



Institutional Framework on Consumer Protection Under The Nigerian Law: A Case Study of Consumer Protection Council

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ABSTRACT

Consumer protection is a matter of concern to all nations. Consequently, almost all countries including Nigeria established the necessary institutions and backed them up with relevant legal instruments. This paper therefore is meant to appraise the performance of the consumer protection council of Nigeria being one out of several institutions for the protection of consumers. Along the line, the questions of who is a consumer, what does consumer protection stand for and why do consumers need protection are answered. The function of the council has been subjected to evaluation with reference to the law that established it. Finally, the paper, based on some observations recommends ways of overall improvement of consumer protection in Nigeria.

Keywords: Institutional, framework, consumer protection, case study

1.0 INTRODUCTION

The function of modern states among other things is protecting their territorial integrity on one hand and protecting the lives and properties of their citizens on the other. The task in the former case is entrusted to the armed forces of the country concerned while in the latter case it is entrusted to the law enforcement agencies and other paramilitary establishments. However, sometimes citizens suffer pecuniary loss, property as well as physical injuries consequential to consumption of hazardous and substandard products or patronizing poor and unsatisfactory services which are offered to innocent citizens by greedy and unscrupulous members of the business community at both national and international levels. In all the above cases, the lives and the properties of innocent citizens are prawn to danger whose remedy requires state intervention hence the establishment of a number of consumer protection agencies with specific but interrelated mandate.

The government equally equipped the agencies with necessary and effective mechanism in order to enable them carry out their mandates.

The scope of this paper is however limited to the consumer protection council of Nigeria for the purpose of Critical evaluation and some suggestions on how best to actualize its mandate.

1.1 Conceptual Framework

Consumer protection agencies are essentially established in order to protect consumers against harmful and exploitative practices of some producers, manufacturers and advertisers alike. The exercise is a tripartite affair involving the consumer himself, the manufacturers/suppliers and the consumer protection agencies that play regulatory role. Consequently the key parties are defined as follows:

1.1.1 Meaning of a Consumer

A consumer has been defined in many ways none of which can claim dominance or more universal acceptability over the other. Consider the following;

- (a) A consumer is an individual who purchases, uses, maintains or disposes a product or services.

- (b) A consumer as any person who is a consumer for the purpose of this Act in terms of any other law.
- (c) A consumer is any person who hires any services for a consideration or any beneficiary of such services, provided the service is availed with the approval of the person who has hired the services for a consideration.
- (d) In a related development, the Nigerian legislation defined consumer as an individual who purchases, uses, maintains or disposes a product or services.

The above definitions are not meant to fore close several other definitions which one may come across or coined by himself.

1.1.2 Consumer Protection Meaning and Scope

As far back as 1973, Senator Murphy, the Australian attorney-general while introducing the trade practice Bill of the common wealth of Australia justified consumer protection as follows:

Today, the marketing of goods and services is conducted on an organized basis and by trained business executives. The untrained consumer is no match for the business man who attempts to persuade the consumers to buy goods and services on terms and conditions suitable to the vendor. The consumer needs protection. Note that the Attorney-General emphasized the need for consumer protection without explaining it. Consumer protection has also been defined by different authors as outlined below:

Consumer protection is accomplished by setting minimum quality specification and safety standard for both goods and services and establishing mechanisms to redress their grievances¹ (consumers)

Consumer protection is about the provision of appropriate and effective mechanisms (in order) 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 (Good and services) to ultimate consumer². Consumer protection in its elaborate form refers to the liability of not only the manufacturers/producers of goods and services but also retailers, wholesalers, distributors and other suppliers of goods and services to persons who use or consume them.

1.1.3 Consumer Protection Agencies/Institution

The above refers to agencies created/established by the state for the purpose of ensuring that consumers are protected against today's harmful business practices and provision of redress whenever the consumers suffer injury pecuniary or otherwise. The institutions serve as a platform where they can resort to for appropriate redress. Though their functions are the similar, consumer protection agencies are not uniformly named, in Nigeria for example there is consumer protection council of Nigeria among others, in Malta they have ministry of consumer affairs while in Australia they have trade practices commission. They are all established with clear mandate backed by the necessary legal instruments to act for the overall interest of their respective consumers.

1.2 Historical antecedent of consumer protection

The history of consumer protection can be traced to the initiative of one of the United States president and consolidated by his successors. According to Durojaiye. The beginning of consumer's rights can be traced to the former United States president, John F. Kennedy who introduced to the congress the revolutionary national rights for consumers in 1962. President Kennedy identified four rights for consumer i.e. the right to safety, the right to be informed, the right to choose and the right to be heard. Thirteen years later, President Richard Nixon came up with additional right i.e. the right to consumer education. Likewise President Ford added the sixth right i.e. the right to redress. In the opinion of this paper, the right to be heard and the right to redress are almost one and the something. This is because he who seeks redress must first and foremost be heard.

Conclusively the president of international organization of consumer union Anwar fadl (1978to1984) raised their number of these rights to eight (8) by introducing two additional rights namely: the right to basic needs and the right to a healthy environment. Note that these two additional rights are to a large extent political in their outlook; they can simply be categorized among the rights that are not justiciable. In any case, these developments marked the starting point of modern day consumer protection.

A question can be raised as to what was the fate of consumers before the Kennedy bill of 1962 on their protection.

The answer is, there are quite number of legal provisions under the law of contracts, commercial law, the law of tort and criminal law that provide one protection or the other to a consumer without necessarily mentioning him by name. Under the law of contract, a party who entered into a contractual relation under the influence of misrepresentation can (if he so desires) not only rescind the contract but seek for damages as well depending on the gravity of the misrepresentation.

Under criminal law provisions, trade practices (miscellaneous offences) Act no. 67, 1992 provides that:

Any person who labels, packages, sells, offer for sale or advertise any product in a manner that is false or misleading or is likely to create a wrong impression as to its quality, character, brand names, value, composition, merit or safety commits an offence under this Act and is liable on conviction to a fine of not less than N50:00

Similar are found under the other two branches of the law above mentioned.

1.3 The Need for Consumer Protection

Consumers need protection because they are generally powerless; most of them are semi illiterate and less sophisticated. By comparison, producers are smart, powerful and employ the services of sophisticated and aggressive trained marketers capable of selling ice in the Eskimos. According Burdah(1975) he asserted that, a hundred years ago, consumer protection was largely unnecessary as most products then were locally produced and there was personal relationship between the seller and the buyer. Any buyer who had complain was expected to directly go to the producer, furthermore, goods and products were not as complex as today's. So it was easy to tell the standard from sub-standard. However, today in addition to the complexity and lack of sufficient knowledge of handling the products, the consumer is thousands of kilometers away from the manufacturer.

The implication of this on the consumer is that he has no direct contact with the producer, a development that makes it difficult for him to sue (contractually).

2.0 THE CONSUMER PROTECTION COUNCIL

The consumer protection councils is one of the parastatals of the Federal Government of Nigeria assigned statutory functions of protecting Nigeria consumers against the ills of today's, business practices such as selling of fake/sub-standard products and providing poor quality services to innocent consumers. Sister parastatals include standard organization of Nigeria (SON), Nigerian Industrial Standard, Nafdac etc.

2.1 Establishment of the Council

There is hereby established, a council to be known as the consumer protection council, which shall be a corporate body with perpetual succession and a common seal and with powers to sue and be sued in its corporate name. Even though the council was established in 1992, it commenced operation only in 1999 when its institutional framework was put in place.

2.2 Composition of the Council

The consumer protection council shall consist of:

A chairman to be appointed by the President and Commander-in-Chief of the Armed Forces on the recommendation of the Minister.

A representative from each of the states of the Federation on the recommendation of the governor of each state.

Four representatives from the following related ministries

- (i) Commerce and tourism

- (ii) Industries and technology
- (iii) Health
- (iv) Petroleum resources.

2:3 Function of the Council

The Act that established the Council conferred on it the following functions.

- Providing speedy redress to consumers, Complaint through negotiations, mediations and reconciliations.
- Seek ways and means of removing or eliminating from the market hazardous products and compel offenders to replace such products with safer and more appropriate alternative.
- Publish from time to time, list of products whose consumer and sale have been banned, withdrawn severally restricted or not approved by the federal government or foreign government (from where the products originated).
- Compel an offending company, firm, trade association or individual to protect, compensate, provide relief and safeguards to injured consumer or communities from adverse effects of technologies that are inherently harmful, injurious, violent or highly hazardous.
- Organize and undertake campaigns and other forms of activities as will lead to increased public consumer awareness.
- Encourage trade, industry and professional associations to develop and enforce in their various fields, quality control standards in order to safeguard the interest of consumers.
- Issue guidelines to manufacturers, importers dealers and wholesalers in relation to their obligation under this Act.
- Encourage the formation of voluntary consumer groups or association for consumer wellbeing.
- Ensure that consumers interest receive due, consideration at appropriate forum and to provide redress to obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade associations or individuals.
- Encourage the adoption of appropriate measures to ensure that products are safe for either intended or normally safe use; and
- Perform such other functions as may be imposed on the council pursuant to this Act.

2.4 Structure of the Council

The consumer protection council is headed by a director General appointed by the President and Commander in Chief of the Armed Forces Federal Republic of Nigeria. The Director General shall possess relevant academic qualifications and practice experience as is appropriate for the functions of the Director General under this Act.

The council also has five (5) different but interrelated departments, namely: department of consumer education, department of quality assurance and development department of surveillance and enforcement, department of administration and finance. While each of the departments is complementing the efforts of the others in pursuance of a common goal, the role of department of surveillance and enforcement merits special consideration. This department is most vibrant, most relevant and more directly related to the consumer right protection. The departments undertake two different functions as follows:

- a- Surveillance: This is their daily routine of gathering information and analyzing information about actual or potential threat to the right of consumers. The personnel carrying out this function have received training along the pattern of state security service.
- b- Enforcement: the department goes on enforcement mission at least twice a week. The outing is always preceded by either the findings in (a) above or by a complaint from a consumer in writing stating all the facts and the grounds thereof. Then the department will after carefully analyzing the complaint engage the respondents into correspondence requesting his response within seven (7) days. If he didn't respond, the department will grant him five (5) more days at first instance and another five (5) more days for the last time at the expiration of which the respondent becomes recartestrant, therefore, the department is left with no option than swinging into action. The action is with a view to arresting the respondents, breaking into his business premises, locking the

premises and in some cases carting way the affected products. This kind of exercise is qualified as minor operation because the respondent is an individual, so the number of personnel involved are relatively few plus at least one (1) law enforcement agent.

In case the respondent is a corporate body, the process as well as the status and composition of the enforcement team changes accordingly. The exercise is qualified as major enforcement operation. It also involves large number of personnel and a sufficient number of armed policemen.

Who are to provide security and facilitate the team's operation?

Part Three (iii) Prospects and challenges before the council

3.0 Prospects

It's no longer news that our markets are flooded with all sorts of products from different parts of the globe, country of trans border other commercial activities between nations. Governments intervention in this respect will surely minimize if not totally eliminate the influx of hazardous products into the country.

3.1 Challenges

The consumer protection council in the course of discharging its statutory functions will surely come face to face with a number of challenges that may constitute a serious inhibition to the consumer protection. Those factors include;

3.1.1 Attitude of Nigerian Public

The Nigerian consuming public is largely semi illiterate and uninformed of the characteristics and complexities of the products they purchase. Consequently, the producers and suppliers capitalize on that and flood Nigerian markets with all sort of substandard goods with a view to maximizing profit. The end result may be either personal injury or damage to the consumers' property.

Another attitude of some consumers in Nigeria is that some times their choice is guided by passion or competition regardless of the quality or safety of the products.

3.1.2 Cultural and Religious Influences

Nigerians are generally people of faith in terms of manifestation, though wanting on the practical aspect. Some adherents of one of the divine faiths believe that whatever one faces in life be it positive or negative must be accepted as an act of destiny from Allah (GOD). Based on prophetic tradition that described a believer as he who among other things believes in fate is it beneficial or detrimental to him.³ As a result of that, if they suffer pecuniary or physical injury as a result of consumption of any products they will not seek for any remedy. However, this position is countered that one can only leave things to God after exhaustively playing all his parts.

Culturally speaking, a term "*yi hakuri*" or "*yi hankuri*" (meaning be patient) is rampantly used within the Hausa/Fulani cultural setting whenever an injury is inflicted on a person.

3.1.3 Economic Reality

Nigeria and indeed several other third world nations are classified as dumping ground nations. Dumping on the other hand has been defined as export and or marketing in another of industry, processes and products which do not meet the specification as to quality, safety or other characteristics of the exporting country. As a result substandard products freely circulate in Nigeria with patronage from the Nigerian consumers due to their weak purchasing power.

3.1.4 Sister Consumer Protection Agencies

In addition to the consumer protection council of Nigeria, there are other consumer protection agencies such as Standard Organization of Nigeria (SON), Nigeria Industrial Standard (NIS), National Agency for Food and Drugs Administration and Control (NAFDAC) and Electricity Regulatory Agency/Commission among others. This development may lead to duplication of functions and rivalry among the agencies.

Part Four (IV) Complaint and Redress Procedure

4.0 Complaint Lodging Procedure

As a matter of fact, lodging complaint with a view to getting appropriate remedy is the exclusive right of the aggrieved consumer. If he so desires, he can institute /lodge the complaint, otherwise he let the sleeping dog lay.

4.1.1 Consumer to the Seller

Aggrieved consumers who wish to lodge a complaint are advised by the council to first contact the seller for settlement and keep records of all their correspondence.

4.1.2 Consumer to the Producer/Manufacturer

If the dispute is not resolved at the above level, the council advises the consumer to contact the provider or manufacturer; if necessary he can contact the headquarters of the company.

4.1.3 Consumer to the Council

The preceding efforts ended in futility, the aggrieved consumer is to write a letter to the Director General, Consumer Protection Council Abuja or the Zonal Coordinator in his state. in case the consumer is an illiterate or is subject to any physical disability thereby unable to write, the clerk or any other official working with the state committee or council shall cause such person's statement to be written at no fee.

4.2.0 Redress Procedure

This means the steps usually taken by the consumer protection council in order to provide an appropriate remedy for the aggrieved consumer. The steps are outlined as follows:

4.2.1 Council to the Respondent

As soon as complaint is properly lodged, the council will acknowledge receipts and then inform the respondent (i.e. producer or the supplier) of the development and demands for his own version of the story within three days of receipt. If the respondent opts for settlement the settlement should be reached in the presence of the consumer protection council staff.

While waiting for the response from the respondent, the council conducts an independent investigation. If the respondent sends his response, the council will after investigating the contents arrange for a meeting with both parties, if he does not respond after seven (7) days, the council will write a reminder giving him (the respondents) five (5) more days, at the expiration of which the council will summon him for a meeting in the presence of the complainant (in order) to find out their position in the matter and how they intend to resolve the dispute. The council will at any time help the parties in dispute to reach an agreement.

4.2.2 Parties before the Panel

If parties failed to resolve the dispute in spite of the council intervention, the case/matter goes to negotiation, mediation and conciliation panel. If the respondent remains recalcitrant by non-responding to the councils summon, the case will at this level be referred to the judicial system. At any level before exit to the judicial system, the council will ensure implementation of any agreement entered into by the parties, further to that, the said agreement will be filed with A.D.R. (Alternative Dispute Resolution) court for enforcement. At the end of it, the case is finally closed when complaint is resolved and the agreement implemented.

Part 5 (v) Summary, Observations, Recommendations and Conclusion

5.0 This is the last lap of the paper, therefore it focuses on the items outlined above as follows

5.1 Summary: The paper is about institutional framework on consumer protection under the Nigerian Law, a case study on consumer protection council. Consequently, the establishments, composition, functions and powers of the council with reference to enabling laws have been the subject of evaluation. Some observations as well as recommendations are raised there in.

5.2 Observation: In the course of writing this paper, many observations were made some of which include the following:

(a) The council's procedure for addressing consumer's problem are lengthy and may frustrate many consumers.

(b) Proliferation of several other consumer protection agencies may bring about duplication of functions and rivalry instead of cooperation.

(c) Most Nigerian consumers are semi illiterate and are not even aware of the existence of the council.

5.3 Recommendations

In the light of the above observations, the following recommendations are hereby presented as the paper's humble contribution to the task of protecting the Nigerian consumer.

- (i) Establishment of a mega consumer protection agency under whatever name to be headed by a Director General. Other agencies should form various departments within the mega agency. Each department to be headed by a Director who will be answerable to the Director General.
- (ii) The council should embark on Intensive and sustained public enlightenment campaign with a view to creating awareness among the consumers in Nigeria.
- (iii) Mobile tribunal should be established in order to promptly attend to the consumers/sellers problems especially in village markets.

5.4 Conclusion

The paper commends the government foresight in establishing the consumer protection agencies. The effort of the staff and other personnel from the council as well as similar agencies are well appreciated. However, the observations as well as the recommendations are presented as a humble contribution to the consumer protection crusade for the benefit of not only the consumers but the Nigerian government as well.

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