Abstract

Consumer protection laws have been necessitated by the imbalance of power relations between producers and consumers of goods. The quest for excess profit and the ‘get rich quick syndrome’ especially in developing countries have led most business owners to engage in unethical processes/practices which have exposed consumers to exploitation beyond imagination. To curb this anomaly, regulations were put in place by governments of most countries to enhance consumer protection and establish best practices for delivering goods and services to consumers. Subsequently, Consumer Protection Council was established in Nigeria to adopt measures in protecting consumers from exploitation, manipulation and harm. The aim of this paper is to high light the role of Consumer Protection Council in Nigeria, whilst giving a critical consideration to recent developments and challenges to enhancing consumer protection in Nigeria and recommending possible solutions. Key Words: Consumer, consumerism, consumer protection, consumer protection law

1.0 Introduction

Consumer protection appears to have remained a front burner issue in global terrain for ages. One of the basic purposes of human interaction has been economic interdependence. We need one another individually, corporately, nationally and internationally to complement our inadequacies. Since no one can be an island to himself, human interaction is virtually inevitable. What we need from one another may be conceptualised as “product;” the person who can provide the need becomes the “producer/manufacturer;” s/he who has the need is the “consumer.” The Consumer Protection Council Act defines “consumer” as “an individual who purchases, uses, maintains, or disposes of product or services.” The definition appears narrow and restrictive unless we choose to understand “individual” as encompassing corporate entities and groups. In this paper, we shall adopt the attribute of the consumer as an individual as defined by the Act.

Could the consumer also be a producer of some products needed by the producer? The producer may, for instance, need raw materials for its product. Let us consider the following scenario: Nigeria

---

1. All of the Department of Private and Commercial Law, Babcock University School of Law, Iperu-Remo Campus
exports cocoa seeds to the industrialised parts of the world as raw materials for production of chocolate and beverages. The producers of the chocolate and beverages import the modified cocoa beans for consumers in Nigeria in various forms. Similarly, Nigeria exports crude oil which buyers outside refine and import as petrol, diesel, kerosene and others. It appears settled that the use of the product for business is excluded in consumer protection issue. Cartwright, in support of the exclusion had mentioned:

s.20(6) of the Consumer Protection Act 1987, which states: ‘consumer’ (a) in relation to any goods, means any person who might wish to be supplied with the goods for his own private use or consumption; (b) in relation to any services or facilities, means any person who might wish to be provided with the services or facilities otherwise than for the purposes of any business of his; and (c) in relation to any accommodation, means any person who might wish to occupy the accommodation otherwise than for the purposes of any business of his.3

In some cases the exchange of products may be gratuitous and some other contractual and commercial. Whatsoever form of exchange it takes will attract the intervention of law where the product is substandard or may harm. There are always ethical expectations as well in the exchange. The ethical and legal expectations for fit and proper products for consumers is founded on the neighbourliness principle.4

The law has different perspectives on protecting (i.e. regulating) the exchange. The protection may be within the legal framework of law of torts; criminal law; commercial law or contract; and even human rights.5The parties in the exchange, it would appear, are quite easier to identify but the products appear not so easy to conceptualise. Are the products only goods within the definition of Sale of Goods law which include goods (like shoes, books, drinks, etc) and services (teaching, legal, auditing, cleaning, medical, architectural, telecommunication, media, labour services, etc)? If services are inclusive, would governmental services and politicians campaign be part of them?

The global recognition of the imbalance of power relations between consumers of goods and services and producers is heightened by quest for balancing the fundamental contractual principle of freedom/voluntariness of contract and the legal maxim of ‘caveat emptor’ (which means ‘buyers

---

To regulate this imbalance the United Nation set up a Guideline on Consumer Protection\(^7\) which has been adopted by most countries, Nigeria inclusive. It should be noted that there have been controversies on the rationale for government intervention in consumer-producer contractual relationship depending on the philosophy of the kind of market economy in a country;\(^8\) we shall not be discussing that in this paper.

Nigerian government over the years have set up agencies by legislation which are directly involved in consumer protection such as Standard Organization of Nigeria (SON), National Agency for Food and Drug Administration and Control (NAFDAC), National Drug Law Enforcement Agency (NDLEA), the Consumer Protection Council, the Civil Aviation Authority, the Economic and Financial Crimes Commission, Federal Road Safety Commission, the Nigerian University Commission, the Central Bank of Nigeria and the Nigerian Communication Commission, etc., to protect and safeguard the rights of consumers against unwholesome practices of producer and suppliers. Some agencies indirectly involved include the Nigerian Customs, the National Judicial Council, the Nigerian Broadcasting Commission, just to mention few.

Further to the protection, there have been various consumer protection legislation which include among numerous others, Sale of Goods Laws, Cosmetic Products (Prohibition of Bleaching Agents, etc.) Regulations, Consumer Protection (Products and Services Monitoring and Registration) Regulations, 2005, etc. The entire legislation and subsidiary legislation in form of regulations provided for consumer protection are too numerous to cover. This paper examines the role of the Consumer Protection Council in enhancing effective protection of consumers’ rights in Nigeria and highlights recent developments in consumer protection in Nigeria.

The Consumer Protection Council was first established under Decree 66 of 1992 as a consumer administrative agency to regulate the protection of consumers in Nigeria. The main function of the council is the administrative responsibility of ensuring that the interests of consumers receive due consideration and redress in the event of unscrupulous exploitation of consumers by producers and service providers; to what extent have they accomplished the goals; what are the recent developments and challenges in consumer protection in Nigeria; and what solutions are available?

### 1.1 Contextual Analysis

A consumer is broadly defined as a person who buys or uses goods and services, a consumer is therefore someone who acts freely and is not in any way coerced or forced into the relationship between him and the producer\(^9\). But beyond that the consumer is also believed to be a user or

---


buyer of ideas. A consumer has also been generally defined as any natural person or legal entity to which a product or service or idea is offered on the market is addressed. The Consumer Protection Council Act however exempted idea. To that extent we shall be limited to the perception of the Act.

The producer has been described as encapsulating the manufacturer of goods or provider of service, the wholesaler, and the retailer. He is essentially the person who produces the product for the consumer. The consumer purchases for his personal use the goods or services provided by the producer.

Consumer protection, notwithstanding having been around for such a long time, is difficult to define. Unlike other aspects of law that have been classified for teaching convenience, law of consumer protection has not been recognised as a subject like criminal law, law of torts, commercial law, law of contract, etc.

Monye asserts that although consumer protection emerged out of the ambit of the law of contract, it has developed into an independent area of law. Every time there is a purchase, be it of goods and services a contractual relationship is established. According to Ladan, "Consumer protection is about the provision of appropriate and effective mechanisms to protect the pecuniary, health, safety and security interests of all legal persons against misleading, fraudulent and harmful business practices, including manufacturing, trading, packaging, advertising, distributing and selling of products/goods and services to the ultimate consumer."

Consumer protection law may be described as a process which begins with the regulations and ethics of production by the producer, through prescription and supervision of the producer's product, to enlightening the consumer of his rights including providing ways for individuals (consumers) to fight back against abusive business practices, to providing access to justice for consumers and sanctioning erring producers. These laws are designed to hold sellers of goods and services accountable when they seek to profit by taking advantage of a consumer’s lack of information or bargaining power. Some conducts addressed by consumer rights law are simply unfair, while other conducts can be described as outright fraud.

Flowing from the description of consumer protection, the laws regulating the process essentially make the consumer protection law. Consumerism may be described as that aspect of the
description of consumer protection which provides for consumer rights to cooperatively fight back against abusive producers or demand products fit and proper for consumption, including fighting back the regulators where lacking in living up to responsibility.

In Nigeria, consumer rights law exists both at the federal and state levels and are administered by agencies such as Standard Organization of Nigeria (SON), National Agency for Food and Drug Administration and Control (NAFDAC), National Drug Law Enforcement Agency (NDLEA), the Consumer Protection Council and the Nigerian Communication Commission just to mention a few.

1.0 Role of Consumer Protection Council

Of all the aforementioned bodies, the Consumer Protection Council is directly charged with the function of consumer protection in Nigeria, this sub-section will therefore be dedicated to an examination of the role of Consumer Protection Council in ensuring effective protection of consumer rights in Nigeria.

The Consumer Protection Council is a parastatal of the Federal Government under the auspices of the Federal Ministry of Trade and Investment, established under Decree No. 66 of 1992 by the Sanni Abacha’s administration to (i) provide speedy redress to consumers complaints through negotiations, mediations and conciliations; (ii) seek ways and means of removing or eliminating from the market hazardous products and causing offenders to replace such products with safer and more appropriate alternatives; (iii) publish from time to time list of products whose consumption and sale have been banned, withdrawn, severally restricted or not approved by the Federal Government or Foreign Government; (iv) cause an offending company, firm, trade, association or individual to protect, compensate, provide relief and safeguards to injured consumers or communities from adverse effects of technologies that are inherently harmful, injurious, violent or highly hazardous; (v) organize and undertake campaigns and other forms of activities that will lead to increased consumer awareness; (vi) encourage trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of the consumers; (vii) issue guidelines to manufacturers, importers, dealers and wholesalers in relations to their obligation under this Decree; (viii) ensure the formation of voluntary consumer groups or associations for consumers wellbeing; (ix) ensure that consumers’ interest receive due consideration at appropriate forum and (x) provide redress to obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade association or individual, amongst others.

2.1 Provision of Speedy Redress to Complaints

There are Acts for the federal and laws for the states.
Section 2(a) of the Consumer Protection Act requires the Council to attend in haste to the complaints of consumers through three different methods of alternative dispute resolutions namely negotiation, mediation and conciliation. A typical instance of the discharge of the Council’s role in that regard was in 2013 when the Council acted based on consumer complaints in respect of the quantity of consumable products produced and marketed by Nigerian Bottling Company (NBC). The Council, in response, set up a panel which invited both Coca-Cola Nigeria Limited and Nigerian Bottling Company to provide responses to the complaint, and also provided them repeated opportunities to make representations, provide information and address sundry issues arising out of the complaint and their operations.

2.2 Removal of Hazardous or Harmful Products from the Market

To maximize profit, manufacturers do carry out a just act with an unjust measure which may be a threat to the life of consumers in the form of hazardous products. Section 2(b) of the Act empowers the Council to device means of removing products that are harmful from the market and cause manufacturers that produce such harmful products to replace such with products which are safer to use and are alternatives to such harmful products. To discharge this function effectively the Council in alliance with the National Environmental Standards Regulations Enforcement Agency (NESREA) has initiated measures to eliminate hazardous products in Nigerian markets.

One of such hazard is the sale of drugs to consumers on the streets as though they were mere bottles of water. The general rule is that administration of drugs must be based on doctor’s prescription; the illegal and unethical act of sale of drugs by hawkers causes more harm than good. In collaboration with NESREA, the Council had apprehended drug hawkers who hawk controlled drugs such as Tramadol in Abuja markets, motor parks and make-shift shops in uncompleted buildings and alerted other relevant regulatory and security agencies of the implications of such sales on the welfare of Nigerian consumers.

Another instance of the discharge of Council’s role in this respect occurred in the case of CPC v NBC and Coca-Cola. The Council ordered the manufacturer of Coke, Sprite, Fanta and Five Alive to subject their manufacturing process to the scrutiny of inspection for a period of twelve months. The purpose was to ensure compliance with safety standards and regulations. The company was also requested to formulate and make available to the Council a shelf life policy within 90 days in order to facilitate the removal of expired products from the market.

2.3 Publication of banned, withdrawn, restricted or not approved products

15LFN 2004
18 Available at <http://thenationonlineng.net/cpc-vs-nbccnl-probing-the-half-filled-bottles/> accessed 3 May 2016
Draft Paper Presented at 49th Annual Nigerian Association of Law Teachers (NALT) Conference

By the provisions of Sections 3(e) and (f) the Council is empowered to ban the sale, distribution and advertisement of products which do not comply with safety or health regulations and to compel manufacturers, dealers and service companies where appropriate to give public notice of any health hazards inherent in their products. In furtherance of the function, the Council banned the production and consummation of the local gin otherwise known as ‘ogogoro’ because it is harmful to consumers.19

Section 2(c) of the Consumer Protection Council Act, 2004 empowers the Council to publish from time to time, list of products it has declared banned, withdrawn from the market, or products lacking due approval from the Federal Government of Nigeria. In fulfilment of this mandate, the Council published its ban on importation of specific poultry products and adopted a three-pronged approach against the existence of the products, namely (i) the sensitization of consumers on the dangers of the consumption of these products (ii) the removal of the products and (iii) collaboration with relevant stakeholders to ensure compliance. The recent nationwide sensitization and enforcement campaign against smuggled poultry products in Nigeria drives this point home.20

2.4 Enforce Compensation of Victims by Offending Companies

Section 2(d) empowers the Council to enforce compensation of consumers or communities (by offending company) which may have been victims of technological operation being carried out by offending companies. In response to the recent admission of allegation that certain illegal ‘defeat device’ software was installed in Volkswagen vehicles to cheat emission test, CPC in fulfilment of its mandate under Section 2(d) issued a seven-day ultimatum to Volkswagen Nigeria to provide information on the status of its vehicles in relation to the emission cheating device which has reportedly affected 11 million cars worldwide.21 The point here is that there has been a misrepresentation to the consumer from the producer.

In 2013, CPC uncovered the circulation of a sub-standard cigarette known as Pine Classic and warned Nigerians to be wary of its consumption. The Council, following a discovery from its surveillance activities, disclosed that the cigarette had no production date, no expiry date and no manufacturer’s address.22

2.5 Undertake and Organize Campaign/Activities to Increase Consumer Awareness

Section 2(e) bestows on the Council the function of campaigning to promote public awareness of consumer rights, and to demand that these rights be respected and protected. To fulfil this

mandate, CPC on 15th March of every year joined the rest of the World to mark World Consumers Rights Day during which time it promotes the basic rights of all consumers, demanding that these rights are respected and protected and at the same time protesting the market abuses and social injustices which undermine them.23

In 2010, the CPC embarked on an awareness campaign in partnership with United Bank of Africa (UBA) to deal with the complaints of customers on the use of ATMs and other shortcomings of financial service operators. The campaign which focused on consumers’ rights relates to financial services and the enlightenment of customers on bank activities and how to carry out banking business without any problem. The campaign took place in 40 branches of UBA across Nigeria.24

Consumer Protection Council also partnered with Federal Road Safety Corps (FRSC) in order to resolve issues of welfare and safety of consumers by creating awareness about the unethical practices of some of the service providers in Nigeria and educate the consumers on their rights.25

### 2.6 Partnering with Industry and Professional Associations to Encourage the Enforcement of Quality Standard

Paragraph 2(e) further bestows on the CPC the responsibility of partnering with trade, industrial and professional association to enlighten manufacturers on the need to promote and protect consumer rights and to advance and implement diverse quality standards that will advance consumer protection. In fulfilment of this mandate CPC has partnered with the Manufacturers Association of Nigeria (MAN)26, through which it made known to the manufacturers of various products the acceptable standards for their products, in the event of a default in maintaining minimum standard, the association under which the manufacturer of the products fall can also act as a check on the defaulter.

CPC has also partnered with the National Union of Textile, Garment and Tailoring Workers of Nigeria (NUTGTWN) in ensuring effective protection of consumer rights in the textile and garment industry.

### 2.6 Issue Guidelines to Manufacturers, Importers, Dealers and Wholesalers

Section 2(g) empowers the Council to issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligations under the decree. For instance, the Act provides that it is the obligation of manufacturers, importers, dealers and wholesalers to notify the public of


26The Manufacturers Association of Nigeria was created to serve as a link between the manufacturers, the government and the general public. It comprises of various manufacturers in the sectors of production and provides for standards that the manufacturers need to follow while producing their products.
hazardous goods\textsuperscript{27}. Section 2(g) empowers the Council to enforce this duty through the issuance of guidelines for manufacturers, importers, dealers and wholesalers to follow in order to ensure that the consumer interest is guaranteed and appropriate standards for goods and services are maintained in their requirements for products and service registration.

In discharging that obligation CPC issued label requirements to manufacturers and notified Leaf Tobacco & Commodities (Nig.) Limited that one of its product named Peterfield Special Menthol Cigarette circulating in the country’s market has failed to comply with its labelling requirements.\textsuperscript{28}

Also in 2015 CPC began the advocacy for the adoption of a consumer friendly labelling for beverages and food products in the country. According to the Council’s Director General, Mrs. Dupe Atoki, “consumer friendly ‘traffic light’ is very simple for consumer to read and understand at first glance, noting with regret that most consumers are illiterates and even the so called literates lack the skill or time to interpret detailed nutritional information on the back of the package”.\textsuperscript{29}

\subsection*{2.7 Encourage Formation of Consumer Association}

Consumer association comprise of consumer groups, this is a group of people (mostly NGO’s) set to protect the interest of other consumers against abuse or potential risk of certain goods and services. A consumer group has been defined as "an organization that works to protect the rights and interests of people who buy things or use services, especially by making sure that businesses act fairly, that products are safe, and that advertising is honest..."\textsuperscript{30}

Its major function is to inspect goods and services, review benefits or detriments of the products or services and publish it for customers to see in order to be guided when purchasing products. Upon publication, such reviews are forwarded to regulatory bodies such as CPC who will then take steps to protect/curb such risks for other potential consumers.

Another function of the consumer association is to protect the interest of the consumer through advocacy of consumer right to safety, right to information, right to range of choice, right to be heard, right to satisfaction, right to consumer education, right to consumer representation, right to a healthy environment, right to redress amongst others. By creating awareness on consumer rights, the public or other consumers are warned against the risks of using a particular product. These rights are also enforced by warning consumers of potential risk and safety precautions.

An example of consumer group in Nigeria is Consumer Rights Advocacy Network (CRANET). This group is an organization that advocates for consumer rights in Nigeria. Another example is Nigerian Communication Commission (NCC), a body which informs and educate consumers in the


\textsuperscript{28}“CPC gives 7 day ultimatum to Tobacco Company over sub-standard cigarette,” 8\textsuperscript{th} June, 2013, available at \url{http://www.cpc.gov.ng} accessed 25 February 2016.


\textsuperscript{30}See \url{http://dictionary.cambridge.org/dictionary/english/consumer-group} accessed on 4 May 2016
telecommunication industry. It is worthy of note that the role of a consumer group is to complement the functions of regulatory bodies such as CPC and not to take over its functions. However, the Nigerian experience has revealed that regulatory bodies sometimes pay lip service to protection and promotion of consumer rights especially when the health of consumers are at risk.

Two instances attest to this submission; first is the recent case of an eatery in Lagos exposed for using expired dairy products in the discharge of its services to the Nigerian public, NAFDAC closed it down but the eatery reopened after 3 months. Another instance was the exhumation of frozen foods which were seized and buried by custom officials, no arrest was made.

2.8 Redress Obnoxious Practices and Unscrupulous Exploitation of Consumers

It is the duty of the Council to ensure that consumer’s interests receive due consideration at appropriate forum and to provide redress to obnoxious practise or the unscrupulous exploitation of consumers by companies, firms, trade associations or individuals.

To discharge this function, the Council runs a radio programme tagged ‘Consumer Speaks Radio Network’, through which consumers are engaged to lodge complaints and such complaints, are addressed by the Council. Also during the programme, stakeholders are sometimes invited to educate and enlighten consumers on their rights and responsibilities and to clarify issues of unscrupulous exploitation of consumers that may arise from previous edition. Sometimes the Council puts its staff from different department on the hot seat to respond to issues and tell consumers what they are doing to protect them from the excesses of service providers.

It remains to be seen if the CPC covers unfair pricing or market cornering poor other economic strategies that corporations use, which are in line with open market and free contract theories but have some antitrust implication? For instance, the Multi-choice operated DSTV increase in price in 2015 without any warning or justification, taking advantage of the near monopoly of the market. Some sued the organisation in representative capacity at the Federal High Court but which case was eventually dismissed. Also, the Nigerian Electricity Regulatory Commission (NERC)made a sudden announcement of increase in tariff but for a brief intervention of the Court. Does the CPC or any other consumer protection provision cater for these?

In addition, Section 6(2) of the Act provides for redress in the event of infringement of consumer rights while Sections 9(2) of the Act provides for penalty for infringement of the provisions of the Act amongst others.

---

32 See the story on "Community exhumes, consumes frozen chicken buried by Customs"

34 “Court stops NERC from increasing electricity tariff” available at <http://nationalmirroronline.net/new/court-stops-nerc-from-increasing-electricity-tariff/> accessed 6 May 2016
Monye had queried whether an aggrieved consumer who has obtained redress through the Council or State Committee may maintain a civil action against the offending producers or service providers. She concluded that the better approach was to give the consumer the option to seek redress either through the Council or State Committee or to institute a civil action to enforce his right.35

2.9 Registering and monitoring products, services and sales promotions

To effectively police the market and ensure that businesses are committed to fulfilling their obligations to consumers the Council through different associations register businesses and monitor their activities. For instance, through the activities of the Manufacturers Association of Nigeria36, the Council has been able to partner with manufacturers of products in ensuring compliance with minimum standard of protection for goods and services. Also, by a gazette signed to law on 1st March 2005 the Consumer Protection Council Act (1992 No. 66) Consumer Protection (Products and Services Monitoring and Registration) Regulation 2005 christened PROSERVE. The main purposes are “• To establish a products and services Listings Regime • To establish a Monitoring, Inspection and Verifications Regime for validation of statuses and compliance of products and services with available standards and regulations • To provide pertinent information about products and services to consumers • To enhance general consumer awareness and their operations in the marketplace • To facilitate efficient resolutions of consumer complaints.”37

3.0 Recent Development and Challenges in Consumer Protection in Nigeria

This section would raise more questions than answers because it critically highlights the challenges that need dire attention call for comprehensive and wholesome consumer protection in Nigeria. It would appear that consumer protection drive in Nigeria has remained at elementary implementation. The CPC has been shown to have made considerable effort at meeting its purpose but not enough. The CPC is particularly incapacitated by the uncomplimentary attitude of other agencies and particularly the justice system. The standard of proof required by the courts in many cases and the requirement of causation have rendered consumer protection in the Nigerian legal system impotent.38

Hitherto the legal protection afforded to consumer is traceable to the rule laid down in Donoghue vs Stevenson. That rule provided the courts with the traditional normative approach to resolving legal matters. Interestingly, the courts appear to have a phobia for moving away this normative approach

36Manufacturers Association of Nigeria is an association created to serve as a link between the manufacturers, the government and the general public, it comprises of various manufacturers in the sector of production in the country and provides for standards that the manufacturers need to follow while producing their products.
to what has been classified as positive law and economics approach.39 Within the so-called normative approach the courts have been reluctant to enforce the rights of consumers against those of producers. Cases bordering on negligence of food and drink producers similar to that of the *locus classicus* case of *Donoghue v Stevenson* have consistently been decided in favour of the producer/manufacturer with exception of few occasions which are eventually overturned on appeal.40 This same approach has been applied by the courts to negligence of banks in electronic and internet banking. The Nigerian Inter Bank Settlement System (NIBSS) had reported that in 2014 Nigeria recorded 1,461 cases of electronic fraud.41 More often than not ATM frauds are resolved in favour of the banks. The evidence usually lies more in the custody of the bank who would even when requested to provide the evidence through notice to produce hardly obliges the Claimant and since there is no serious consequential effect of the refusal the Claimant is denied evidential proofs in support of his claim. In many of the cases the banks rely on the exemption clause that the Claimant had one time or the other revealed his or her ATM PIN to a third party. The same argument is made in incidents of fraud in internet banking. Notwithstanding the challenge of internet hacking, phishing and malwares the courts allow banks to walk free of negligence where Claimants allege fraudulent withdrawals from their accounts.

It could be argued that the effect of the posture of the courts imply positive law and economics approach by the courts. Perhaps the courts are ambivalent of the effect of holding the banks negligent would have on the hitherto ailing banking sector. Perhaps the courts think it would open a floodgate of cases. But that, with due respect, should not be the rationale if it were. The courts ought to balance the economic implication of the decisions against the economic and contractual rights of consumers as well. Some have in fact alleged corruption as the basis of the posture taken by the courts; the banks have bigger bags.

However, the position of the law in recent times appears more complicated, the following cases X-rayed recent developments in the legal protection of consumer in Nigeria. For instance, in the case of *Boardman v Guinness (Nig.) Ltd*42 the court had applied the doctrine of strict product liability in favour of the Claimant in contrast to the more recent and conflicting decision in cases of *Ebelamu v. Guinness (Nig.) Ltd*43 and *Nigerian Breweries PLC v. David Audu*44 where the courts ruled that the doctrine of strict product liability was inapplicable in Nigeria.

Developed and developing jurisdictions tend to bring in law and economics approach through the adoption of anti-trust laws. These are founded in competition laws that seek to discourage

42 (1980) NCLR 109
43 FCA/1/101/82, Monday Jan. 24, 1993
44 (2009) LPELR-8863 (CA)
Draft Paper Presented at 49th Annual Nigerian Association of Law Teachers (NALT) Conference

monopoly and promote competitive productions for the benefit of quality choice for consumers in the marketplace. There have been agitations in that direction in Nigeria. But the question is whether that is the best for Nigeria now?

With the adoption of competition law must come the flexibility of intellectual property rights. Otherwise, the agitation for competition law would have no substance. Whereas developed jurisdictions have laid emphasis on patents and developed a system of recognition of thin distinctions of patents to allow for competition among producers, the same appears yet to be seen in Nigeria. The case of genetic modified products of farm produce now been patented for the benefit of the Western producers has become a major challenge. Scholars, especially from developing countries, have raised pertinent queries about some conflicts engendered by the position of the West as regard intellectual property rights. The TRIPS agreement does not seem to favour developing countries especially Africa. Take for instance the issue of indigenous knowledge. Owing to the standards already set for the recognition and registration of patents certain indigenous knowledge including agriculture and traditional medicine have found it difficult to gain recognition of the international community. The worst part of the challenge has been the undue advantage taken by the West over African farmers and traditional medicine practitioners.\textsuperscript{45} Africa has a very wide varieties of agricultural produce which they had maintained and replicated for centuries though not in so much sophisticated fashion as the West’s. Interactions of the West with Africans from colonial days to the present day have afforded the West the opportunity to explore and exploit African agricultural varieties. In the process they subjected the varieties to scientific experiments and where they have been able through genetic capabilities modified a variety to bring about a better yielding product they patent same and relegate the other varieties by casting them as poor yielding produce. By so doing a great deal of limitation of varieties started and have continued unexacerbated. The more nourishing produce have been exchanged for economic but content ridden genetically modified products.

If that were the only problem with the monopolistic trend of the West’s exploitation of the agriculture varieties perhaps dialogue would have been effective in resolving the issue. But the effect of the genetically modified products is a more hazardous problem. Recently advertisements are being made on the Nigerian media that the people should not be scared by genetically modified food as they have been certified okay before coming into market. In other words, the natural food (otherwise known as “organic” in the West) is being discarded for the unnatural. Meanwhile science has proved that genetically modified products are not as healthy as the natural. Researches are ongoing to verify certain claims that the unnatural food products are harmful to health.\textsuperscript{46} Some of the highlighted disadvantages include toxicity, tendency to initiate allergic reaction, nutritional


\textsuperscript{46} See Nataliya Mogilna, Alex Magufwa, "Genetic Modified Foods: Advantages and Disadvantages” (2009) Sumy State University, Sumy, Ukraine 2009
deficiency, destabilisation by genes inserted, any other unintended effects of the hybrid of the genes, etc.

The taste of the natural against the unnatural is another issue entirely. Having a taste of naturally grown corn and fertilizer grown corn would readily convince a doubter. There is wide difference in taste of naturally bread fowls and genetically modified counterparts.

Another challenge of the patented products is the permission for food preservatives for storage purpose. Foods exported from other countries do not have the same time-lag for consumption as those within the exporter’s community. The use of preservatives have been scientifically proven to be inimical to human health.

A recent trend in product packaging allowed by the regulators is re-labelling of expired products. It has been found that certain products where properly preserved and kept in good condition may outlive the marked period of expiration. The regulators have relaxed the rule for such products and allowed producers of such to re-label the products and extending the expiration time. Although NAFDAC demands that such products must be verified at their laboratory, it is a very dangerous permissiveness. Given the socio-economic nature of the Nigerian system, that permissiveness may be abused and become a norm to the detriment of consumers.

Although there is the Food and Drug Act for the regulation of standardised products, it is yet to be seen if locally produced agricultural produce are subjected to SON standards before being released into Nigeria’s local market. Apart from lack of verification of the source of production, lack of tests of the produce for quality control, there is the debilitating unhygienic packaging of food produce and products in Nigeria. In the popular Mile 12 Market in Lagos, fruits, tomatoes, yams, meat are packed and dumped on refuse infested bare ground full of mud and dust. The products are bathed in sweats and unhygienic water. The regulatory agencies appear not concerned with such hazard perhaps because it is seen as an informal market. Incidentally, the products may be good in themselves but by negligent and careless handling become polluted by the dirt or in fact diseased.

The economic downturn in Nigeria and the growing inflation have rendered quite a percentage of the population economically handicapped and unable to afford the cost of new cars. The result is that used vehicles are allowed into Nigeria with caveats which are not enforced. Even where the year of manufacture is limited the fact remains that the vehicles are unpredictably hazardous and harmful to the buyer and the society at large. The regulatory laws are indeed available to check this menace but the implementation agencies have refused/neglected to live up to their duty. Similar to the used car position is that of other machinery imported as used. Mechanical objects are prone to unpredictable breakdown that may result in harm to the consumer.

The emergence of advanced technology has enhanced new forms of exploitation of consumer rights in the telecommunication industry as well as through e-commerce hence the need to highlight recent developments in consumer protection necessitated by advance technology and proffer solutions to it. There are online outlets like OLX, Jumia, Konga, etc. The negotiation for sales are
done online. There is no physical presence for the consumer to verify claims to quality of the product and often times the shrink wrap agreement is made and the consumer/buyer hardly has the patience to thoroughly go through the long and tiny printed agreement.47

The Way Forward and Conclusion

In view of the recent developments and challenges highlighted above, it is recommended as follows:

1. There is need to re-appraise the conceptual framework of consumer protection in Nigeria to make it more encompassing and meet the recent products classified under innovative features in today’s marketplace.

2. Empirical research must be carried out in the different aspects of consumer protection before any amendment to the laws regulating consumer protection in order to attain a more realistic and well informed amendments.

3. The CPC Act needs to be amended to accommodate virtually all regulatory bodies as part of the Council membership. The Act is not verbose. But it demands a lot from the Council which membership is so limited to very few regulatory agencies;

4. The CPC must be adequately funded to enable it meet all the set goals;

5. It is time for the Council to make regulations in relation to agricultural produce especially as regard organic and genetically modified foods and products.

6. There is need for the Council to provide regulation for e-commerce in Nigeria.

7. The Courts have got to be up and about in complementing the role of CPC by being more liberal and realistic in the approach to consumer protection cases. The consumer must be protected from the ‘almighty’ producers still within the ambits of substantial justice.

In conclusion, the CPC must be efficient and effective. The extent of its effectiveness would be the measure of the quality of the life of the citizen. The consumer should be protected adequately from both local and international producers.