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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

NOTICE 162 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

HARMFUL BUSINESS PRACTICES ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice No 2568 of 1998 as published in Government Gazette No. 19363 dated 23 October 1998, as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

KENNISGEWING 162 VAN 1999
DEPARTEMENT VAN HANDEL EN NYWERHEID
WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, publiseer hiermee, kragtens artikel 10(3) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), die verslag van die Sakepraktykekomitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing No 2568 van 1998 soos gepubliseer in Staatskoerant No. 19363, gedateer 23 Oktober 1998, soos in die Bylae uiteengesit.

A ERWIN

MINISTER VAN HANDEL EN NYWERHEID

BUSINESS PRACTICES COMMITTEE

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

Report No. 67

**Zen-Corp International and
Ulov Sabor**

1. THE ADVERTISEMENT

A handbill/flyer with an advertisement of Zen-Corp International (Zen-Corp) came to the attention of the Business Practices Committee (the Committee) during August 1998. The advertisement contained the following copy:

**ZEN-CORP INTERNATIONAL
24 HOUR**

Tel: 011-323-1179

P O Box 8774

Fax: 011-323-1005

**HOUGHTON
2041**

ATTENTION: THE FINANCIAL DIRECTOR

**ZEN-CORP INTERNATIONAL
SPECIALISES IN:**

- A) DEBT COLLECTION (WORLDWIDE)**
- B) V.I.P PROTECTION SERVICE**
- c) CORPORATE INVESTIGATION & TRACING**

**OUR LEGAL SYSTEM IS USELESS
THEREFORE, WHY USE IT ????**

**OUR METHODS ARE A DIRECT PHYSICAL
APPROACH**

**NO LETTERS OF DEMAND.
NO LENGTHY COURT CASES.
NO WASTED TIME.**

**WE DO WHATEVER IT TAKES TO GET YOUR
MONEY.**

**NEED RESULTS FAST ????
CALL IN THE PROFESSIONALS
NOW.**

ULOV SABOR

2. THE HARMFUL BUSINESS PRACTICES ACT, 71 of 1988

The Committee, a statutory body within the Department of Trade and Industry, administers the Harmful Business Practices Act, 71 of 1988, (the Act). The purpose of the Act is to provide for the prohibition or control of harmful business practices, and for matters connected therewith.

A "business practice" includes any type of advertising and a "harmful business practice" is any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer or deceiving any consumer;

In terms of section 4 of the Act the Committee may undertake such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with, any harmful business practice which allegedly exists, or may come into existence. The Committee may, in terms of section 8(1) of the Act, and subject to section 8(2), on its own initiative undertake such investigation as it may consider necessary into any harmful business practice which it has reason to believe exists or may come into existence.

The Committee has wide investigative powers. It may undertake a section 4(1)(c) or a section 8(1)(a) investigation in terms of the Act into the business practices of specific entities or persons. Section 4(1)(c) investigations are known as "informal" investigations and section 8(1)(a) investigations are called "formal" investigations. An informal investigation enables the Committee to undertake such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with, any harmful business practice which allegedly exists or may come into existence. Notice of informal investigations is not published in the Government Gazette, as opposed to formal investigations. The purpose of an informal investigation is to enable the Committee to make a more informed decision as to whether a formal investigation is called for. The Minister of Trade and Industry is not empowered to make any decisions on the strength of an informal investigation. He may do so in terms of a section 8(1)(a) or formal investigation.

3. THE COMMITTEE'S CONSUMER CODE FOR DEBT RECOVERY AGENTS

In an effort to improve the relations between businesses and consumers, the Committee developed a policy of self regulation. This self regulation is manifested in consumer codes of conduct for various industries. The Committee published a draft consumer code for debt recovery agents under Notice 184 in Government Gazette 15529 dated 4 March 1994 for comment. The final code was launched on 20 February 1998.

This Consumer Code for Debt Recovery Agents (the Code) is intended to govern the conduct of debt recovery agents. It embodies principles which are observed by the majority of debt recovery agents in the industry. When considering complaints, the Committee takes the provisions of the Code into account in determining whether the conduct complained about constitutes a harmful business practice. In this respect the Code is more than a voluntary code of conduct.

The Code *inter alia* states that, in attempting to collect a claim, a debt recovery agent shall not threaten violence or harm to the debtor, or use obscene, defamatory, or threatening language when communicating with a debtor or persons related to him.

4. COMMUNICATION BETWEEN THE COMMITTEE AND ZEN-CORP

On 17 August 1998 the Committee wrote a letter to the "Manager" of Zen-Corp at the address in the advertisement. The functions of the Committee and the provisions of the Harmful Business Practices Act were briefly outlined. It was stated in the letter that the style of the Committee is one of cooperation rather than being confrontational. It was pointed out to the addressee that the Committee often received complaints about advertisements that could be regarded as misleading and thus harmful business practices as defined in section 1 of the Act. In most cases the advertisers did not plan to mislead consumers and were quite willing to amend their advertisements.

It was pointed out that the words in the advertisement

"Our methods are a direct physical approach. No letters of demand. No lengthy court cases. No wasted time. We do whatever it takes to get your money",

could mean only one thing and that is the extortion of money by threats of/ or actual physical violence. If this was the case, the advertisement clearly constituted a harmful business practice. The addressee was requested to furnish the Committee with an amended advertisement before 31 August 1998. It was stated that failure to do so would probably lead to a formal investigation, as set out in the letter, into the business practices of Zen-Corp.

The letter was faxed to number 011-323-1005 at 07h49 on 17 August 1998 and the original was posted to Zen-Corp. An official of the Committee received a call from Mr Sabor (Sabor) at 09h55 on the same day. Sabor was quite upset and said *inter alia* that he could advertise in any way he wanted to. The official again tried to explain the provisions of the Act to Sabor. At the end of the conversation it was agreed that Sabor would meet with the official at the offices of the Committee at 10h00 on 27 August 1998.

On 25 August 1998 the letter addressed to Zen-Corp was returned by the Post Office marked "Address insufficien" (sic).

At 10h15 on 27 August 1998, the day of the proposed meeting, the official received a call from a "Mr Thomas" (Thomas). Thomas explained to the official that Sabor went to Austria to take money to a client for whom he collected debt and that he (Thomas) was to attend the meeting. Heavy traffic allegedly prevented him from doing so and he agreed to meet the official on 12h30 on 31 August 1998. The official told Thomas that the Committee's letter dated 17 August 1998 was returned by the Post Office. He was asked what the physical address of Zen-Corp was and he gave the address as 52 Bakker Drive, Houghton.

Neither Thomas nor Sabor turned up for the appointment on 31 August 1998. The Committee met on 1 September 1998 and resolved to afford Sabor the opportunity to address the Committee on 10 September 1998. In a letter from the Committee dated 2 September 1998, he was requested to call the secretary of the Committee to arrange for a suitable time to address the Committee. It was pointed out to Sabor that failing to attend the meeting of the Committee on 10 September 1998 would probably result in him being summonsed to do so at a next meeting. The letter was also faxed to him at 09h14 on 2 September 1998. Zen-Corp did not respond to this letter.

5. THE SUMMONS

On 23 September 1998 the Chairman of the Committee signed a summons in terms of section 5(4) of the Act requesting Ulov Sabor to appear before the Committee. This summons could not be served on Sabor because it was now evident that Thomas gave a false physical address of Zen-Corp to an official on 27 August 1998.

6. NOTICE OF THE SECTION 8(1)(a) INVESTIGATION

On 29 September 1998 the Committee faxed a letter to Sabor requesting him to furnish the Committee with the physical address of Zen-Corp. The fax was sent at 11h01 on 29 September 1998 and was again ignored by Zen-Corp.

At its meeting on 8 October 1998 the Committee resolved to undertake a section 8(1)(a) investigation into the business practices of Zen-Corp International and Ulov Sabor. On 16 October 1998 an official called Zen-Corp at 011-323-1179 to inform them of the impending section 8(1)(a) investigation. It now appeared that Zen-Corp had a telephone answering service. The call was taken by a Ms "X". Tilanie van der Merwe. A message was left for Sabor. The crux of the message was to inform Sabor that notice of the section 8(1)(a) investigation into the business practices of Zen-Corp and himself would be

published in the Government Gazette of 23 October 1998. He was asked to call the official urgently as it was still possible at this late stage to come to an agreement in terms of section 9 of the Act. The official again called Zen-Corp number later during the day on 16 October 1998. The operator confirmed that the message was already conveyed to Sabor.

The following appeared under Notice 2568 of 1998 in Government Gazette 19363 of 23 October 1998:

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

Zen-Corp International, Ulov Sabor and any employee, agent and/or representative of any of the aforementioned in respect of the activities of Zen-Corp International.

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

The Secretary, Business Practices Committee,
Private Bag X84, PRETORIA, 0001.
Tel: (012) 310 9562 Ms L van Zyl Ref. H101/20/10/37(98)".

Sabor did not respond to Notice 2568.

7. CONCLUSION AND RECOMMENDATIONS

Many consumers in South Africa, for various reasons, such as limited economic means and inexperience about credit matters, unintentionally become subject to the attention of debt recovery agents. The majority of these particular consumers obviously live under a great deal of stress and this should not be aggravated by the actions of debt recovery agents. There is a place for debt recovery agents, but even those consumers who are in arrear with the payments on their debts should not be subject to unscrupulous debt recovery agents wielding baseball bats and physically threatening consumers and their families.

The advertisement, and thus business practice, of Zen-Corp International and Ulov Sabor, in the opinion of the Committee constituted a harmful business practice. There are no grounds justifying the practices in the public interest. The Committee has consequently

resolved to recommend to the Minister that in terms of section 12(1)(b) and (c) of the Harmful Business Practices Act he declares unlawful the business practices whereby Ulov Sabor, directly or indirectly, in respect of the advertising of his services as a debt recovery agent:

- (i) distributes handbills or flyers or places advertisements containing words to the following effect:

"Our methods are a direct physical approach. No letters of demand. No lengthy court cases. No wasted time. We do whatever it takes to get your money",

- (ii) does not comply with the provisions of the Committees' Consumer Code for Debt Recovery Agents

and

directs Ulov Sabor to refrain from applying the harmful business practice.

LOUISE A TAGER
CHAIRMAN: BUSINESS PRACTICES COMMITTEE

9 December 1998

NOTICE 163 OF 1999
DEPARTMENT OF TRADE AND INDUSTRY
HARMFUL BUSINESS PRACTICES ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in General Notice No 2568 of 1998 published in Government Gazette No. 19363 of 23 October 1998, which report was published in Notice 162 in Government Gazette No. 19761 of 19 February 1999, and being of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12 (1) (b) and (c) of the Harmful Business Practices Act (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, "harmful business practice" means the business practice whereby Ulov Sabor directly or indirectly, in respect of the advertising of his services as a debt recovery agent:

- (i) distributes handbills or flyers or places advertisements containing words to the following effect:
"Our methods are a direct physical approach. No letters of demand. No lengthy court cases. No wasted time. We do whatever it takes to get your money" and
- (ii) does not comply with the provisions of the Committees' Consumer Code for Debt Recovery Agents.

1. The harmful business practice is hereby declared unlawful.
2. Ulov Sabor is hereby directed to refrain from applying the harmful business practice.
3. This notice shall come into operation upon the date of publication hereof.

KENNISGEWING 163 VAN 1999
DEPARTEMENT VAN HANDEL EN NYWERHEID
WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan in Kennisgewing No. 2568 in Staatskoerant No. 19363 van 23 Oktober 1998 kennis gegee is, welke verslag gepubliseer is by Kennisgewing No. 162 in Staatskoerant No. 19761 van 19 Februarie 1999, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdheid uit kragtens artikel 12 (1) (b) en (c) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 17 van 1988), soos in die Bylae uiteengesit.

A ERWIN

MINISTER VAN HANDEL EN NYWERHEID

BYLAE

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken "skadelike sakepraktyk" die sakepraktyk waardeur Ulov Sabor direk of indirek, in verband met die advertering van sy dienste as 'n skuldinvorderingsagent:

- (i) handnotas of vlugskrifte versprei of advertensies plaas wat woorde met die volgende strekking bevat:
"Our methods are a direct physical approach. No letters of demand. No lengthy court cases. No wasted time. We do whatever it takes to get your money" en
- (ii) nie voldoen aan die voorsienings van die Komitee se Verbruikerskode vir Skuldinvorderingsagente nie.

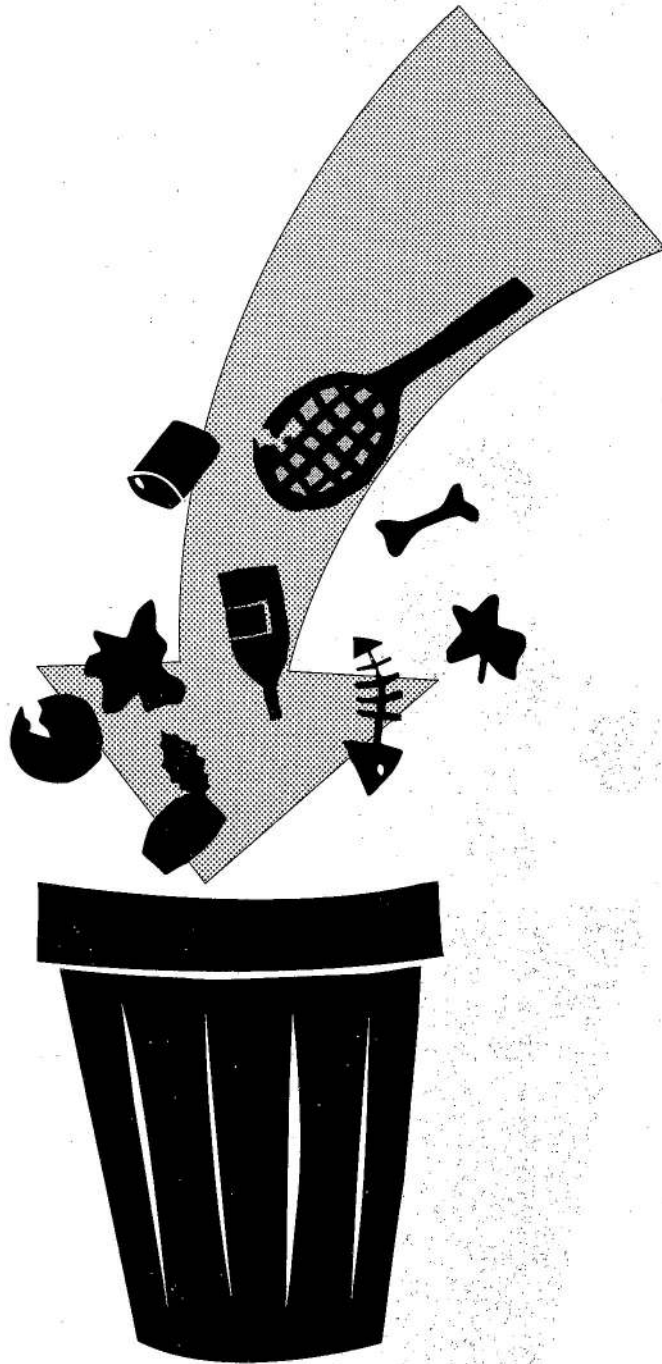
1. Die skadelike sakepraktyk word hiermee onwettig verklaar.
2. Ulov Sabor word hiermee gelas om af te sien van die toepassing van die skadelike sakepraktyk.
3. Die kennisgewing tree in werking op die datum van publikasie hiervan.

Keep South Africa Clean



Throw trash where it belongs

Hou Suid-Afrika Skoon



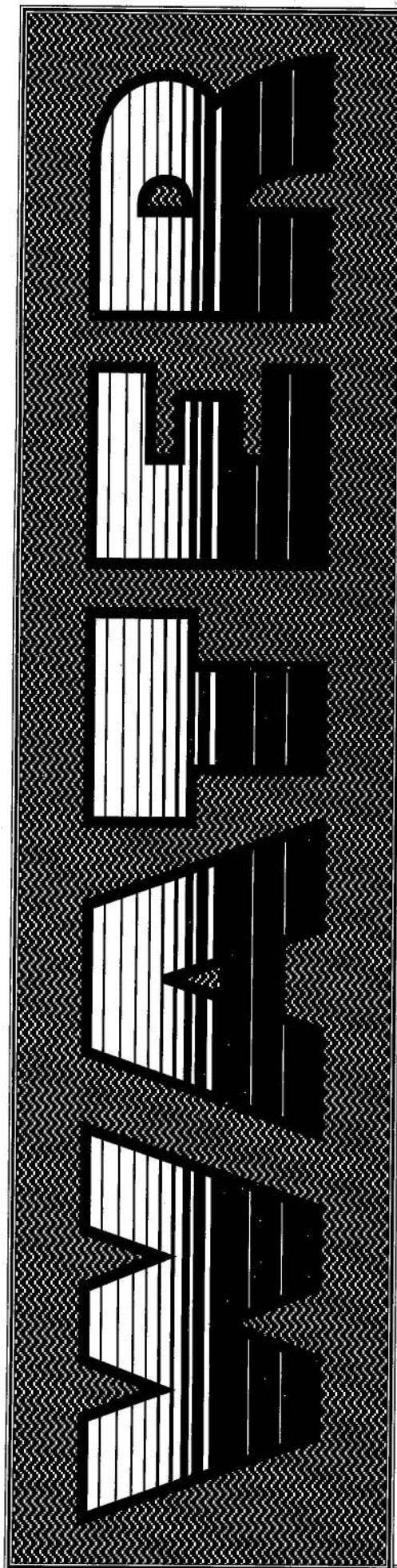
Gooi rommel waar dit hoort



DON'T

WASTE

It!

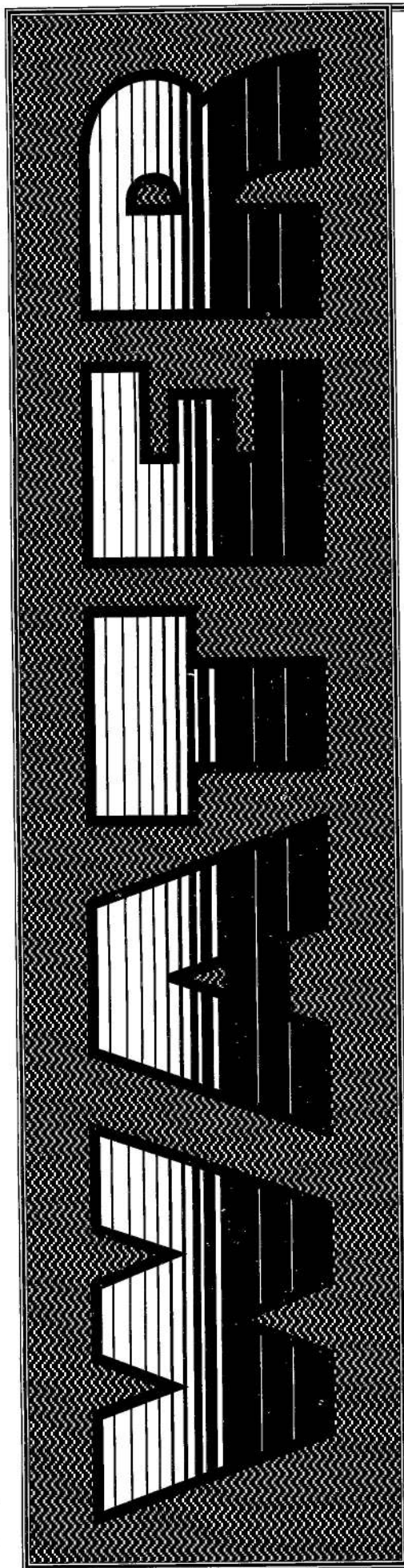




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