



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 449

Pretoria, 8 November 2002

No. 24051



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GENERAL NOTICES

NOTICE 2922 OF 2002

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 360 of 2001 as published in Government Gazette No.22045 dated 9 February 2001, as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

REPORT IN TERMS OF SECTION 10(1) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988 (ACT No. 71 OF 1988)

Report No 98

PROSPER INTERNATIONAL LEAGUE LTD (PILL)

1. THE CONSUMER AFFAIRS COMMITTEE

The Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act), is administered by the Consumer Affairs Committee (the Committee), a statutory body in the Department of Trade and Industry. The purpose of the Act is to provide for the prohibition or control of unfair business practices. An unfair business practice is defined as any business practice which could harm the relationship between businesses and consumers or which will unreasonably prejudice, deceive or unfairly affect consumers.¹

The Act is enabling and not prescriptive. The main body of the Act is devoted to various administrative procedures, the investigative powers of its investigating officials, the types of investigations the Committee can undertake and the powers of the Minister. The Act confers wide investigative powers on the Committee. There are two types of investigations which the Committee may undertake when examining the business practices of an individual or a particular business namely: an "informal" section 4(1)(c) investigation² or a "formal" section 8(1)(a) investigation³. Notices of section 4(1)(c) investigation are not published in the Government Gazette, whereas formal section 8(1)(a) investigations are.

The usual procedure when the Committee receives a complaint from a consumer, is to undertake a 4(1)(c) investigation. This investigation enables the investigators to make preliminary enquiries in order to establish how the business operates. The fact that the Committee intends to embark on such an investigation is not made public. However, once the Committee is satisfied that there is evidence of an unfair business practice and that a formal investigation⁴ is necessary a notice is published in the Government Gazette.⁵ The Minister is not empowered to make any decisions about the discontinuance of a particular unfair business practice on the strength of a 4(1)(c) investigation. He may do so following an 8(1)(a) investigation.

The Act does not stipulate that an 8(1)(a) investigation must be preceded by a 4(1)(c) investigation. If the Committee is of the opinion that *prima facie* evidence of an unfair business practice exists, it usually dispenses with the 4(1)(c) investigation.

Should the Committee, after an 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action by the Minister to ensure the discontinuance of the unfair business practice. The powers of the Minister are set out in section 12. As the investigation related to a particular business or business person the Minister's order will only be applicable to the particular individual or business entity

¹ See section 1 for the definition of an unfair business practice

² These investigations are commonly referred to as 4(1) (c) investigations

³ These investigations are commonly referred to as 8 (1) (a) investigations

⁴ In terms of section 8(1) (a)

⁵ In many instances the Committee is able to resolve the matter and it is not necessary for the matter to proceed to a formal investigation.

named in the notice.⁶ The Minister's order is published in the *Government Gazette*. An infringement of the order is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both a fine and imprisonment.

If there is evidence of an unfair business practice, but the business person concerned is prepared to work with the Committee to ensure the discontinuance of the practice he or she can negotiate with the Committee and enter into an agreement in terms of section 9.

2. THE COMPLAINT

The activities of Prosper International League Ltd (PILL) came to the attention of the Committee through an advertisement, placed by Ms P Ntlokwe, in a South African national newspaper. It stated:

"Make \$200 - \$1000 per sale, without ever leaving home".

The fact that the advertisement promised high returns for very little concerned the Committee as this is often an indication that consumers will be misled or will be encouraged to participate in a scheme which may be prejudicial to them.

The matter was investigated and it was established that PILL is an offshore trust organization based in the United States of America. It was also established that Miss P Ntlokwe is a local member of PILL. She referred the Committee to a web-site (www.pill.net) where the business was explained.

3. THE ANNOUNCEMENT IN THE GOVERNMENT GAZETTE

The following notice was published under Notice 360 in *Government Gazette* No. 22045 of 9 February 2001:

"In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of:

Prosper International League Ltd and any persons participating in its activities.

Any person may within a period of fourteen (14) days from the date of this notice make written representations regarding the above-mentioned investigation"⁷

The Committee did not receive any complaints from consumers however, the Committee and its investigators held hearings and had discussions with Ms Ntlokwe. In addition, a letter was sent to the Manager PILL, Winter Park, Florida USA informing

⁶ In order for a Minister's notice to be applicable to an entire industry the Committee must undertake a general investigation in terms of section 8(1) (b)

⁷ See Notice 300 in *Government Gazette* 22045 dated 9 February 2001.

them of the intended investigation. To date no response has been received.

4. THE BUSINESS PRACTICE

The web-site claims that PILL is a world leader in affordable, private, tax-free offshore trusts with over 32 000 members in 130 countries. Galaxy, the wealth building vehicle, was launched in June 2000. The web-site claims that people can 'make more money than ever thought possible'. Each new member (called a cadet) pays a one-time price of \$1000 directly to PILL for the establishment of an Offshore Trust Account. One hundred dollars of that fee goes to the trust of the sponsor (person who introduces the new cadet). The new cadet is then entered into an existing galaxy as one of the galaxy's eight new cadets. The commander of each galaxy receives \$5250 which is deposited into his or her PILL Trust Account. A "First Time" galaxy commander receives \$3500 with another \$1000 being held as a minimum deposit in that new trust account. In each galaxy following, the full \$5250 is paid into the trust account of the commander. This is paid in \$750 increments, as each new cadet enters the galaxy.

Each new galaxy is borne with seven crew members already participating. There is one commander, two navigators and four astronauts. The entire mission of each new galaxy is simply to find eight new cadets to bring into their galaxy. Once this is achieved the mission is over and that galaxy ceases to exist. Each galaxy splits into two new galaxies and the "new cadets" are now re-entered into the galaxies of their sponsors.

New cadets are required to sponsor just one new cadet into their galaxy. This means that existing members should rise very quickly to the Commander's pay position. However, the Galaxy will spin even faster if more people are invited to join. The website claims that if a person introduces five people, he or she will earn \$26 250 from future galaxies. \$100 will be earned for every person referred to the scheme regardless of a person's galaxy position.

PILL does not consider itself to be a multi level marketing system. It is referred to as a referral program. On the web-site is a disclaimer which states as follows:

"Given the climate we live in, we realize that in this world full of protectors of the public best interest regulatory bodies government agencies, all trying to justify their existence, someone is bound to challenge us and call us an illegal MLM one of these days. That is one of the reasons we insisted on having our one and only office offshore in a jurisdiction with little or no regulations"

In their disclaimer they state that all "individuals should obey all laws they are subject to and avoid where prohibited by law." The Committee is of the view that this is a clear indication that the promoters of this scheme are aware of the fact that the scheme is illegal in many jurisdictions

5. SUMMARY OF THE SCHEME

Participants in this scheme earn money by recruiting new participants. A pyramid promotional scheme is defined as "any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from the person's introduction of other persons into a plan or operation rather than from the sale of products by the participant or other persons introduced into the plan or

operation".⁸ Therefore this scheme is a pyramid promotional scheme.

Pyramid promotional schemes were declared illegal by the Minister on 10 June 1999.⁹ One of the reasons why these schemes were prohibited is because a large number of people are required to keep the scheme going and the vast majority of those people will lose their money: many losers pay a few winners. Participants in a pyramid promotional scheme are, consciously or unconsciously, deceiving those they recruit. There are no grounds justifying these practices in the public interest.

The Committee has investigated a number of pyramid type schemes. In many cases promoters stop promoting their schemes as soon as they become aware of the Committee's interest. In other cases, the Committee has recommended to the Minister that these schemes be declared unfair business practices. Often the promoters will attempt to circumvent existing regulations by introducing a product. Notwithstanding the use of a product, the scheme remains a pyramid scheme because the primary focus is to earn a great deal of money and participants are paid for recruiting new members rather than for selling the product. The products are therefore regarded simply as smoke screens. In this particular case there has been no attempt to circumvent regulation through use of a product. The compensation plan clearly indicates that participants are rewarded simply for introducing new participants. The scheme therefore falls squarely within the definition of a pyramid scheme.

6. CONSIDERATION

The business practices of PILL, in the Republic of South Africa, are illegal and therefore constitute unfair business practices.¹⁰ There are no grounds justifying these practices in the public interest. Consumers are being misled into believing that they will receive large sums of money. However, without a constant supply of new recruits the scheme will eventually collapse at which stage the latest recruits must inevitably lose their investments. As with all pyramids, the majority of participants will never recoup any money at all, irrespective of the life of the scheme.¹¹

⁸ See Report 76: "Investigation in terms of section 8(1)(b) of the Harmful Business Practices Act, 71 of 1988, into money revolving or pyramid schemes" published under Notice 1034 in Government Gazette 20169 dated 10 June 1999.

⁹ See Notice 1035 in Government Gazette 20169 dated 10 June 1999.

¹⁰ Despite the fact that the scheme is already illegal, the Committee was of the view that a formal investigation was necessary because this scheme was being promoted on the Internet. The Internet makes it possible for people from various jurisdictions to participate in a business opportunity. As not all laws are uniform, it may be possible to participate in pyramid type schemes in other jurisdictions. Consumers need to be informed that despite the fact that the scheme is operating in cyberspace, they could not promote the scheme in South Africa by for example publishing advertisements in local newspapers or by in any other way inviting consumers to participate in the scheme.

¹¹ For a full discussion of pyramid schemes, their problems and limitations see Report No 76.

7. RECOMMENDATION

The Committee recommends that the Minister under section 12(1)(b) of the Act declare unlawful the business practice whereby any juristic or legal person

- i. invites or encourages in any way, directly or indirectly any person to partake in or become members of Prosper International League Limited (PILL).
- ii. directly or indirectly, operates, conducts or promotes participation in or membership of Prosper International League Limited (PILL).
- iii. transmits in any way whatsoever, money to any account, whether in the Republic of South Africa or abroad, destined for the credit of Prosper International League Limited (PILL).

Prof T WOKER

VICE CHAIRMAN: CONSUMER AFFAIRS COMMITTEE

NOTICE 2923 OF 2002**CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 360 of 2001 published in Government Gazette No. 22045 of 9 February 2001, which report was published in Notice No. 2922 in Government Gazette No. 24051 of 8 November 2002, and being of the opinion that an unfair business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(l)(b) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

In this notice, unless the context indicates otherwise -

"unfair business practice" means the business practice whereby any juristic or legal person:

- (a) invites or encourages in any way, directly or indirectly any person to partake in or become members of Prosper International League Limited (PILL);
- (b) directly or indirectly, operates, conducts or promotes participation in or membership of Prosper International League Limited (PILL);
- (c) transmits in any way whatsoever, money to any account, whether in the

Republic of South Africa or abroad, destined for the credit of Prosper International League Limited (PILL).

1. The unfair business practice is hereby declared unlawful.
 2. This notice shall come into operation upon the date of publication hereof.
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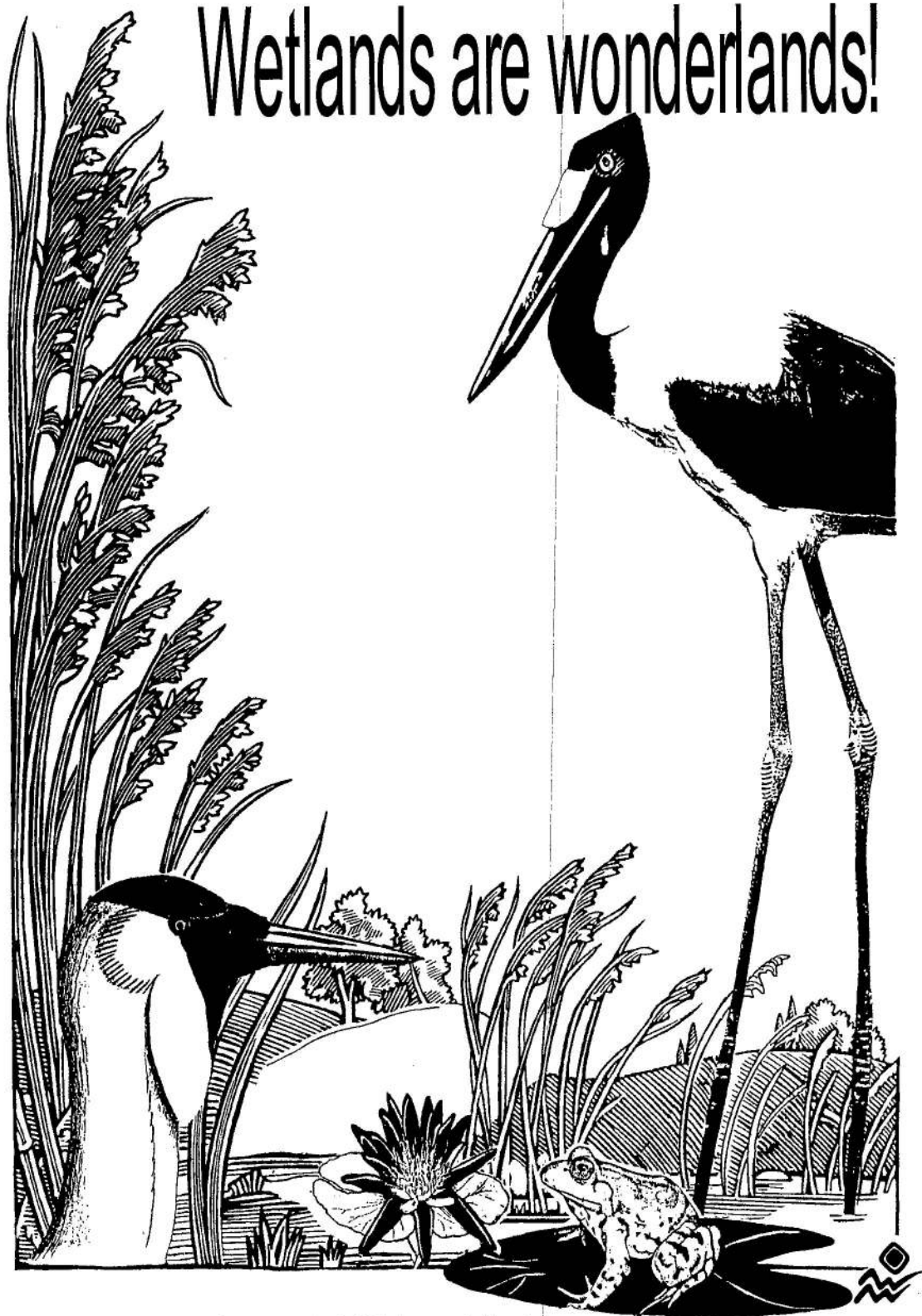
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Department of Environmental Affairs and Tourism



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AFFAIRS AND TOURISM

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
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