
AN ANALYSIS OF THE CONSUMERS ' RIGHTS UNDER THE NEW REGIME: KNOW YOUR RIGHT AS A CONSUMER





INTRODUCTION

The campaign for consumer rights in Nigeria has become imperative. This is so because Nigerian consumers have suffered a great deal at the hands of Vendors, Suppliers and Service providers due to a lack of awareness of their rights as enshrined in existing laws in Nigeria.

It is one thing to make consumer laws. It is another thing for the consumers to know the laws that are meant to protect them, hence the need for continuous advocacy as to the rights available to the consumers as contained in the Federal Competition and Consumer Protection Act, 2018, which gave birth to the new regime of consumer protection in Nigeria.

In this article, we will look at the various rights of the consumer as spelt out in the Federal Competition and Consumer Protection Act of 2018. We hope that with this, we will support Consumer Rights advocacy in Nigeria.

2.0 RIGHTS OF CONSUMERS

2.1 RIGHTS TO INFORMATION IN PLAIN AND UNDERSTANDABLE LANGUAGE.

Sec. 114(1) of the Federal Competition and Consumer Protection Act, 2018 gives consumers the right to information in a prescribed form or plain language if no form is prescribed. By subsection (2), a notice, document or visual representation is in plain simple language if it is reasonable to conclude that the ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy, skill and minimal experience could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to the criteria laid down in the subsection. The requirement laid down in this subsection relate to the context, comprehensiveness and consistency of the notice, document or visual representation; the vocabulary, usage and sentence structure of the notice, document or visual representation; and the usage of illustrations, examples, headings or other aids to reading and understanding¹. In order words, information on items should be clear enough for the consumer to understand to aid his decision as to whether or not purchase the goods.

¹ Monye Felicia, Law of Consumer Protection: Statutory Liability (2nd ed., Vol. 1)



2.2 DISCLOSURE OF PRICES OF GOODS AND SERVICES

Section 115 of the Act prohibits an undertaking from displaying any goods or services for sale without adequately displaying to the consumer the prices of those goods or services. For the purposes of this section, a price is adequately displayed to a consumer if a written indication of the price, expressed in the currency of the Federal Republic of Nigeria, is annexed or affixed to, written, printed, stamped or located upon or otherwise applied to the goods or services or to any band, ticket, covering, label, package, reel, shelf, or other things used in connection with the goods or services or on which the goods or services are mounted for display or exposed for sale or published in relation to the goods or services in a catalogue, brochure, newspaper, circular or similar publication available to the consumer or to the public generally. It is an offence to require a consumer to pay a price for any goods or services higher than the displayed price. Where more than one price is concurrently displayed, the consumer is entitled to pay the lowest of the prices so displayed².

This provision is novel in Nigeria. Hitherto, display of prices of goods and services was at the discretion of suppliers. The current position is a welcome development as it is expected to save the consumer the burden of negotiating the price with suppliers who invariably enjoy superior bargaining power. Additionally, the practice helps consumers to conduct effective window shopping and prevent being short-changed by unscrupulous suppliers.³

2.3 RIGHT TO SELECT SUPPLIERS

Another consumer right is a right of choice, as contained in Section 119 of the Federal Competition and Consumer Protection Act 2018. This section of the Act provides thus:

- (1) An undertaking shall not require, as a condition of offering to supply or supplying any goods or services, or as a condition of entering into an agreement or transaction, that a consumer shall –
- (a) Purchase any other particular goods or services from that undertaking
 - (b) Enter into an additional agreement or transaction with the same undertaking or a designated third party, or
 - (c) Agree to purchase any particular goods or services from a designated third party, unless the undertaking can demonstrate that the convenience to the consumer in having those goods or services bundled outweighs the limitation of the consumer's right to choice, or that the bundling of those goods or services results in economic benefit for the consumer.

² Ibid

³ Ibid



An undertaking as mentioned above is defined under section 167 of the Act (i.e. The Federal Competition and Consumer Protection Act, 2018) to include any person involved in the production of or the trade in goods or the provision of services.

That means anyone producing and/or selling goods to end users and anyone providing services to end users is forbidden under section 119 of the Act from restricting a consumer's freedom of choice, meaning that the consumer is completely at liberty to choose whom to patronize for purchase of goods or receive the provision of services from at every material time. This completely put the consumer in a vantage position in every transaction.

2.4 RIGHT TO CANCEL ADVANCE RESERVATION, BOOKING OR ORDER

S.120 of the Federal Competition and Consumer Protection Act, 2018 provides thus:

- (1) A consumer shall have the right to cancel any advance booking, reservation or order for any goods or services, subject to a reasonable charge for cancellation of the order or reservation by the supplier or service provider.
- (2) for the purpose of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regards to-
 - (a) the nature of the goods and services that were reserved, booked or ordered.
 - (b) the length of time of cancellation provided by the consumer.
 - (c) the reasonable potential for the supplier or service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice, and the time of the cancelled reservation, booking or order; and
 - (d) the general practice of the relevant industry.
- (3) a supplier or service provider may not impose any cancellation fee in respect of a booking, reservation or order because of the death or hospitalization of the person for whom, or whose benefit the booking, reservation or order was made.

These provisions give the consumer the right to cancel reservations, bookings or orders made in advance. However, the right is subject to the payment of reasonable fees.⁴ A cancellation fee would be seen as unreasonable if it exceeds a fair amount in the circumstances having regard to the nature of the goods, length of notice of cancellation, potential of finding an alternative consumer and the general practice of the relevant industry.⁵ A cancellation fee will not apply where failure to honour the booking, order or reservation was as a result of the death or hospitalisation of the person for whom the booking, order or reservation was made.⁶



4 Section 120 FCCPA
5 Section 120(2)(a)-(d)
6 Section 120(3)

From the foregoing therefore, the issue whether the consumer has rights to cancel advance reservation, booking or order which of course is subject to reasonable fee charged by the product or service provider is put to rest. Whereas S.120 gives consumers the right to cancel any advance booking, reservation or order for any goods and services, subject to payment of a reasonable charge. Subsection (2) outlines the conditions or criteria for assessing whether a charge unreasonable. Subsection (3) is indicative of a situation where charges are completely disallowed upon a cancellation of advance reservation.

To further drive home the point, however, as an instance, where Ndidi Amaka makes a flight reservation for her mother to visit and she cancels the reservation before the flight date, she will be surcharged for the cancellation but where she can prove that her mother took ill and was eventually hospitalized or dies as a result of the illness before the reserved date, the airline company cannot insist on charging a cancellation fee. This is the scenario painted under the FCCPA,2018.

2.5 RIGHT IN RELATION TO DISPLAYED GOODS, SALE BY SAMPLE AND DESCRIPTION

Section 121: A consumer has the right to select or reject goods displayed in or sold from open stock. A consumer will also not be held responsible for any loss or damage to any goods displayed by a supplier unless the loss or damage was as a result of gross negligence or recklessness, malicious behaviour or criminal conduct of the consumer. This also implies that if customer damages goods in circumstances that are not as a result of gross negligence or recklessness, malicious behaviour or criminal conduct, such a customer will not be liable to pay for the damaged goods.⁷ This right applies irrespective of any contrary statement or notice to the contrary displayed by the supplier. By this, the negligent act of the supplier in not shelving goods properly is not passed to the consumer. This is a commendable feat introduced by the FCCPA aimed at safeguarding the rights of the consumer.

2.6 THE RIGHT TO RETURN UNSAFE GOODS

Generally, and by all standard both locally and internationally, producers/manufacturers/marketers of goods are obliged to ensure the goods sold or supplied to the consumer is fit for purpose, and corresponds with the description or samples and meets the quality earlier advertised or agreed upon. Where this is not the case the consumer is entitled to return the product and demand for a refund of the purchase price.⁸

⁷ <https://businessday.ng/opinion/article/protecting-consumer-rights-highlights-of-provisionsin-fccpa/>. Accessed on the 14/11/2022.

⁸ Clause 28 of the United Nations Guidelines For Consumers Protection, the United States Consumer Product Safety Act



This right of a consumer to return these goods is provided for in section 122 of the Federal Competition and Consumer Protection Act, 2018. According to the said section- a Consumer may return goods to the supplier and receive a full refund of the consideration paid for those goods if it is shown that the goods does not satisfy a particular purpose communicated to the supplier or if it becomes unsuitable for that particular purpose within a reasonable time after delivery. This same provision extends to the right to return goods supplied where they do not meet description, or correspond with the sample or quality reasonably contemplated in the sales agreement upon delivery.

This right to return goods of the nature mentioned above can be exercised immediately upon delivery and inspection of the goods. Where however the consumer takes delivery of goods without having an opportunity to immediately inspect to see whether it matches description, he still has the right to reject such goods within a reasonable time after delivery upon his inspection of same or upon realizing it does not fit the purpose communicated to the supplier. The key pointer is that such a right must be exercised immediately or within a reasonable time upon inspection.

REASONABLE TIMEFRAME FOR RETURN OF GOODS

In exercising this right to return goods unfit for purpose, the consumer must do so within a reasonable time. What amounts to a reasonable time is relative and may depend on several factors ranging from the nature of the goods itself to the Return Policies of the supplier. For instance Jumia's Online Stores Return Policy provides for 7 days within which goods purchased and delivered can be returned, with full refund of purchase price and shipping fees where applicable.⁹ This policy is similar to that of the Konga online stores¹⁰. According to Stephen Ubimago, an editor with the INDEPENDENCE newspaper Where there is no clear return policy deadline, what is reasonable may range from 2 to 3 weeks upon notice of discrepancies¹¹

Where the Consumer returns it, he shall be entitled to a refund of shipping fees and other expenses associated with the delivery of the goods. See section 132(2) of the Act.

2.7 THE RIGHT TO FAIR DEAL

Section 124 of Federal Competition and Consumer Protection Act, 2018 prohibits businesses or agents acting on their behalf from using physical force, coercion, undue influence or pressure,

⁹ <https://www.jumia.com.ng/sp-returns-refunds/>

¹⁰ <https://www.konga.com/content/return-policy>



harassment, unfair tactics or any other similar conducts in the marketing, supply, negotiations or demand for payment or collection of goods and services or in the conduct of a legitimate business transaction.¹²

In addition to the above, the Act also protects the consumer from being taken advantage of by the seller due to the fact that the consumer was substantially unable to protect his/her own interests by reason of physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement or of any other similar factor.¹³

Where the factors mentioned above are manifestly present in a transaction, such transactions would be declared as unfair and subsequently set aside upon the complaint of the Consumer. In essence the law guarantees the right of consumers to repudiate a sale of product or services where it is manifestly obvious he/she was coerced to undertake same through the use of physical force, undue influence or pressure, harassment, unfair tactics or any other similar conduct.¹⁴ This unfair tactics as enumerated above can come in the course of the marketing of the product or services, the supply of such goods or in the form of some demand for payment of same e.t.c. ¹⁵ Every consumer is entitled to be treated fairly and not be taken advantage of by virtue of his physical or mental disability, illiteracy, ignorance or inability to understand the language of an agreement or similar factor.¹⁶ Where any of these infractions are made, the Consumer is entitled to seek redress and the unfair deal nullified or repudiated as the case may be.

2.8 RIGHT RELATING TO PERFORMANCE OF CERTAIN OBLIGATIONS

Section 130 of the Act 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 a manner or quality that a reasonable person is 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 reasonable persons are generally entitled to expect.¹⁷

¹² Section 124(1) of the Federal Competition and Consumer Protection Act, (FCCPA) 2018.

¹³ Ibid Section 124(2) FCCPA 2018

¹⁴ Section 124 of the Federal Competition and Consumer Protection Act, 2018.

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid



2.9 RIGHT TO SAFE AND QUALITY GOODS

Section 131 of the Act provides that consumer has a right to services performed in the manner and quality that reasonable persons are generally entitled to expect. Relating to quality, the FCCPA, provides that every consumer has the right to quality goods, in good working order, free from defects, and that they comply with any applicable standards set by the industry sector regulator. In addition, there is an implied warranty in any transaction that the goods comply with the applicable quality standards set out in the FCCPA, and the customer has a right to return the goods within a prescribed period for failure to comply with the foregoing.

Right to safety. Means right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services availed of should not only meet their immediate needs, but also fulfil long term interests. Before purchasing, consumers should insist on the quality of the products as well as on the guarantee of the products and services. They should preferably purchase quality marked products.

Even within a service, if there are options available, clients should be assisted in choosing an option based on their preferences. Right to safety: the services offered to the clients must be of good quality and not endanger the life and health of the clients.¹⁸

Conclusion

It is expedient therefore, that the Nigerian Consumer knows his rights to enable him have the best of quality goods and service delivery. When the consumer begins to exercise these rights it acts as check to manufacturers, sellers of goods and service providers to improve in their service delivery and the consumer will have the best of the market.

Disclaimer:

This article is for information purposes and is not intended as a legal opinion or advise on any issue. Therefore, any usage of this article must be with the proper legal guidance as the position of the law may have changed.

¹⁸ <https://www.banwoighodalo.com/assets/resources/418e11b577c7d187a13da793841b4996.pdf> accessed on 10th November, 2022

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