

# THE IMPACT OF CONSUMERS' PROTECTION LAWS AND THE REGULATORY SCHEMES IN NIGERIA

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## ABSTRACT

*This Study was a review of the impact of Consumers' Protection Laws and the Regulatory Schemes in Nigeria. The logical conclusion that readily flows from the context analysis of this study is that the Courts, relevant Consumer Protection Statutes and Regulatory Agencies have failed to offer the desired and much expected protection to the Consumer. Consequently, the Consumer is simply left unprotected and at the mercy of unconscionable manufacturers and pretentious traders. A model Consumer Protection Law that affords a remedy on the basis of defect in consumer goods, rather than resultant injury to the consumer among others is recommended.*

*Keywords: Consumers' protection laws, regulatory scheme, Courts, Statues*

## INTRODUCTION

Effective regulation of manufacturers' activities and quality of consumer goods by relevant regulatory Agencies through the implementation of applicable laws is crucial to the regime of sustainable consumer protection. This is against the backdrop that the consumer's bargaining power is perpetually weakened by a number of factors among which is the fact that manufacturers and other key players in the chain of distribution, in their unabated quest for avariciousness consciously and deliberately put in the overt market potentially dangerous and shoddy consumer products, unwholesome and adulterated food, fake and substandard drugs with the least consideration for, and to the detriment of consumer's health and safety, This was succinctly summed up by Anigolu J.S.C in the following words:

*...nothing appears to be elementary in this country where it is often the unhappy lot of consumers to be inflicted with shoddy and unmerchantable goods by some pretentious manufacturers, entrepreneurs, shady middlemen and unprincipled retailer whose avowed interest seems only, and always, to be to maximize their profits leaving honesty a discounted and shattered commodity<sup>1</sup>.*

The foregoing scenario presents major challenges to consumerism and consumer protection with reference to standardisation, product liability, Merchandising Marks, and questions whether the appropriate regulatory agencies in the implementation of relevant statutory provisions have been able to effectively deliver on their mandate to offer adequate protection to the consumer. The position taken in this paper upon a dispassionate appraisal of the salient factors is that no remarkable positive impact

has been made in this direction. The reasons although numerous are not far fetched, namely that although adequate statutory provisions exist for the protection of consumers in Nigeria, prescribed imprisonment terms and pecuniary penalties are mild and therefore unable to deter prospective offenders in the light of prevailing socio-economic climate in the Country. In addition, enforcement machinery is weak, and easy for most offenders to circumvent. The integrity and lackadaisical attitude of a larger number of the enforcement officers pose even a greater challenge to the realization of consumer goals. The foregoing shortcomings are compounded by lack of awareness on the part of consumers, predominance of illiteracy in our society, inadequate publicity and public enlightenment by appropriate regulatory agencies.

### **CONSUMERISM AND THE CONCEPTS OF STANDARDISATION, TRADE MARKS AND PRODUCT LIABILITY**

Consumerism can hardly be discussed in isolation of an assessment of the impact on it by the concepts of standardisation, trade marks and product liability. In this paper, a brief exposition of these concepts is made to establish the fact that neither the laws nor the courts have lived up to the expectation of affording the expected protection to the consumer. Standardisation relates to the ascertainment of items in relation to stipulated standards of weight, length, capacity, volume, area, capacity, area or number with a view to ensuring compliance with the Nigerian trade standards<sup>2</sup>. Within the context of this discussion, "item" used for trade, including food, drinks, oil (edible and lubricating), premium motor spirit (petrol), re-packed goods. Under the Weights and Measures Act<sup>3</sup>, it is an offence to sell, offer, or expose to consumers, any loaf of bread that is less than 225 grammes in net weight<sup>4</sup>.

Despite the carefully planned statutory provisions, some avaricious and unprincipled businessmen short change consumers at filling stations, by wanton adjustment of calibrated liquid meter pumps with the consequence of under dispensation of petroleum products to consumers. Power supply in Nigeria apart from being epileptic and characterised by incessant voltage fluctuation, culminating in extensive damage to consumer's electrical appliances and lighting system. The Weights and Measures Act<sup>5</sup> takes no cognizance of agricultural products. Substandard and adulterated fertilizers are packaged and labeled as high quality products. Poor quality seedlings are sold as exotic breed by firms and middlemen in the agricultural sector to unsuspecting peasant, and most times, illiterate farmers.

A Trademark is any visible sign adopted by a manufacturer to distinguish his product from goods of the same general description<sup>6</sup>. An infringement of trade mark which could be against goods or trade consists of the unauthorised use or colourable imitation of a trade mark on substituted goods of the same class as those for which the trade mark has been appropriated with the result that intending customers could readily confuse one product for the other. The gist about trademarks was summed up by Lord Cranworth L.G, in *Seixo v Provenzende*<sup>7</sup> as follows:

*Where a manufacturer has been in the habit of stamping the goods which he has manufactured with a particular mark or brand so that persons purchasing goods of that description know them to be of his manufacture, no other manufacturer has a right to adopt the same stamp.*

Distinctiveness has always been the fundamental essence of granting injunction in favour of objectors against the simultaneous use by imitators of trade marks similar to that of the objector. Furthermore, the endless in-fighting and litigation between manufacturers over the protection of merchandising marks is, primarily to safeguard their economic interest and ensure continuity in the use and distinctiveness of the marks. A manufacturer would hardly resort to litigation against the imitator of his product, for the singular purpose of protecting the consumer of his product. The fact that the consumer ends up being protected from being fed with imitation is coincidental and consequential.

The foregoing allusions are eloquently attested to by the following judicial authorities. In *Alban Pharmacy Ltd v. Sterling Products International Inc*<sup>8</sup>, Ademola C.J.N. opined that the criterion for determining what constitutes an infringement was that "The mark sought to be registered must not when compared with what is already registered, deceive the public or cause confusion". In this case, the owners of the trade mark "Castoria" objected to the defendant's application to use the mark "Casorina" on medicines of the same type as sold by the objectors. The court was of the view that the objector's apprehension about the possibility of confusion was well founded, having regards to the similarity in the dominant syllables in both marks. Similarly, in *Iyke Merchandise v. Pfizer Inc & Anor*<sup>9</sup>, the plaintiff/respondent (Pfizer Inc) has been engaged in the manufacture and sale of a pharmaceutical product, a worm expeller for the treatment of worms in children and adults, known as "Combantrin Plus" duly registered under trade Mark No. 31159. Thereafter, the defendant/appellant (Iyke Medical merchandise) also a pharmaceutical outfit, sought to put in the market a product known as Combiterin which is also for the treatment of worms in both children and adults. The plaintiff's action for injunction, order of delivery up for destruction of the infringing product (Combiterin), and general damages succeeded.

Product liability<sup>10</sup> is a tort which imposes liability on manufacturers and sellers of products that are manufactured or sold in defective condition. A product is defective if it is unreasonably dangerous to the user. Liability is tied to physical or emotional injury to the ultimate consumer. See: *Constance Ngonadi v. Nigeria Bottling Company Ltd*<sup>11</sup>. The greatest challenge to the consumer in product liability cases is in the area of food poisoning and adulteration of drinks. The courts are inherently disposed to holding the presumption of due exercise of care in favour of manufacturers of unwholesome food and drinks, despite genuine and obvious proofs to the contrary by the injured consumer. The manufacturer is exonerated on the mere mention that it exercised the required standard of care and expertise in the packaging of food or bottling of drink<sup>12</sup>. This state of affairs leaves the injured consumer in a state of

helplessness, frustration and loss of confidence in the judicial process as can be gleaned from the following cases.

In *NBC Plc. v. Okwejinor & Anor*<sup>13</sup>, the respondent bought a crate of coca-cola drink from the appellant. While drinking a bottle of fanta, he felt some sediment down his throat and stopped drinking and discovered that it contained some particles of foreign bodies. He also discovered that another bottle in the same crate contained identical foreign bodies. He developed stomach pain and was rushed to the hospital where he was confirmed to be suffering from poisoning which could have been caused by the Fanta he drank. The trial court awarded the plaintiff the sum of N950,000.00k. The Court of Appeal reversed the decision and held that because the consumer ate breakfast earlier on that day (bread and coffee) before leaving his house, it could not be concluded that the Fanta orange caused the injuries complained of<sup>14</sup>. In *Okonkwo v. Guinness Nigeria Ltd*<sup>15</sup>, the plaintiff drank small stout, brewed by the defendant. The drink which contained particles of roots, leaves, and bark of tree. The plaintiff relied on the principle of *Res Ipsa Loquitur*. The trial judge rejected plaintiff's case and held that the plaintiff could not establish that the defendant was the manufacturer of that particular bottle of stout; and that he could not also prove when the drink left the manufacturer. He finally held that the principle of *Res Ipsa Loquitur* did not apply to the case. In his words, *Obi-Okoye.J* summed up his judgment as follows:

*In conclusion, let me say this, Donoghue v. Stevenson did not create a magic for the recovery of damages against manufacturers of drinks by ultimate consumers of the drinks, A plaintiff in a case of this nature realizes that unless he has obtained admission of certain facts from those he sues, the burden which he has assumed of establishing his case is enormous: no presumption exists in his favour; all the ingredients of the case must be proved by credible evidence at the trial. If therefore he is not in a position to discharge such burden, it is pointless instituting the action at all.*

In *Nathaniel Ebelamu v. Guinness Nig. Ltd*<sup>16</sup>, the plaintiff at the occasion of his 10th anniversary of his wedding organized a party and treated his guests to food and drinks. Some of the invitees who drank harp beer, a product of the defendant developed stomach pains, vomiting, and were rushed to a nearby hospital, where they were diagnosed of food poisoning. One unopened and two opened bottles and of the harp beer were sent for laboratory analysis, and were found to be poisonous. Despite the overwhelming evidence, the court dismissed plaintiff's claim and stated *inter alia* that no nexus had been created between the opened bottle and the unopened ones; and that a manufacturer owed no duty to ensure that its product was perfect, beyond taking reasonable care to ensure that no injury was done to the consumer. In his judgment, *Oshodi.J.* held that:

- (i) There was no nexus between the opened bottles and the unopened ones;
  - (ii) A manufacturer owed no duty to ensure that the goods are perfect, but merely to take reasonable care that no injury is done to the consumer or ultimate purchaser;
  - (iii) The principle of *Res Ipsa Loquitur* has no place in a case of this nature.
- In *NBC v. Olarewaju*<sup>17</sup>, the plaintiff/respondent purchased two bottles of

coca-cola, a product of the appellant. After taking some content of the drink, he noticed visible particles in it. He also saw similar particles in the unopened bottle. Thereafter, the respondent felt unwell and consulted a doctor. He thereafter instituted an action for damages at the Ilorin High Court, and was awarded damages. On appeal by the appellant, the Court of Appeal, Ilorin, reversed the appeal on the ground that the respondent could not establish a direct link between the coca-cola he drank and his ailment. In his judgment, Ogunwumiju J.C.A stated:

*What is most relevant in the circumstances of this case is whether or not the respondent was able to prove on a balance of probabilities that he drank a contaminated bottle of coca-cola and became ill as a result of it.....Merely brandishing Exhibit-A, an unopened but obviously contaminated bottle of coca-cola is not enough.*

In *Boardman v Guinness (Nig) Ltd*<sup>18</sup>, the plaintiff drank an unwholesome liquid content of Harp beer in an ill lit room. It was found to contain a considerable quantity of sediments. The plaintiff filed an action for negligence against the defendant, for the manufacture of adulterated beer. The defendant in its defence gave a detailed account of the manufacturing process to show that the drink was produced under the strictest scientific brewing and quality control process, such that the presence of extraneous or deleterious substance could easily be ruled out. The court discountenanced the laboratory report which revealed that the beer contained certain bacteria and held that the plaintiff had failed to show that the defendant was guilty of negligence. This was in spite of the fact that the case appeared clearly to be on all fours with *Donoghue v Stevenson*<sup>19</sup>.

It is obvious from the foregoing decisions that the principle enunciated in *Donoghue v Stevenson* no longer represents the law in Nigeria in cases relating to the manufacture of unwholesome food or drinks. It is sad to note that the courts have actively contributed through judicial pronouncements to further weakening the protection hitherto afforded the consumer in this area of law. It is suggested that Nigerian courts should adopt a more liberal and objective approach to the issue of proof in food poisoning cases as exemplified by the decision in *Osemobor v. Niger Biscuits Co. Ltd and Nassars & Sons*<sup>20</sup> where Kassim J. stated:

*A manufacturer of products which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation of putting up of the product will result in an injury to the consumer's life or property owes a duty to the consumer to take that reasonable care<sup>21</sup>.*

The Nigerian Communications Commission which oversees the activities of GSM operators has been unable to come up with any proposal that can protect mobile telecom users from exploitation, or shoddy services. A holistic approach is advocated on the issue of liability. The courts should adopt a strict liability approach to cases of product liability and food poisoning cases as it is done in other jurisdictions. In America,

strict liability is enforced against manufacturers who put defective products in the overt market for consumers' use. In *Greenman v. Yuba Power Production Inc*<sup>22</sup>. a man was injured while using an all-purpose power tool given to him as a present by his wife. The injured consumer brought an action. The supreme court of California held the manufacturer liable and stated in its judgment, thus;

*a manufacturer is strictly liable in tort when an article he places on the market knowing that it is to be used without inspecting for defects, proves to have a defect that causes injury to a human being---- the purpose of such liability is to ensure that the costs of injuries resulting from defective products are borne by the manufacturer that put such product on the market rather than by the injured persons who are powerless to protect themselves.*

### **INSTITUTIONAL FRAMEWORK ON CONSUMER PROTECTION**

The institutions to relevant consumer protection are set up with the task of implementing the provisions of the relevant laws for the overall benefit of the consumer. They ensure compliance with set standards in the overall interest of the consumer that is often fed with shoddy and unwholesome products. The Agencies are empowered by enabling laws to take punitive measures against defaulters. The major key players in this sector include; (i) The National Agency for Food and Drug Administration and Control (NAFDAC)<sup>23</sup>. The Food and Drug Administration and Control Department of the Federal Ministry of Health and Social Services used to be the Regulatory Agency charged with the responsibility of ensuring standardisation in the sale and distribution of Food and Drug<sup>24</sup>; it was transformed into a body corporate now known as the National Agency for Food and Drug Administration and Control (NAFDAC)<sup>25</sup>.

The body is responsible for the regulation and control of the importation, exportation, manufacturing, advertisement, distribution, sale, and use of food, drugs, cosmetics, medical devices, bottled water and chemicals. The Organisation has made remarkable impact, in the drastic reduction of influx of fake drugs, and adulterated food into the overt market for consumers' use (referred to as regulated products) with a view to ensuring efficacy, safety and quality of consumer goods<sup>26</sup>. (ii) The Standards Organization of Nigeria (SON)<sup>27</sup> is an autonomous, statutory body which ensures compliance by producers and manufacturers with set standards so as to ensure quality and safety of consumer goods. It has remained the fulcrum of standardization, quality control, laboratory testing and metrology activities.

The organization also ensures that the quality of materials, equipment and treatment chemicals used for drinking water supply meet required standards and system certification. (iii) The Consumer Protection Council (CPC): At present, the Consumer Protection Council is the only consumer protection regulatory body that is enabled by statute to provide redress to consumers complaints through negotiations, mediation and reconciliations<sup>28</sup>, It also has a mandate to organize and undertake campaigns and other forms of activities as will lead to increased public consumer

awareness<sup>29</sup>, and publish from time to time list of products whose consumption and sale have been banned<sup>30</sup>. Unfortunately, the Council has not impacted on the consumer in any of these key mandates, probably due to the challenges of finance, internal bureaucracy and adequate manpower. It is recommended that a policy should be worked out to encourage collaborative work between the Consumer Protection Council, Standards Organization of Nigeria and NAFDAC so that their effort can positively impact on consumers.

### **STATUTES RELATING TO CONSUMER PROTECTION**

Some of the legislations which relate to consumer protection include the Weights and Measures Act<sup>31</sup>, Consumer Protection Council Act<sup>32</sup>, NAFDAC Act<sup>33</sup>, Standards Organization of Nigeria Act<sup>34</sup>, Sale of Goods Act<sup>35</sup>, Merchandise marks Act<sup>36</sup>, Hire Purchase Act<sup>37</sup>, The Criminal Code Act<sup>38</sup>, the Price Control Act<sup>39</sup>. The Trade Malpractices Act<sup>40</sup> and Food and Drug Act<sup>41</sup>. A careful examination of the aforementioned Statutes reveal common features of inadequacies which transform to their inability to provide consumers with the expected protection. In this paper, the discussion shall be narrowed to three major lines of weaknesses in these statutes, namely; the problem of replication, pattern of penal provisions and absence of provisions for consumers' right of civil action or compensation, except the Consumer Protection Council Act<sup>42</sup>. The penal sanctions are mainly criminal or quasi criminal in nature<sup>43</sup>. This presents the challenge of burden of proof and involvement of law enforcement agents in the prosecution of offenders.

The price control Act<sup>44</sup>, empowers the Price Control Board to fix prices for designated goods. It prohibits the sale, offer or agreement to sell a controlled commodity above the controlled price. The Act like many other consumer protection statutes fails to provide for consumer right of civil action against violators. Fines paid and goods forfeited go to government. The Act should be amended so that consumers can be empowered to recover any money paid in excess of the control price to the seller. The Merchandise marks Act<sup>45</sup> relates to fraudulent trade marks or descriptions on merchandise. This Act has no direct bearing on the protection of the consumer. It seeks to protect the economic interest of owners of registered trade marks upon which goodwill has been built. A repeal of the Act and the incorporation of its provisions into the Trade Marks Act are recommended.

The Trade Malpractices Act<sup>46</sup>, prohibits trade activities that mislead consumers as to quality, brand, character, name, value, safety and composition through packaging, labeling and advertisement of goods. The intention of the Act is quite laudable, and the prohibitive sanction highly commendable. A repeal of this Act is however recommended so that its provisions can be incorporated into the Consumer Protection Act to avoid duplicity. The Counterfeit and Fake Drugs and Unwholesome Processed Foods Act<sup>47</sup> and Food Drugs and Related Products Registration Act<sup>48</sup> relate to prohibition of sale and distribution of counterfeit, banned, fake, substandard or expired

drugs or unwholesome processed food, and the prohibition of the advertisement, sale, distribution of unregistered processed food, drug cosmetic, medical device respectively. These statutory functions are already comprehensively subsumed in the NAFDAC Act. Both statutes are hereby recommended for repeal for reason of replication and duplicity. The Food and Drug Act<sup>49</sup>, apart from its inability to provide the consumer with civil right of action is substantially replicated in the NAFDAC Act. It should be repealed in its entirety.

The Criminal Code Act<sup>50</sup> creates an offence punishable with an imprisonment term of one year<sup>51</sup> for any person who knowingly sells, as food or drink, or has in his possession with intent to sell any food or drink which has become noxious or unfit. by putting same in the overt market for consumers. Although the penal sanctions here appear stiff, no cognisance is taken of any pecuniary benefit to the injured consumer. Furthermore, the standard of proof required here presents a challenge, since "knowledge of the accused" must be proved beyond reasonable doubt. A repeal of this section and its incorporation into NAFDAC Act is recommended.

Section 2 of the Hire Purchase Act<sup>52</sup> specifies transactions in relation to goods (with exception to motor vehicles) to a maximum sum of 2,000 (Two Thousand Naira Only). Consequently, other forms of equipment such as Air conditioners photocopying machines, refrigerators and industrial equipment are excluded. There is no justification for this upper limit. An amendment of the Act to remove the upper ceiling price is suggested. The practice of payment of installments by the hirer to the seller through the finance company should be reversed to allow direct payments from hirer to seller, if for nothing else, to rule out occasional defaults by finance companies to transmit money paid by hirer to seller, and sometimes lead to seizure of the hired good from the consumer hirer. The NAFDAC Act obviously appears to be an effective statute, however, an amendment is suggested to provide penalty for its officials who willfully certify substandard products for exposure and sale in the overt market.

### **PATTERN OF PENAL PROVISIONS IN RELEVANT STATUTES**

The penal sanctions in relevant consumer protection statutes have become obsolete and meaningless with a clear inability to achieve a deterring effect on prospective offenders. The fines are too meager and cannot deter prospective offenders from flouting the provisions of the statutes, especially in the light of prevailing socio-economic realities which compel our currency to persistently suffer the misfortune of devaluation. Below is a graphical illustration of the pattern of penal provisions in some of the statutes which to say the least is abysmal and unfortunate.

<b>STATUTE</b>	<b>OFFENCE</b>	<b>PENALTY</b>
Weights and Measures Act	Offering to sell bread that is less than 225 grammes in weight contrary to	N500 (Five Hundred Naira Only) to be paid into the Consolidated Revenue Fund.



Standards Organisation of Nigeria Act	section 27(1) Making or selling of any material with an industrial standard or certification mark, without the Organization's permission contrary to section 11	Maximum of N1,000 (One Thousand Naira Only) fine
Poisons and Pharmacy Act	Having in stock unwholesome, deteriorated, impure or adulterated patent medicines or drugs contrary to section 6(2) & (5)	Fine of N200 (Two Hundred Naira Only)
Hire-Purchase Act	Failure to furnish adequate information about the Hire Purchase transaction contrary to section 6(4)	Fine not exceeding N20 (Twenty Naira Only)
Moneylenders Act	Operating moneylenders business in a name other than the true name, contrary to section 6(a), Relocation of business premises without first notifying the court that exercises jurisdiction over the area, contrary to section 10(3)	Fine of N200 (Two Hundred Naira Only) for individuals and Maximum fine of N20 (Twenty Naira Only) respectively
Price Control Act	Selling of controlled commodity above control price contrary to section 6	Maximum of N200 (Two Hundred Naira Only) and Maximum of N2,000 (Two Thousand Naira Only) for retailers, maximum of N1,000 (One Thousand Naira Only) for manufacturers, and maximum of N10,000 (ten thousand naira only) for wholesalers

The above table speaks volumes about the nugatory and pathetic state of the prescribed statutory pecuniary penalties. It would be superfluous to emphasize here that to prosecute an offender under any of the statutes under reference will be foolhardy, because apart from the fact that the prescribed penalty has no deterring ability, the financial and human resources that would be expended in litigation will be an exercise in futility. The consistent depreciation of money value owing to inflation and passage of time has been judicially noticed in a number of decisions. In *Senior v. Baker and Allen Ltd*<sup>53</sup>, Lord Denning M.R stated that in the award of damages, the court is entitled to take judicial notice of the inflationary trends in a society. In *Usman v. Abubakar*<sup>54</sup> Salami J.C.A stated that "the economic reality of today is that the Naira is a ghost or shadow of its old self". In *Onagoruwa v. IGP*<sup>55</sup> "

*In these days of racing inflation where the buying and purchasing power of the Naira falls drastically (and painfully so) every day and therefore not commensurate to the quality and quantity of goods bought, a judge should in the assessment of damages consider the current market situation. It will be most unrealistic to ignore this fundamental aspect and merely theorise with principles of law and facts and figures presented to him in court by counsel and witnesses.*

Similarly, in *Allied Bank v. Akabueze*<sup>56</sup> the court stated:

*I also recognize that the court ought, in appropriate circumstance, to keep up with the times and in particular, with the economic strength or decline, as the case may be of our national currency the Naira*<sup>57</sup>.

It is recommended that the statutes be amended to review the fines upward and provide consumers with civil right of action before special or small scale courts to be designated "Consumer Redress Courts".

## CONCLUDING REMARK

In this study, we have asserted that the consumer continues to be plagued by weak bargaining power, due largely to the inability of applicable statutes to provide the requisite protection, right of civil action and compensation system, amongst others. The penal provisions have outlived their usefulness as the fines are too mild and unable to deter prospective offenders. These laws are long overdue for reforms in order to meet the quest for sustainable protection for the consumer. The courts should create a level playing field for both manufacturers and injured consumers in food poisoning cases. The evergreen principle relating to unwholesome food and drink as enunciated in the time honoured decision in *Donoghue v. Stevenson* should continue to be accorded its prominence by Nigerian Courts,

A model Consumer Protection Law that affords a remedy on the basis of defect in consumer goods, rather than resultant injury to the consumer is recommended. Litigation is expensive in Nigeria in terms of time, finance and human effort. This adversely affects consumers' desirability to seek redress. An alternative dispute resolution system or, special consumer redress courts for speedy, inexpensive and simplified procedure devoid of legal technicalities for dispensation of justice to aggrieved consumers, should be established at Federal and State levels. A genuine effort at improving consumer welfare must include a package of highly subsidized legal aid services.

The logical conclusion that readily flows from the foregoing analysis is that the Courts, relevant Consumer Protection Statutes and Regulatory Agencies have failed to offer the desired and much expected protection to the Consumer. Consequently, the Consumer is simply left unprotected and at the mercy of unconscionable manufacturers and pretentious traders. The Legislature, Regulatory Agencies and Courts must rise up to the occasion of entrenching a sustainable regime of consumer protection.

## NOTES

<sup>1</sup> *Constance Ngonadi v. Nigerian Bottling Co. Ltd* [1985]1 Nigerian Weekly Law Report (Pt.4)739, where the plaintiff/Appellant sustained severe injuries from a brand of kerosene refrigerator which was sold to her by the Defendant/Respondent.

<sup>2</sup> The various types of measurements are expressed in metric units as follows; length to be in Millimetre, Centimetre, Decimetre, Metre or Kilometre; area to be in Square millimetre, Square centimetre, Square decimetre, Square metre or hectare; Capacity to be in Litre or Hectolitre, Millilitre; electrical, current to be in AMPERE, electrical resistance in OHM difference of electrical potential in VOLT and electrical power

in WATT; mass or weight to be in Milligram me, Hectogram me, kilogramme or metric tonne; volume to be in Cubic millimetre, Cubic centimetre, Cubic decimetre or Cubic metre

<sup>3</sup> Cap. 467, Laws of the Federation, 1990

<sup>4</sup> Section 27 of the Weights and Measures Act, Cap.

<sup>5</sup> Cap W3,2004s

<sup>6</sup> The definition given to trademark in the Trademarks Act is not wide enough. It should be expanded to include symbols, pseudonyms, shape and presentation of goods, and packaging.

<sup>7</sup> (1866)1 Ch.App 192 at 196, as cited by K.A Apori, The distinctive trade mark in an illiterate setting :

A critique of the early trade mark cases and passing off law in Nigeria. *University of Benin Law Journal*, 1, 6

<sup>8</sup> [1968]1 ALL Nigeria Law Report 300

<sup>9</sup> (2001) 6 NSCQR 997, [2001] 10 Nigerian Weekly Law Report (Pt. 722) 540

<sup>10</sup> The tort protects the consumer from unfair trade practices by manufacturers and other key players in the chain of distribution who put in the overt market potentially dangerous and shoddy consumer products, unwholesome and adulterated food, fake and substandard food and fake drugs.

<sup>11</sup> *Supra*

<sup>12</sup> Negligence as an impractical theory of consumer protection, particularly in the context of the twin issues of the foolproof production process rule and the burden of proof, bears much relevance to products of the beer and beverages industry than to other types of goods.

<sup>13</sup> (1998)8 Nigerian Weekly Law Report 295

<sup>14</sup> See also *Ogbimi v. Guinness (Nig.) Ltd*[1981]1 FNR67

<sup>15</sup> (1980)1PLR538

<sup>16</sup> (1983) 1 FNLR 42

<sup>17</sup>[2007] ALL Federal Weekly Law Report (Pt.364) 360

<sup>18</sup> (1980)NCLR109

<sup>19</sup> (1932)A.C 502

<sup>20</sup> (1973)NCLR382

<sup>21</sup> In this case, the plaintiff in the course of eating the biscuit manufactured by 1st defendant, and sold by 2nd defendant in its supermarket found a decayed tooth in it, and in consequence became hysterical and physically ill. The court held that the consumer of biscuit would reasonably not be expected to carry out an examination of the product before consuming it. The defendants were held liable.

<sup>22</sup> (1963) 27 Cal. Reporter 697,

<sup>23</sup> Established by the National Agency for Food and Drug Administration and Control Act, Cap.N1 Law of the Federation of Nigeria 2004

<sup>24</sup> The Department however ceased to exist by the promulgation of Decree No. 15 of 1993, which established in its place the National Agency for Food and Drug Administration and Control (NAFDAC) on the 1st day of October 1992.

<sup>25</sup> Section 1(a) & (b).

<sup>26</sup> NAFDAC laboratories investigate and pronounce on the quality of imported, exported and locally manufactured food products and water based on national and international standards (CODEX) and regulations. The laboratory testing aspects include: microbiological, pesticide residue, trace metals, mycotoxin analysis and radiation monitoring.

<sup>27</sup> Decree, No, 56 of 1971- Retained as Cap 412, Law of the Federation of Nigeria, 1990.

<sup>28</sup> Section 2(a) of the Consumer Protection Act, No.66, 1992,

<sup>29</sup> Section 2(e)

<sup>30</sup> Section (c)

<sup>31</sup> Cap.W3, Law of the Federation of Nigeria, 2004. Under section 49, individual offenders under the Act are liable

to N500.00 fine, or one year imprisonment, while corporate bodies are liable to N5,000.00 fine on conviction.

<sup>32</sup> No.66 of 1992, now Cap.C25, Law of the Federation of Nigeria, 2004

<sup>33</sup> No.15 of 1993, now Cap.N1, Law of the Federation of Nigeria, 2004

<sup>34</sup> Cap.S9, Law of the Federation of Nigeria, 2004.

<sup>35</sup> The law is clearly absent from the Laws of the Federation of Nigeria, 2004.

<sup>36</sup> Cap M10. Law of the Federation of Nigeria, 2004. It is an offence under s.18, to make false representation as to mark

<sup>37</sup> Cap.H4, Law of the Federation of Nigeria, 2004

<sup>38</sup> Cap77, Law of the Federation of Nigeria,1990

<sup>39</sup> Cap .65, Law of the Federation of Nigeria 1990, Cap. p28 Law of the Federation of Nigeria 2004

<sup>40</sup> 1992,Cap.T.12,2004

<sup>41</sup> No. 21 of 1999,now Cap. F3. It is an offence under Section 6, to manufacture, prepare, preserve, package or store for the purpose of selling any food, drug or cosmetic. Section 19, creates a penalty of a fine of not less than N50,000, or a term not exceeding 2 years or to both such fine and imprisonment

<sup>42</sup> Section 8 of the Consumer Protection Council Act,66 Of 1992,

<sup>43</sup> Except the Sale of Goods Act and Hire Purchase Act

<sup>44</sup> Cap 365, Law of the Federation of Nigeria 1990, Cap. P28 Law of the Federation of Nigeria 2004

<sup>45</sup> Cap.223, Law of the Federation of Nigeria.1990, Cap M10.Law of the Federation of Nigeria,2004 .It is an offence under s.18,to make false representation as to mark

<sup>46</sup> 1992,Cap.T.12,2004

<sup>47</sup> 1999,C.34,2004

<sup>48</sup> No 19 1993, Cap F33, 2004

<sup>49</sup> Cap. 150, Law of the Federation of Nigeria 1990, Cap F32 Law of the Federation of Nigeria 2004

<sup>50</sup> Cap77, Law of the Federation of Nigeria,1990

<sup>51</sup> Section 243. (1)

<sup>52</sup> Cap 169, Law of the Federation of Nigeria 1990, Cap. H4, Law of the Federation of Nigeria 2004

<sup>53</sup> (1965) International Weekly Law Report 429

<sup>54</sup> (2001)12 Nigerian Weekly Law Report (PT.728)685

<sup>55</sup> (1991)5 Nigerian Weekly Law Report(Pt.193)593 at 650-651

<sup>56</sup> (1997)6 Nigerian Weekly Law Report (Pt.509)374 at 407

<sup>57</sup> See generally on this issue:L.O.Ejisun v.M.Ajao and others Dr.O.O.Kalu & Anor v.Dr.S.Mbuko(1998)3 Nigerian Weekly Law Report (Pt.80)86, N.E.P.A V. Alli, (1992)8 Nigerian Weekly Law Report (Pt. 259)279