



CONSUMER PROTECTION IN NIGERIA: THE NEW REGIME

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1.1 Introduction

In Nigeria, the issue of fake and substandard products has received quite a level of attention from the government and various interest groups. The problem, which cuts across various product fields, including food and drugs, is also evident in service delivery. Most often, consumers find themselves saddled with shoddy services or even non-performance of the obligation bargained and paid for. Unfortunately, victims of fake and substandard products rarely seek redress for several reasons, the most prominent being lack of knowledge about the laws and agencies saddled with the mandate of protecting the rights of consumers and the channels for redress.

The need to protect the consumer has become a topical issue in many countries across the globe. The upsurge of interest in this issue can be attributed to a variety of factors, such as increasing rates of fake and substandard products and services, the complex nature of many products, which makes perception by consumers difficult, new dimensions of trade malpractice, excessive use of exemption clauses and information asymmetry and power imbalance between consumers and suppliers of products and services.

Authors have advanced reasons why consumer protection should receive priority attention in every country. Some of such reasons include the complexity of modern products brought about by advanced technology, the disadvantaged position of consumers compared to suppliers of products and services; a high level of illiteracy and poverty in some countries; a low level of consumer awareness and absence of effective competition. It has been noted that any government that does not take care of issues of consumer concern can be likened to a government that toys with human rights; it is like an economy built on a shaky foundation waiting to collapse as soon as the factors sustaining it collapses.



To ensure that consumers are not short-changed in dealings with suppliers of products and services, governments often put in place various measures (laws, regulatory agencies and other measures) to protect the interest of consumers.

The Nigerian Constitution did not specifically mention consumer protection, but consumer protection issues are embedded in many of its provisions. For example, many consumers-related problems are contained in the Exclusive Legislative List. These include aviation, bankruptcy and insolvency, banking, drugs and poison, insurance, meteorology, trade and commerce, traffic on federal trunk roads, water from sources affecting more than one state, weights and measures and wireless broadcast. This explains why many consumer protection laws in Nigeria are federal based and have been enacted by the National Assembly under the Exclusive Legislative List. This was the enactment of the Federal Competition and Consumer Protection Act, 2018, which is the focal point of this Article on consumer protection.

This Article will briefly consider the definition of some terms, i.e. Consumer, Consumerism and Consumer Protection, Sources of the law of Consumer Protection, Rights of the Consumer as enshrined in the FCCPA, 2018, Enforcement of Consumer's Right and Penalties for contravention of consumer's right.

2.0 Definition of Terms

2.1 Who is a Consumer?

Section 167 of the Federal Competition and Consumer Protection Act 2018 defines 'Consumer' to include any person:

- a. who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or
- b. to whom a service is rendered.



It can be deduced from the above definition that a consumer does not include a seller or an agent of the seller, a car mechanic who purchases car spare parts to repair his client's vehicle, an installer or manufacturer of a product, by-product or component of an item. The consumer is the end user of the goods or services.

In the Nigerian Communications Act, 2003, the term 'consumer' was used interchangeably with 'customer' and 'subscriber'. These terms are collectively defined by Section 157 of the Act, which provides that a 'consumer', 'customer', or 'subscriber' means any person who subscribes to and uses a communication service.

Section 100 of the Electric Power Sector Reform Act defines 'consumer' as any end-user of electricity which is a customer of a distribution licensee that is not an eligible customer and, to file a complaint with the Commission and for any other reason that the Commission may determine, a person who is temporarily disconnected or otherwise without service, provided that a person who has applied for but is yet to receive service shall also be deemed to be a consumer.

The Fair Trading Act 1973, a United Kingdom law which is similar to the Nigerian Federal Competition and Consumer Protection Act 2018, defines a consumer in Section 137(2) subject to subsection (6) of that same section to mean either:

- a. a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking them, or
- b. a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them, and who does not receive or seek to receive the goods or services in the course of a business carried on by him.

The Supply of Goods (Implied Terms Act, 1973 (UK) defines a related term consumer sale as a sale of goods (other than sale by auction or by competitive tender) by a seller in the course of a business where the goods:

- a. are of a type ordinarily bought for private use or consumption; and
- b. are sold to a person who does not buy or hold himself out as buying them in the course of a business.



Some restrictions inherent in some of the definitions considered above can be said to have been effectively taken care of by judicial interpretations. The decision in *Donoghue v Stevenson*¹ and other subsequent cases clearly illustrate that the term consumer goes beyond the realm of contract. Thus in *Stennett v Hancock and Peters*², the owner of a lorry took the lorry's wheel, the flange of which had come off, to a motor repairer for repair. After the work was done, the flange came off again while the lorry was being driven on the highway and blowing along the road; it mounted a pavement and hit the plaintiff, a pedestrian, injuring her. It was held, following *Donoghue v Stevenson*, that the repairer was liable to the plaintiff in negligence as he was in the same position as the manufacturer of an article sold by a distributor in circumstances which prevented the distributor or ultimate purchaser or consumer from discovering by inspection any defect in the product.

This principle was emphasised by the Supreme Court in *Nigeria Bottling Co Ltd v Ngonadi*, involving the explosion of a kerosene refrigerator with severe bodily injuries to the respondent and *Solu and Ors v Total Nigeria Ltd*³, involving a defective gas cylinder which exploded and caused serious injuries to members of the claimant's family. In both cases, damages were awarded in favour of ultimate users.

It is seen from the above that the concept of consumer has assumed a very wide connotation. As rightly observed by scholars, the category of persons who may be deemed to be ultimate consumers has been extended to include the user⁴ of the product as well as the person who comes into contact with it whether accidentally or deliberately.

It follows that the term consumer is not confined to purchasers. It extends to contractual consumers; ultimate users, and any person affected by a product or service in any way whatsoever. It covers any person who receives products or services through trade, gift, sample or other means. In fact, the term is so encompassing that it can accommodate any relationship involving consumption of products and services of whatever description. It is not restricted to any field and can therefore be used interchangeably with the usual term used in relation to a person who receives products or services under any sector. Thus a customer of a bank can be regarded as the consumer of banking services offered by the bank. The same applies to a road or air passenger, an insurance customer and any other customer-supplier relationship.



Consumerism is a social movement aimed at enhancing the position of the consumer. The primary objective is to ensure that consumers of products and services obtain value for money. The movement could be championed by an individual, a group of individuals, businesses or the government. This movement which started as a product of consumer discontent has assumed a greater significance in today's digital age. Hitherto, a prominent prompting factor was industrialization with its attendant side effects. Digital technology has introduced more complex products and services thus making consumerism more significant.

The essence of consumerism is to maximize consumer satisfaction. Satisfaction in this sense cuts across diverse issues including product/service quality, durability, price, metrology, product labelling and effective consumer complaints resolution system.

2.3 Consumer Protection

Consumer protection can be defined as the act of safeguarding the interests and rights of consumers of products and services. Such protection extends to all matters relating to products and services, such as the supply of fake, substandard or injurious products or services; fraudulent and hazardous practices; as well as any act that adversely affects a purchaser or an ultimate user of a product or service.

3.0 Sources of the Law of Consumer Protection

Any country's Laws on Consumer Protection sources are mainly the statute book and judicial decisions. Nigeria possesses an impressive number of laws dealing with different aspects of consumer protection. The regulatory agencies established by these laws are mandated to make regulations and guidelines as part of the implementation of the matters covered by the enabling statutes.

In addition, judicial decisions constitute a good source of consumer protection laws in Nigeria. In several pronouncements, the courts have dealt with different aspects of consumer law such as duty of care, exclusion clauses, defective products and the presence of foreign substances in food items.

4.0 Rights of Consumers

The Federal Competition and Consumer Protection Act, 2018 contains a long list of the rights of consumers in transactions involving the supply of goods and services. We will be looking at some of these rights under specific subheadings in brief.



4.1 Right to return unsafe goods

Section 122 of the FCCPA provides for the right of the consumer to return unsafe goods to the supplier and receive full a refund of any consideration (money) paid for those goods.

4.2 Rights relating to the performance of a certain obligation

Section 130 of the FCCPA sets out the various rights available to the consumer when an undertaking agrees to perform any service for or on behalf of the consumer. These include timely performance and completion of the service; timely notice of any unavoidable delay in the performance of the service; and performance of the service in a manner and quality that reasonable persons are generally entitled to expect. In the case of supply of goods, the rights include delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect.

5.0 Enforcement of Consumer Rights

Section 146 of the FCCPA empowers consumers to enforce any breach of their right in a transaction or agreement under the Act and to resolve any dispute with suppliers of goods and services.

6.0 Penalties for contravention of consumer rights

Section 155 states the penalties for contravention of consumer rights. The section states as follows:

Except where otherwise provided for in this Act, any person who contravenes any consumer right commits an offence under this Act and in the case of a

- a. natural person, is liable on conviction to imprisonment for a term not exceeding five years or to payment of a fine not exceeding N10,000,000.00 or to both the fine and imprisonment;
- b. body corporate, is liable on conviction to a fine of not less than N100,000,000.00 or 10% of its turnover in the preceding business year, whichever is higher; and
- c. in the case of a body corporate referred to in paragraph (b) of this section, each director of the body corporate is liable to be proceeded against and dealt with as specified in paragraph (a).



7.0 Conclusion

We have been able to establish from this article that the consumer has a right that must be protected and enforced. The challenge often faced by Nigerian consumers is how to identify and enforce these rights when infringed upon. It is the duty of every Nigerian Lawyer and consumer's right advocate to aid Nigerian consumers to seek redress for the infringement of their rights before the relevant authorities and the courts.

The Federal Competition and Consumer Protection Commission, the Judiciary and other consumer regulatory Agencies must act as guardians to navigate the course of the new regime of consumer protection in Nigeria to give the Nigerian consumer a shield and as such entrenched decency in the production, supply and service delivery value chain in the country.

References:

1. Felicia Monye, Law of Consumer Protection, Vol 1, 2nd Ed.
2. Federal Competition and Consumer Protection Act, 2018.

1 [1932]AC 562

2 [1939] 2 All ER 578

3 HC Lagos State, ID/619/85;1988.

4 Grant v Australian Knitting Mills Ltd [1936] AC 85



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