yet to come out with false trade descriptions as to services in general. There are also areas that the Singapore authorities might need to address. This is in the area of provision of fair competition standards and rules.<sup>120</sup> Added to these is the problem surrounding the right to information and education to enable consumers make informed decisions about things and services they buy.

---

<sup>120</sup> The 24<sup>th</sup> annual general meeting of the Consumer Association of Singapore recently ended by indicating, among other things, that it would push for the introduction of a "Fair Trading Act" in the current Parliament. See, "Case outlines plans for next 3 years, elects new exco", *The Sunday Times* [Singapore], June 22, 1997, at 3.