

NIGERIAN CONSUMERISM: ISSUES AND CHALLENGES

Aigbevoile, Paul A,

Abstract

The concern over consumer welfare has been of long standing especially as the received English Common law has been very slow in response to consumer protection. The position is that of caveat emptor which postulates that the consumer buys what he likes from competing goods and must stay with his bargain. This position is coupled with the principle of privities of contract and also exemption clauses, which serve as limitations. However, in most cases the decision to buy is not made by the consumer as an expert' with expert knowledge. Almost every aspect of life has been professionalized but (the degree of expertise required by the consumer in the market place is not available to the average consumer entitling the manufacturer or seller to say the consumer is sovereign. The Consumerism's view is that injury is injury. A relief must be found against the defective product. Injury cannot be justified on any basis and must be compensated. This paper examines key legislations on consumerism and proffers solutions to enhance the status and bargains of consumers in the Nigerian market place.

Introduction

Consumerism simply means public concern over the rights of consumers, the quality of consumer goods, and the honesty of advertising. The ideology came into full focus in the 1960s after President John F. Kennedy introduced the Consumer Bill of Rights, which stated that the consuming public has a right to be safe, to be informed, to choose, and to be heard. Fuel was added to the fire in 1966 with the publication of Ralph Nader's book *Unsafe at Any Speed*, which attacked portions of the automotive industry.

The early emphasis on free trade has been understood to entail rather very minimal regulation of trading activity. However, experience over the years has shown that while the bargaining process can be left to a large extent unregulated, details of pricing, quality, standard, safety and so on of products or services have not been adequately handled on the basis of simple contract of sale. Fake and defective products and services have therefore, affected consumers one way or the other.

Over the years in England, a number of statutes have been enacted which have dealt with specific aspects of concern. Some of the statutes include the London Bread Act 1822; Adulteration of Food and Drinks Act 1860 and the Pharmacy Act 1868. These legislations reflected the beginning of consumer protection in England. It is interesting that the lawmakers saw that the sanctity of the bargain should be safeguarded by criminalizing certain types of conduct. Also statutes have been made to govern weights and measures and increasingly others that safeguard quality in such areas as food and drugs and trade description and so on.

Malemi (1996), is of the view that in Nigeria the concern over consumer welfare has been of long standing especially as the received common law has been very slow in response to consumer protection. The position has been that of caveat emptor which postulates that the consumer buys what he likes from competing goods and must stay with his bargain. This position is coupled with the principle of privities of contract and also exemption clauses, which serve as limitations.

Consumerism concern has always been reflected in legislations such as the Weight and Measures Act Cap 467 Laws of the Federation of Nigeria 1990, the Food and Drugs Act Cap 150 1990 and the Money Lenders Law Cap 100 Laws of Bendel State of Nigeria 1976. However, these laws dealt with specific consumer concerns. Even statutes such as the Price Control Act Cap. 365 1990, the Sale of Goods Law Cap. 150 Bendel State 1976 which were wider in scope have not made the desired impact in consumer protection.

The need became obvious for a law that would provide general coverage for the consumer. This need gave birth to the promulgation of the Consumer Protection Council Decree No 66 of 1992 and 'its companion the Trade Malpractices (Miscellaneous Offences) Decree. Whilst conceding that the former provides an umbrella coverage for the consumer, it will still be necessary to continue to make laws to cover particular industries in specifics to deal with the peculiarities of such industries as is the case in England and in the rest of the European Union where there are statutes, regulations and directives covering specific areas of consumerism. The Trade Malpractices (Miscellaneous Offences) Decree represents a bold attempt by Government to deal with trade malpractice in the area of trade descriptions, false advertisements, misrepresentation, fraud and false weights and false measurements. It is hoped that its faithful enforcement would bring a measure of relief to consumers and also justify its complimentary role to the Consumer Protection Council Decree.

The Nigerian Consumer: Who is He?

A consumer has been defined in a variety of ways. The Osborn's Concise Law Dictionary defines a consumer as "a person to or for whom goods or services are, or are sought to be supplied in the course of a business carried on by the supplier and who does not receive them in the course of a business carried on by him". The Consumer Protection Council Decree No 66 of 1992 section 32 thereof, defines a consumer as "an individual who purchases, uses, maintains or disposes of products or services."

A consumer is also anyone who deals with another as a consumer. By section 12 (1) of the Unfair Contract Terms Act, 1977 (U.K) a party to a contract "deals as consumer" in relation to another party if: "(a) he neither makes the contract in the course of a business nor holds himself out as doing so; and (b) the other party does make the contract in the course of a business; and (c) in the case of a contract governed by the law of sale of goods or hire purchase or by S.7 of this Act, the goods passing under or in pursuance of the contract are of a type ordinarily supplied for private or consumption".

Trends of Trade Malpractices in Nigeria

Trade malpractices cut across every sphere of economic life such as the supply of substandard goods and also in the shoddy installation of equipments. In his concurring dictum in *Nigerian Bottling Company Limited v. Ngonadi* [1985] INWLR PT.4, 739 at 753 Anigololu J.S.C stated: "Nothing appears to be elementary in this country where it is the unhappy lot of consumers to be inflicted with shoddy and unmerchantable goods by some pretentious manufacturers, entrepreneurs, shady middlemen and unprincipled retailers whose avowed interest seems only and always to be to maximize their profits, leaving honesty a discounted and shattered commodity..."

The matter arose out of a respondent's appeal to the Supreme Court being a consumer victim who purchased an Evercold refrigerator from the Appellant which same purchase landed the consumer in serious personal injuries for which she suffered severely.

- Another area in which trade malpractice occurs is in the sale of fake goods. Sterling Health Nigeria Pic makers of "Panadol" painkillers have kept warning the public by radio and television advertisements that if the tablet does not have the name "Panadol" written on it, it is not Panadol and cannot be the same thing as Panadol. The essence of the foregoing is mainly to safeguard the health of the consumers by helping them to identify and buy the genuine product.

Other malpractices include use of smaller or false measurements in the sale of goods to the consumer public. This is common in the foodstuff market where a cup or plate for measuring garri or beans is often knocked from the base so as to defraud the consumer.

Also, prices are unstable and differ from retailer to retailer or locality to locality. Scarcity, artificial or otherwise is foisted on the consumers and goods are sold at prices many times higher than recommended by Price Control Agencies. Price hike is common when there is a strike by the manufacturers of the relevant products.

Hudson (1978), opines that consumer complaints cover claims that the goods are either positively dangerous, simply shoddy or are insufficiently durable.

Trade Malpractices at the International Front

Dumping of counterfeit goods as a trade malpractice is not only of concern to Nigeria but also to other Third World Countries. Examples of such goods counterfeited include substandard and

exploitative drugs, which in many cases may not only be substandard but expired, unfit and unsafe for use.

Other goods counterfeited include motor vehicle spare parts and electronics. The bulk of these fake goods are exported to third world countries resulting in health hazards and exploitation of the country in which these goods are dumped.

In an attempt to forestall and reduce these and other trade malpractices and economic sabotage, Nigeria insisted on Pre Shipment Inspection of relevant goods. Also, regulatory agencies such as Standard Organization of Nigeria (SON) and National Agency for Food and Drug Administration and Control (NAFDAC) which have been set up have the mandate to check the influx of such goods into the country and for this purpose manpower from the Agencies of SON and NAFDAC are deployed at the International Airports, Seaports and Border posts in addition to the compliment of other security personnel with a mandate to search for and impound such goods and drugs.

An interesting aspect of these international trade malpractices is that in most, if not all of the cases, there is usually connivance by greedy cliques of unpatriotic citizens of the recipient or 'victim' third world country who collaborate with these international criminals to dump the fake and defective goods on their countries. It is hoped that with the efforts of local regulatory agencies such as SON and NAFDAC, the Consumer Protection Council, the Customs and Excise Department., dumping of counterfeit and hazardous goods among other sharp practices which are plaguing international trade will be eliminated or reduced to the barest minimum.

Protection of Nigerian Consumerism

The consumer in Nigeria is moving forward. We cannot rest until he is at the front row not displacing the interest of the producer, yet gaining equal rank in representation with that interest.

Writing on the goals of consumerism, Rosenberg (1978), stated that the issues, which are central to consumer law are those dealing with the sale of goods and the provision of credit to the purchaser of goods. Thus the primary emphasis till date in the development of the body of the consumer has involved such problems as:

Regulation of advertising

Control of sales techniques and methods

Door to door sales

Quality of the product, including title, packaging and labeling requirements.

Rescission rights of the buyer.

Restrictions on freedom of control through the doctrine of unconscionability.

In 1985, the United Nations set the tone for consumer protection when its General Assembly adopted guidelines for consumer protection by consensus on April 9, 1985 vide General Assembly Resolution No 39/248. The guideline provides a framework for governments, particularly those of developing nations to use in collaboration strengthening consumer protection policies and legislations. They are also intended to encourage international co-operation.

The legitimate needs which the guidelines are intended to meet are the protection of consumers from hazards to their health and safety, the promotion and protection of the economic interests of consumers, access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs, consumer education, availability of consumer redress and freedom to form consumer and other relevant groups or organizations.

According to paragraph 4 of the U.N. guideline, governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. From the Sale of Goods Act 1893, we have got to the Consumer Protection Council Decree No. 66 of 1992 and the Trade Malpractices Decree. There is no doubt that we have sufficient laws in our statute books to deal with contraventions. There is also no doubt that we have sufficient enforcement agencies, personnel, detection and monitoring mechanisms and incentives to ensure reasonable protection for consumers in Nigeria.

The question however, is whether the goal of consumer protection has been achieved. To answer the question we must first have an insight into the present day Nigerian economy; i.e. whether the quality of a number of locally produced goods such as shoes and books have improved significantly over the years. The answer obviously is no. The price index is unstable by reason of inflation; social services like health care delivery and water supply are not smoothly run. Health care is costly and its personnel are on strike many times. The transport system is unreliable. The prices of most household equipments have gone beyond the reach of many people. Many people have lost huge sums of money by way of deposits in the financial sector all in the name of creating twenty-five Big, Strong and Reliable Banks as put forward by the Central Bank of Nigeria Governor Professor Charles Soludo. The collapse of All States Trust Bank in September 2005 and its effect on depositors and depositors' funds is very fresh in the minds of people.

There is a general apathy towards enforcement of consumer rights. The cost of litigation, long adjournments, etc are not attractive for the consumer who has invested a little sum on a product. Most consumer protection agencies and personnel have no zeal in pursuing the objectives of the respective bodies. All over society, contravention of laws is taken for granted. This is a major threat to consumerism.

Suggestions, Reforms and Conclusions

Nigeria's progress in consumer protection in the future will be determined more by the will on the part of government and the regulatory and enforcement agencies to enforce the laws. It is hereby proposed that government creates a small claims Court division out of the State High Courts. Its jurisdiction should be consumer matters and it should have summary jurisdiction.

Government should also promptly review and amend laws to take care of developments. Furthermore, inflation must be kept under control and there must be the will to enforce all existing laws, On the part of the citizens, everyone should avoid covetousness and the desire to cheat, deceive or harm others with fake or defective products and services. We should all love our neighbours as we love ourselves.

References

Black H. C. (1990). *Black's Law Dictionary*. West Publishing Company U. S. A.

Hornby A.S. (1995). *Oxford Advanced Learner's Dictionary*. Oxford University Press Oxford.

Hudson A.H. (1978). Time and terms as to qualify in sale of goods, 94 l.q.r. 566. Internet search: consumerism.

Malemi E.O. (1996). *Trade malpractices and consumer protection in Nigeria*, UNP.

Miller C.J. (1985). *Product liability and safety encyclopedia*, Butterworths and Co. Publishers Ltd. London.

Rosenberg r. (1978). *College Business Law*, Greg div. McGraw Hill Books Co. New York.