

Perspectives on Consumerism and Consumer Protection Act in Nigeria

Kamarudeen Babatunde Bello
Department of Management Technology,
Modibbo Adama University of Technology Yola
Adamawa State, Nigeria
Email kambell2000@gmail.com

Jamila Bisi Aduke Suleiman
Department of Management Technology,
Modibbo Adama University of Technology Yola
Adamawa State, Nigeria
Email jamilayahmed@yahoo.com

Ibrahim Danjuma (Corresponding author)
Department of Management Technology,
Modibbo Adama University of Technology Yola
Adamawa State, Nigeria
Email: ibro.danjuma@gmail.com

The research is assisted by Modibbo Adama University of Technology, Yola, Adamawa State, Nigeria

Abstract

This study focuses on the issues and challenges relating to consumerism and consumer protection in Nigeria, with particular attention to the Consumer Protection Council (CPC) Act 2004. Evidences from available literature indicate that consumerism in Nigeria, like in most Less Developed Countries has remained at the lowest ebb in spite of the prevalence of unwholesome business practices. The Nigerian consumer is thus continuously saddled with substandard goods and services, coupled with the lack of information and limited choice in the market, thus necessitating political/government efforts. In This study, it was observed that although the CPC Act recognized the rights of consumers, it does not specifically provide for these rights as they are merely implied and subsumed into the functions of the council and the state committees established by the Act. We therefore conclude that mere existence of the law is not enough. Specific protective and compensatory measures should be clearly stated for any infringement on any of the consumers' rights. Doing so would strengthen the CPC Act in Nigeria. Further the Consumer Protection Council need to embark on sustained sensitization of consumers on their rights and also push for the amendment of specific sections of the CPC Act to give aggrieved consumers unfettered access to courts to pursue their rights.

Keywords: Keywords: consumerism, consumer protection, marketing, consumer rights, Nigeria

1.1 Introduction

There is a global recognition of the fact that there exists real and perceived imbalance of power relations between the producers and consumers of goods and services. This imbalance of power, as noted by several scholars in the field of marketing and business in general appears always to the advantage of the producers, who are strengthened by the traditional legal maxim 'Caveat emptor' (buyer beware) and the ever growing free market philosophy, which seems to put the producers at liberty to do whatever they want (Eze, Eluwa, and Nwobodo, 2010). This is in spite of the strong emphasis on consumer sovereignty as the moral basis of marketing theory with emphasis on such concepts as 'customer orientation', 'customer focus', and 'customer-driven strategies' in most definitions of marketing, whether in theory or practice (Kelly, 2005).

The consumers have thus over the years expressed one form of discontent or the other against the activities of organizations, with which they engage in trade relationships. This has led to the growth of mass movements (a phenomenon referred to as consumerism) that have forced marketing and business firms in general in most developed countries, especially in Europe and America to respond favourably and adopt better ways of delivering goods and services to the consumers (Arndt, Barksdale and Perreault, 1980). These mass movements comprise those formed by direct consumer groups or consumer representative groups, as well as the government (Onah, 1979). The activities of these groups have been a source as well as beneficiary of a distinct school of marketing thought known as the 'activist' or 'consumerism' school of marketing thought, which came about as a result of observance of some "obvious problems in the market place" by marketing scholars, and sought to "provide an advocacy position in terms of developing and protecting the rights of the consumers" (Sheth and Gardner, 1982:

4). This school of thought focuses on both empirical research and conceptual thinking related to the issues of consumer welfare and consumer satisfaction and thus covers such areas of consumer complaints as deceptive advertising, high pressure sales tactics, product safety, and disclosure of information among others (Sheth and Gardner, 1982).

Consumerism has been defined as a social movement that seeks to increase the rights and powers of consumers (Kotler, 1972; Perreault and McCarthy, 2002). It is a great political force, which started from America, but has spread to many different countries of the world (Arndt, Barksdale and Perreault, 1980), and has become a force that businesses must contend with. It is worthy of note that efforts to reduce the imbalance of power between buyers and sellers is not however limited to consumer and activist groups alone. Governments also have at one time or the other had to intervene to protect the rights of consumers in relation to producers. In the United States for example, government participation in consumerism dates as far back as 1906, when the congress passed the Pure Food and Drug Act, as a check on the unsanitary meat-packing practices in the Chicago stockyards (Perreault and McCarthy, 2002). The historic declaration in congress on March 15, 1962 of four basic consumer rights of *Choice, Information, Safety*, and the right to be *heard* by the then U.S. president J. F. Kennedy, also served as a morale booster to consumer movements and subsequent declaration of March 15 every year as world consumer rights day (Vetrivel and Mohanasundari, 2011).

In Nigeria, the quest for excess profit and the get-rich quick syndrome have led most businesses to engage in unethical practices, which have endangered the lives of consumers, leading to sporadic complaints from individual consumers. There seems to be no real organized mass movement of consumers to fight for the protection of the rights of the consumers. This has left the bulk of the work of consumer protection at the door step of the government. A phenomenon that is common to most developing countries, where consumerism, according to Kaynak (1985) has been more of a matter of government policy through legislation and efficient enforcement than a matter of engaged public support.

Successive governments in Nigeria have set up agencies like the National Agency for Food and Drug Administration and Control (NAFDAC), Standards Organization of Nigeria (SON), and recently, the Consumers Protection Council of Nigeria (CPC), to protect and safeguard the rights of consumers against unwholesome practices of producers and suppliers. The focus of this study is on the state of consumerism and consumer protection in Nigeria, with particular attention on the Consumer Protection Council Act, CAP C25, 2004.

2.0 Literature Review

2.1 Consumer and Consumer Protection

There has been a series of discussions on the actual definition of the 'consumer' that needs to be protected (Akomoledede and Oladele, 2006). However, a modern definition of the consumer, according to Akomoledede and Oladele (2006:16) is "... any person who purchases or is supplied goods, or uses or consumes goods and services at the end of a chain of production". Two salient features can be pointed out from this definition. First is that the consumer is a buyer and/or user of a product or service, and the second is that the consumer is a member (in fact, at the end) of the production chain. These features underscore the importance of the consumer in both economics and marketing theories. That is, without the consumers (consumption) there can be no basis for production, and hence, no market. It is on this premise that the consumer is seen as the pivotal point of not only marketing, but of all business activities (Barksdale and Darden, 1971), and whose interests must be served and protected at all times. There is however a 'paradox of importance' in this philosophy of business, because the consumer, rather than being treated as the king as often advertised by business, is "in actual practice treated as a slave or servant" (Vetrivel and Mohanasundari, 2011). This then brings to the fore, the proposition by Bell and Emory (1971:40) that if business fails in its responsibility to help the consumer (out of his disadvantaged position), "... then the government or other parties must act on the consumers' behalf".

In Nigeria, several factors exist that led to the necessity of consumer protection laws. That consumers are repeatedly sold sub-standard products and services is no longer news. And because of the absence of, or difficulty of access to major manufacturers or dealers, the Nigerian consumer would rather purchase from road-side shops which have no brand reputation or trademarks to protect consumers. In addition to this, the Nigerian consumer is described as "largely complacent" ("At the Mercy," 2008). This complacency claim is attributable to the choice that consumers make of their place of purchase, of especially electronic products ("At the Mercy," 2008). It is opined that rather than purchase from reputable dealers or major importers where the manufacturer's warranty will more likely be honoured, most Nigerian consumers purchase from "...small time dealers..." who may not be in the position to offer refunds, exchange the goods or provide post-purchase services as the goods may have passed through a chain of middlemen before getting to such dealers. Uche (1990) is of the opinion that lack of avenue for checking manufacturer or advertisement claims on goods; as well as accepting to pay price for packaged goods without assurance of quality, and in some cases, quantity, are also challenges to consumers that

led to the establishment of Laws of Consumer Protection.

According to Kanyip (2005) lack of competition in the market account for why defective goods and services are prevalent in the market. She argues that in the face of competition, consumers can express their preference by the choices they make and thereby drive out undesired suppliers of goods and services out of the market.

The harsh economic realities in Nigeria have made many consumers to patronise cheaper products that are seemingly substandard, without warranty. In addition most consumers have little or no knowledge of labels or how to access information on safety, quality and in some cases, quantity of products. In this regard, Umenyi (2007) posits that imperfections in the market not only lead to misleading information through deceptive advertisements, but also encourages proliferation of fake and sub-standard goods. These realities are detrimental to consumers and put the seller in the vantage position of exploiting the buying party in the exchange process (Monye 2005).

2.2 Consumerism in Nigeria

Scholars have argued that consumerism in most Developing Countries, to which Nigeria belongs, is still at its infancy (Onah, 1979; Thorelli, 1981; Darley and Johnson, 1993; Ho, 2001), in spite of the prevalence of unwholesome marketing practices by business firms in general. The situation in Nigeria in terms of consumer movement/actions against unwholesome marketing practices is the existence of a few organized bodies scattered around the country with minimal, localized effects (Agbonifoh, Ogwo and Nnolim, 1998; Onah, 2007). The resultant effect is that most consumers do not know of their rights, and even among those who know, there is general unwillingness to take actions against these unwholesome marketing practices.

A number of reasons have been advanced explaining the low level of consumerism in Nigeria. Prominent among these reasons as noted by scholars include low level of literacy; ignorance and absence of consumer awareness and education of market place transactions; high poverty rate, which tends to make consumerism issues the least of the consumers' problems; and the judicial stress resulting from the judiciary's rigid adherence to strict legal rules, even when dealing with consumer discontent/loss suffered in trade transactions ((Monye, 2006; Mogaba; 2008; Eze et al., 2010; Ketefe, 2011; Ijewere and Obeki, 2011).

3.0 Consumer Protection in Nigeria under the Consumer Protection Council Act, 2004,

In Nigeria, like in other parts of the world, consumer protection is the concept designed to protect consumers from unscrupulous producers and service providers. It denotes the attempt by governments to provide regulatory framework to protect and enforce the rights of people who pay for goods and services. Therefore, the Law of Consumer protection has a two-fold purpose. On the one hand, it protects the interests, rights and safety of end-users of products and services; and on the other hand, to the extent that it derives from and relates to contractual transactions, consumer protection can be said to be a means by which private law relationships are regulated. It is in the interest of the public that the nature and deficiencies of product and services be made known to consumers, thus, the need for public regulation of private transactions. Regulation will thus have the end result of putting into the market, the best possible products.

Monye (2005) asserts that although consumer protection emerged out of the ambit of the law of contract, it is developing into an independent area of law. Every time there is a purchase, be it of goods or services, a contractual relationship is created. The implication of this is that both parties agree to the terms and conditions as stated by them and as implied by law. Equally importantly, the seller agrees to provide to the purchaser, other "statutory rights" Lewis (undated). Such other statutory rights are, amongst others, those contained in the Consumer Protection Council Act, 2004 (the Act) and also those outlined in other pieces of legislations as outlined by Akomolede & Oladele (2006).

The CPC Act does not in any of its sections specifically provide for rights of a purchaser or consumer in that term, but the Act provides for the establishment of a Consumer Protection Council. The rights of consumers are implied and subsumed into the functions of the Council and into the duties of the State Committees established by the Act. This part of this paper is the attempt to classify consumer rights under various heads to elucidate on the provisions of the Act.

The components of good quality consumer protection manifest as the rights sought to be protected under the Act whether they are so stated out rightly or they are implied and they include:

- i. Right to safety
- ii. Right to information and advice
- iii. Right to choice
- iv. Right to being heard
- v. Pre emptive rights in favour of consumer
- vi. Enforcement rights

vii. Redress for consumers against offending product providers

The governmental agency responsible for the rights of consumers is the Consumer Protection Council (the council) established in 1992 by the Consumer Protection Act, CAP C25, 2004 (The Act). These rights are provided for, in the Act, sometimes by implication and not necessarily under those captions.

i. Rights to safety

Right to safety connotes that consumers and their families not be exposed to undue risk of physical harm, injury or death resulting from the use of a product. As relates to safety, the council has a duty to ensure that products are safe for the purpose for which they are intended (Section 2(j)). To further ensure safety, the Council could also notify the public of health hazards inherent in products (Section 3 (e)) and ban the “sale, distribution, advertisement of products that fall short of safety and health regulations (Section 3 (f)). It is noteworthy that such safety and health regulations are not contained in the Act and to ascertain what they are, one would have to look into other pieces of legislations like the Standard Organization of Nigeria Act, 2004 and the National Agency for Food and Drug Administration and Control Act, 2004. Monye (2005), Akomolede & Oladele (2006) are all agreed on the imperative for such legal rigmarole and the fact that it may be detrimental to the interest of the Nigerian Consumer.

ii. Right to Information and advice

With the reality of the proliferation of goods and services, information is vital, or indeed, indispensable for consumer choice. The information will put the consumer in the position to compare the quality of various products and services as they relate, not only to cost, but also safety, content, ingredients and expiry date etc. For the information provided to be meaningful, it must be correct and not fraudulent and advertisements and labeling must not be misleading or false.

In addition to the above kinds of information, the Act also mandates the Council to publish a list of products that have been banned, withdrawn, restricted or not approved for consumption (Section 2 (c)) and to organise campaigns and other sensitization avenues that will lead to public and consumer awareness. Also sections 2(e) and 2(h)

iii. Right to choice

Inherent in the right to be informed lays the right to choose as information of various products and services offers the consumer the opportunity of picking one product or service as opposed to another. In addition to this however, the right to choose also presupposed competition. It is believed in the world of business that competition regulates the market. The concept of competition is in contra-distinction to the concept of monopoly. Thus in places like the United States of America, there is a whole body of Laws (Antitrust Laws) that prohibit monopoly and guarantee competition which serves the purpose, amongst other things, to guarantee consumer choose.

iv. Right to be heard

Section 2(a) mandates the council to provide “speedy redress” to consumers by means of the pacific measures of negotiation, mediation and conciliation and by section 2(i), it offers compensation to injured consumer. In an effort to bring relief closer to the public, the Act also provides for State Committees to receive complaints and investigate the complaints and act on them. Also, the Council has the power to apply to court to prevent the circulation of any product which constitutes an imminent public hazard

v. Pre-emptive rights in favour of consumer

In addition to the safeguards already discussed above which the council is empowered to provide, the council is also empowered to implement “precautionary measures to forestall consumer injury” and this may include requiring trade professional bodies and industries to creation and maintain quality standards (section 2 (f)) to constitute benchmarks for quality to ensure consumer security. Also, by the provision of Section 3 (b)-(f), the council may cause consumer products to by subjected to quality test and to compel providers of consumer products give certification that benchmarks as regards safety standards have been met and to notify the public of any inherent health hazards in products. In addition, another pre-emptive measure is for the council to ban products from being put in the market, or even the advertisement of such products which have not complied with the regulations relating to safety and health as provided for in the Act. Section 3(f) Furthermore, by the provisions of Section 9, when a manufacturer or dealer has puts goods in the market and thereafter becomes aware of previously unseen hazards of the product, he has a duty to notify the general public of such risks and to withdraw the products from the market and failure to do so give rise to a criminal offence Section 9(2).

vi. Enforcement rights of consumers

While the provisions defining rights of consumers and those that seek pre-emptive measure to protect consumers are designed to prevent injury to the consumer in the first place, the Act also anticipates that despite all of these provisions, consumer injury will still occur and has put in place provisions for enforcement. The Act provides for compelling producers compliance with provisions of the Act in the following ways:

1. Enforcement by injured consumer

The right of an injured consumer to institute an action in court for consumer related injuries as provided by the Act is curious. By virtue of Section 8(a) and (b) of the Act, it would appear that the right of an injured consumer to apply to court arises only after the council or a state committee has investigated the consumer complaint and the consumer has proved to the council/committee that his/her consumer rights have been infringed that such a consumer may go to court. Section 8 provides:

“whereupon an investigation by the council or state committee of a complaint, it is proved that-

- (a) the consumer’s right has been violated; or*
 - (b) that a wrong has been committed by way of trade, provision of services, supply of information or advertisement thereby causing injury or loss to the consumer;*
- The consumer shall, in addition to the redress which the state Committee, subject to the approval of the council may impose, have a right of civil action for compensation or restitution in any competent court.”*

This Section provides a condition for which an injured consumer may approach the courts. The word “whereupon” means “as a result of” (Encarta 2009). So it is only as a result of the investigation by the council which shows that the consumer has proved some injury caused to his consumer rights that a consumer may seek redress in court. The imposition of this condition is clearly inconsistent with Section 36 of the constitution which entitles a person to unfettered rights to institute actions in court, “in the determination of his civil rights...a person shall be entitled to a fair hearing...by a court or other tribunal...” The position of the law is relatively settled that any provisions of any law that is inconsistent with the provisions of the constitution shall be null and void to the extent of the inconsistency in accordance with Section 1(3) of the constitution.

2. Enforcement by council or committee for compliance failure

2.1 By the provisions of Section 3 (a), the council may apply to court to obtain orders to prevent the circulation of products that are imminently hazardous to the public.

2.2 The State Committees have powers to hold hearings, make decisions and make recommendations of remedies to the Council for violations of consumer rights as enshrined in the Act. Specifically, Section 5 of the Act empowers the committee to receive complaints of injury suffered by consumers, to conduct negotiations between the parties (i.e. the injured consumer and the alleged defaulting seller) to bring about an amicable settlement or for the committee to make recommendations to the council for the payment of compensation by “the offending person to the injured consumer.” Section 5 (c) The Act thus confers on the state committees the status of Administrative Tribunal or an Alternative Dispute Resolution mechanism. Thus, the council in conjuncture with the committee act as non-judicial alternative compensation mechanism. However, it is noted that no procedural rules have been provided for to achieve this no-judicial processes.

3. Enforcement by a Federal Attorney-General

The Act empowers the Attorney-General of the Federation to institutes action against a person under the circumstance that the Council or State Committee has requested a person who has persistently conducted himself in a manner detrimental to consumers to make a written “assurance” to desist from such conduct but the person has failed to either observe the assurance as made by him, or to make the assurance at all. Against such a person, the court may make a prohibitive order to “refrain from continuing that course of conduct.” Section 10(3)

In addition to the above, the Attorney-General, by Section 16 may apply to court where the Council so requests him, against any person individual or corporate to comply with:

- i. the provisions of the Act
- ii. any order of the council made pursuant to this Act

In Nigeria, a look at our case law reveals next to no actions on enforcement of our consumer protection law. With these numerous provisions of the law, one may wonder why this is still so. Monye (2006) offers one explanation. She asserts that case law show that judges are inclined to accept the “foolproof system” of production; often used as defence by alleged violators of consumer rights. She cites the cases of Boardman v Guinness (Nig) Ltd. (1980) NCLR 109 at 126; Okonkwo v. Guinness (Nig.) Ltd. [1980] NCLR at 130 and Ebelamu v. Guinness (Nig.) Ltd. FCA/101/82) to illustrate such instances. Other authors such as Akomolede, and Oladele, (2006) have asserted that “...the law has only succeeded in providing a regulatory framework for consumer protection...” without adequate enforcement. It would appear that emphasis is still being put, by our justice system, on contractual obligations which still places the caveat emptor (buyer beware) burden on consumers. The absence of judicial enforcement still leaves consumers in the perilous position of being easily exploited by producers, sellers and service providers with impunity.

We propose that one way to address the above pitfalls is the establishment of a specialised court for consumer protection. Section 6(4) (a) of the constitution empowers the National Assemble to establish courts as exigencies

may demand. It is believed that such courts will no doubt apply the provisions of the Act more fully than the generalised courts such as the High Courts do. This is as a result of the narrow focused jurisdiction to which cases brought before the courts will be routed.

vii. Redress for consumers against offending product providers

The Act provides for five main categories of reliefs for consumer against offending product providers. While four of such reliefs are judicial, (a-d below), one, (e below) is administrative.

a. Prohibitive injunctions

Prohibitive injunctions may be ordered by the court where a person who has persistently carried out acts or practices detrimental to consumers and at the request of the council/committee, has either failed to make “written assurance” to desist from the practices (Section 10 (1)), or has defaulted in the assurances written, then, upon a case filed by the Federal Attorney General, an injunction may be ordered by the court prohibiting the offender or refraining him from continuing that course of conduct. (Section 10 (3))

b. Criminal convictions

The Act provides that criminal convictions and sentence of five years imprisonment or N50,000 fine or both may be passed on the following categories of offenders:

- Manufacturer or distributors of products, who after placing a product in the market, subsequently become aware of any hazards in the products, fail to promptly notify the public of the hazard and withdraw the products from the market. Section 9 (1) & (2)
- A person who makes or aids in the making of “wrong advertisement” relating to a consumer product. (Section 11)
- A person who contravenes the provisions of the Act by selling or offering for sale products which are unsafe or hazardous; or causes injury or loss to a consumer by providing service, information or advertisement contrary to the spirit and letter of the Act. (Section 12)

c. Compensation

In addition to the sentences already mentioned, a person convicted of violation of consumer rights may be ordered to pay compensation for any injury, loss or damages suffered as a result of his violations. (Section 13)

d. Positive orders

Upon the application of the Attorney General, a court may make an order commanding that the provisions of the Act and any orders made by the Council pursuant to the Act be complied with. (Section 16)

e. Seizure by inspecting officer

A person, who by the provisions of Section 15 (1) of the Act is designated an inspector, may, by the provisions of Section 15 (2) (e), seize or detain consumer goods that contravene the provisions of the Act.

4.0 Conclusion and Recommendation

The enactment of consumer protection Law In Nigeria, is only an attempt at consumer protection. The level of consumer awareness in Nigeria is still relatively low, thus culminating in the near absence of consumerism or action against unwholesome business practices. Nigerian consumers are continuously confronted with substandard goods and services, lack of information and limited choices in the market. The ability to enforce the laws relating to consumer protection will provide the necessary impetus for safeguarding the rights and safety of consumers in Nigeria. In this regard, we recommend that:

1. Nigerians should be sensitized about their consumer protection rights and how to enforce those rights. The current weekly programme ‘consumers speaks’ on the national radio network is a step in the right direction, but efforts should be extended to local radio stations and the programmes aired in local languages to aid the understanding of the local populace.
2. A more comprehensive legal regime in consumer protection should be enacted specifying consumer rights and obligations of marketers rather than the present regime where these are subsumed into the functions of the Council.
3. Anti-trust laws should be enacted to encourage competition in the market place and invariably, guarantee the right of choice to consumers.
4. The Consumer Protection Council and the State Committees should be more proactive in the performance of their statutory functions.
5. The media should assume the role of whistle-blowers with a view of checkmating unwholesome business practices by unscrupulous entrepreneurs and organisations
6. Section 8 of the CPC Act should be amended to give aggrieved consumers unfettered access to the courts. In addition, the Section should provide for special court for consumer protection matters

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