CONSUMER PROTECTION IN NIGERIA; NAFDAC IN PERSPECTIVE
BY MPI ELTON CHIZINDU(BARR.)

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Consumer protection is more and more becoming a topical issue in this country. Consumers in Nigeria are constantly abused but had permanently remained unresponsive to various forms of trade malpractices carried out by sellers/producers. Consumption is the essence of production of goods and services. The process of production would be worthless if the products of that process are not consumed.

In Nigeria however, the incidence of fake, substandard, defective and adulterated product assumes an alarming dimension. Most Nigerian consumers are not aware of relevant laws that protect them in their daily transactions. They are, however, aware of some regulatory agencies but are not comfortable with the fact that most of them are located in the cities making accessibility of their redress difficult.

This however will not be enhanced by removing from consumers the necessity to make their own choice or by imposing on the market condition, which limits the freedom of a consumer’s choice or the means of developing their powers of judgment. Based on this review, I will be investigating the level of protection offered to consumers by the government and regulatory agencies in the protection of consumer rights. In order to accomplish this study, National Agency for Food and Drug
Administrative and Control (NAFDAC) has been selected in perspective of this study.

1.2 STATEMENT OF PROBLEM

Effective regulation of manufactured activities and quality of consumer goods by the 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 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 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 is health and safety. Over the years, Nigerian consumers have been subjected to various forms of trade malpractices by the sellers/producers. There have been instances where low quality, adulterated and inferior products are sold to consumers as genuine products. Let us consider the following cases, the case of a trader selling chalk as aspirin, and PA as methylated spirit. "My Pikin" a case of Baby Teething mixture that killed scores of children in 2008.

Drugs all over the country are categorized. Some are called Over the Counter (O.T.C) others are poisons which must not be obtained without prescription by an expert. The patent medicine dealers are licensed to sell only the O.C.T category, but many of them sell those in the poison category because according to them, that is where the profit is. Consumers of goods and services have been exposed to myriads of problems including problem of safety and quality of product and services. Some framework has been institutionalized to address these consumer problems.
In view of all these, the researcher is concerned with determining the safety and rights of a citizen of the country in consumption or usage of food and drugs.

1.3 OBJECTIVES OF THE STUDY

The objectives of this study are to;

1. Examine the role of regulatory agencies in the protection of consumer rights.

2. To ascertain how safe the food and drug market is for the consumers in the country.

3. To critically examine the role of National Agency for Food and Drug Administrative and Control in the protection of consumer rights and to probe into the activities of companies in the light of marketing concept.

4. How much the government is involved in ensuring safety in the food and drug market.

5. Case review of NAFDAC law, standard specifications, regulations, and guidelines for production, importation, exportation, sale and distribution of food, drugs, cosmetics, medical devices, bottled water and chemicals.

The purpose of the project is to contribute to the empowerment of individual consumers through the realization of their consumer rights. Consumer protection laws, relevant regulatory agencies and judicial decisions were reviewed.

1.4 THE SCOPE OF THE STUDY
This study will consist of the role of regulatory agencies in the production of consumer rights, analysis on various Acts enacted by the government with regards to the manufacturer’s sale and dispensing of food and drugs. Some of these Acts includes Food and Drug Act in Nigeria, Sale of Goods Law of Rivers State, Standard Organization of Nigeria Act, Counterfeit and Fake Drug Act.

Assessment is made on the works of writers on consumer protection like “Law of Consumer Protection” by Felicia Monye, ” consumer protection law” by Ikhide Ehigbelua and different kinds of consumer laws relevant to our study written by these authors are examined in the light of what is obtained in Nigeria. Also, the assessment consists of the roles played by health bodies in the country. The scope also extends to an enquiry into the disposition of distribution on ensuring the safety of consumers in the market and methods adopted by manufacturers in order to ensure the availability of the right kind of food and drugs in the market and safe consumption. This however was limited to National Agency, For Food, Drug Administration and Control in perspective. This is because this agency covers a large area (Nationwide) in the food and drugs market, the enquiring into the activities of manufacturers in the market, the scope of the study also extend to the activities of consumers in ensuring safety by following prescriptions in the use of these foods and drugs.

1.5 SIGNIFICANCE OF THE STUDY

This study is of immense benefit to manufacturers and consumers of food and drugs and also to the researcher as well.

Firstly, producers will benefit from this study so as to improve upon and control their marketing strategies.
Secondly, the sellers of food and drugs will adopt better marketing methods to the needs and wants of their prospective consumers and desist from selling fake and expired products which will eventually enhance opportunities for realizing greater profit.

Thirdly, it will educate the consumers on their rights in the market as stipulated in the laws.

Again, this study will help in identifying the factors encumbering effective consumer protection in Nigeria and aid the government to know why the food and drug market is infested with substandard and pirated products despite all their efforts to ensure safety.

1.6 METHODOLOGY OF THE RESEARCH

This project research will be divided into five chapters having different subtopics in each of the chapters respectively. It shall comprise of different Acts and Laws that enhance consumer protection. The appraisal of these laws is the purport of chapter three. In doing so, the researcher has consulted various Acts and laws like the Sale of Goods Law of Rivers State, Standard Organization of Nigeria Act, the Criminal Code Act etc. The researcher's primary source of materials were sourced at the Rivers State university of science and technology, faculty of law library. Whilst the secondary sources were obtained online which includes journals and articles from different authors. With respect to NAFDAC as a case study in relation to their achievements over the years, the information and statistics was curled from their official website because this is the primary source, having been updated by NAFDAC as a way of updating the general public on how the agency has been carrying out its duties and responsibilities over the years. With respect to the number of pages this project shall consist of, the researcher decided not to exceed 80 pages due to time
constraint.
Some of the books adopted for this project include; "Law of consumer protection" by Felicia Monye, Harvey B.W and Parry D.L; "The law of consumer protection and fair trading", Ikhibe Ehigbelua-consumer protection law(new pages publishing co 2004) etc. Some of the articles and journals adopted are Kennedy, John F(march 15, 1962) "special message to the congress on protecting consumer interest", Buchanan, J.A; defence of caveat emptor(1970) 38 chi.L. Rev 64. etc.

The methodology adopted for this research is to divide the work into chapters, introduction to the project, appraisal of various statutes and laws, National Agency for Food and Drug Administration and Control as a regulatory agency in protection of consumer rights in perspective and do an analysis on its achievements and challenges. The project will be concluded in the fifth chapter with summary of findings and recommendation. The footnoting and references to be used is the oxford style.
CHAPTER 2
CONCEPTUAL FRAMEWORK

2.1 INTRODUCTION

The previous chapter treated the introductory part of this project, from background of the study, statement of problems, objective of the study and its importance etc.

This chapter will appraise conceptual framework of this project, consumerism in Nigeria and to the extent in which consumer rights are protected in Nigeria.

2.2 HISTORICAL ORIGIN OF CONSUMER PROTECTION

Consumer protection is indeed a modern trend the world over, and its origin can be traced to the 20th century.¹

According to M.J Leder:-

“English law has never developed a fully coherent body of law designed to protect the consumer. The consumer and his advisers have instead been obliged to utilize a hotchpotch of common law concepts and doctrines designed primarily for other purposes. Even the recent statutory consumer protection developments have been piecemeal and do not amount to a comprehensive code.”²

Most of the early laws that had a bearing on consumer protection were primarily meant to regulate competition and ensure fair trading. Consumer protection was only a by-product of those laws.³

In the early days when industrial revolution and development were picking up, the emphasis was on the protection of industries, and various legislations were made primarily to protect industrial growth. The consumer was never the focus of these laws because industrial growth rather than consumer protection was the focal point of the various laws. Badaiki⁴ has posited that consumer protection can be traced to the earliest times through the old testament of the Bible⁵, where an injunction was given to architects and builders to be diligent in the design and construction of buildings, which is their product so that injury may not be caused to person who may come in contact with their building.

Professor Igweike points out that in the early days, the Nigerian economy was basically agrarian, there was therefore, no production and the consumer need little or no protection at all, therefore the notion or concept of consumer protection was alien to our colonial past.⁶

In 1861, colonialism gained its first foothold in Nigeria by the ceding of Lagos to the British colonialists. Soon after that event, British imperial statutes began to be applied to Nigeria and principle of the common law and equity became applicable to Nigeria. In 1876, the Supreme Court Ordinance was promulgated for the colony of Lagos.

⁴ Badaiki A.D. Towards an Intl Legal regime of consumer protection for developing Countries: Nigeria as case study (1993) Jul vol 6 No. 4 at P. 43
⁵ Deuteronomy 22:8
⁶ Igweike K.I.” Consumer Protection in a Depressed economy the Nigerian Experience “(Published Art, Umjos law faculty)
It provided for the establishment of a legal system and the reception of some existing English laws into the system. S.14 of the Ordinances provided as follows:

“The common law, the doctrines of equity, and statutes of General application which were in force in England…on the 24th day of July 1874, shall be in force within the jurisdiction of the court”.

In 1900 the protectorate, of Northern and Southern Nigeria were proclaimed, the Supreme Court Proclamation of 1900 of Southern Nigeria was enacted and in 1902 a similar proclamation was enacted for the Northern part of Nigeria, these proclamations created a Supreme Court each for both the North and South and similar provisions for the application of the common law, equity and statutes of general application were made. In 1914 the Southern and Northern Parts of Nigeria were brought together administratively in what is now termed amalgamation of 1914 and a new Supreme Court Ordinance was introduced for the whole country.

S.14 of the Supreme Court Ordinance 1914 provided as follows:

“subject to the terms of this or any other ordinance the common law, doctrines of equity and the statutes of general application in England on the 1st day of January, 1900 shall be in force within the jurisdiction of the court”

As far as consumer protection was concerned, all principles of both common law, equity and statutes of general application that were in force in England in 1900 therefore became applicable law in Nigeria. One of such statutes is the Sale of Goods Act of 1893.
2.3 LITERATURE REVIEW

Review of the literature reveal that a limited number of studies on consumer protection have been previously undertaken in the Nigerian context. While some are conceptual in nature, others are empirically based. Onah (1979)\textsuperscript{7} studied the efforts of consumers, government, and protection agencies to safeguard the interest of consumers from unscrupulous business activities in Nigeria. This study gave various reasons why it is necessary for regulations in consumer protection to be made. I agree with Onah on the necessity for regulations for the protection of consumers because regulations help in the fight against fake drugs and food. It also helps in the protection of consumer rights and the need for consumers to be safe. This can be achieved where adequate measures are put in place to combat the emergence of fake and adulterated food and drugs.

As the Nigerian National Assembly gets set to finish work on the Consumer Rights Acts, Onyeka-Ben and Anuforo (2006)\textsuperscript{8} examined critical issues relevant to the making of laws with respect to consumer protection. Later, Monye (2006a)\textsuperscript{9} reported that the level of consumer awareness in Nigeria is relatively low. In my opinion, I think Monye's report make sense and I agree with her view. In Nigeria, consumer awareness is relatively low because some consumers do not know their rights and whenever they suffer from trade malpractices they do nothing about it. If the consumers

\begin{flushleft}
\textsuperscript{8} Onyeka-Ben, V...& Anuforo E. (2006 September 13) Taming the evil infringement on consumers rights. The Guardian, p 14-15
\end{flushleft}
are conscious of the existing laws on consumer protection, it will go a long way in the enforcement of consumer rights by consumers.

A fourth study, Monye (2006b)\(^{10}\) focused on the enforcement of consumer rights in Nigeria which it termed a serious problem. This study maintains that consumers are often reluctant to enforce their rights for a variety of reasons, including ignorance of their rights, poverty, and the judiciary’s rigid adherence to strict legal rules that make it very difficult for consumers to prevail. A handful of empirical studies were reviewed in the literature. This position by Monye is true and the reasons she stated above are responsible for low level of consumer protection in Nigeria. Ignorance they say is a disease. Major fallout of illiteracy is ignorance. Majority of the consumers in Nigeria are ignorant of their rights, hence they seem helpless in the face of exploitation by producers and marketers. Fellow Nigerians in a bid to get rich quick, who will then save Nigerians from themselves? This in my opinion is a question Nigerians have to answer.

Aire (1974)\(^{11}\) found that about fifty eight percent of the 226 consumers interviewed felt that the made-in-Nigeria products which they had purchased in the preceding fifteen months were of lower quality than expected. Whilst this may be true, I still believe that some Nigerians have this perception that any product made in Nigeria must be fake and substandard. We have what it takes in Nigeria to produce products that are of good quality and government has to do all it takes to restore the confidence of the Nigerian consumer on domestic made products by supporting and equipping manufacturers. Goods made in Nigeria should be adequately monitored including the different stages of production and

---

\(^{10}\) Monye F (2006b) October 27, Consumer protection and ADR in Nigeria. CL&P Blog.

must conform with the standard prescribed by the National Agency for Food and Drug Administration and Control. When these measures have been religiously adhered to, then Nigerians need to start patronizing our domestic products and stop the mentality of thinking that the foreign products are more superior than our domestic products.

Another study, (Agbonifoh and Edoreh, 1993)\(^{12}\) reported that most Nigerian consumers are ignorant of their rights as buyers. Of the 450 adults surveyed during the study carried out in Benin City, the average “awareness score” was forty-eight percent. Furthermore, about 77 percent of the respondents claimed to have suffered from one form of dissatisfaction or the other and yet only 28 percent of them could seek and obtain satisfactory redress. The study concluded that a low level of consumer awareness is not, for a developing country, much of a surprise because of low levels of formal education and a lack of consumer organization.

Agbonifoh and Edoreh's report clearly shows one of the major setbacks in effective consumer protection. Some consumers are ignorant of their rights due to low literacy level. There's a saying that the customer is always right and the customer is king. Nigeria customers in my view need to realise this and also know that it is the duty of the manufacturers to produce goods that will satisfy the consumers and not to endanger their lives.

A third study by Omotosho (2008)\(^{13}\) examined knowledge of consumers about information and warning labels on selected products in Ado Ekiti in Southwestern Nigeria. Findings from the study revealed that respondents


had average knowledge of information labels on the selected products. Consumer awareness here again has been identified by Omotosho as a challenge. This is synonymous with the views of Onah and Monye which I also agree with.

Lerer (2006)\(^{14}\) acknowledged that most drugs are identical to the real ones in terms of packaging, labels and even appearance because they are faked not by amateurs in drug business but by scientists and knowledgeable individuals whose aim is to make profit. The Nigerian supply of meningitis vaccines to Niger in 1995 during an epidemic also resulted in about 2500 death after vaccination. China, Nigeria and the former Soviet Republics are singled at regularly as centre of drug counterfeit production. Finally, I humbly submit that corruption is the bane of Nigerian development. A lot of consumer activists easily succumb to material and financial inducement to abandon the fight against the exploitation of the consumers.

2.4 DEFINITION OF TERMS

**Consumer:** Black’s Law Dictionary defines the word *consumer* as one who consumes, individuals who purchase, use maintain and dispose of products and services; users of the final product: a member of the broad class of people who is affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practices for which the State and general consumer protection laws are enacted. The term is further defined as a buyer of any consumer

product; any person to whom such product is transferred during the
duration of an implied or written warranty applicable to the product, and
any other person who is ensiled by the terms of such warranty or under
applicable state law to enforce against the warrantor the obligations of the
warranty.\textsuperscript{15}

\textit{Collins Cobuild English Language Dictionary} defines consumer as a
person who buys things or uses services; a person or company that buys a
particular thing or uses a particular service; something or someone that
uses up a supply or amount of something.

\textit{Chambers English Dictionary}\textsuperscript{16} simply defines a consumer as one who
consumers; as opposed to producer, one who uses an article produced.

Some statutory definitions may be considered. The Fair Trading Act 1973
(UK) provides that a consumer means any person who is either:

(a) a person to whom goods are supplied, or are sought to be supplied
(whether by way of sale otherwise) in the course of business carried
on by the person supplying or seeking to supply them; or

(b) a person for whom services are sought to be supplied in the course
of a business carried on by the person supplying or seeking to
supply them, and who does not receive or seek to receive the goods
or services in the course of a business carried on by him.\textsuperscript{17}

The supply of Goods (Implied Term) Act, 1973 (UK) defines a related term
consumer sale as a sale of goods (other than sale by auction or by

\textsuperscript{15} Henry Campbell Black M.A.; 6\textsuperscript{th} ed. (St. Paul, Minn. West Publishing Co.; 1990) P. 316
\textsuperscript{16} Davidson Seaton Schwarz, & Tebbit; \textit{Chambers English Dictionary} 7\textsuperscript{th} ed. (Edinburgh: W.R. Chambers
Ltd.),
\textsuperscript{17} S. 137 (2)
competitive tender) by a seller in the course of a business where the goods;

(a) are of a type ordinarily bought for private use or consumption; and

(b) are sold to a person who does not buy or hold himself out as buying them in the course of a business.\(^\text{18}\)

The term is defined by the Consumer Protection Council Act, 1992 as an individual, who purchases, uses, maintains or disposes of products or services.\(^\text{19}\)

Legal scholars have not been left out in this regard. Aaaker and Day\(^\text{20}\) equate the term consumer with citizens. They write that consumer interest is involved when citizens enter exchange relationships with institutions like hospitals, libraries, the police force and various government agencies, as well as with businesses.

**Schiffman and Kanut**\(^\text{21}\) classify the consumer into two different kinds of consuming entities: (1) the personal consumer, and (2) the organizational consumer. According to them, the personal consumer is the individual who buys goods and services for her own use, for the use of her household or for just one member of the household, or even as a gift for a friend.

In all these contexts, the goods are bought for “final” or “end” use by individuals who are referred to as end users or ultimate users. The second category encompasses private businesses, government agencies, and

\(^{18}\) S. 4(7)

\(^{19}\) S. 32


institutions, all of which must buy products, equipment, and services in order to run their organizations – whether for profit or non-profit.

One fact that emerges from the above definitions is that writers and legal draughtsman are not agreed on a precise meaning of the term consumer. While some confine it to contractual relationships, others favor an extended meaning that is uninhibited by contractual requirements. The infinite nature of the term can be seen from the fact that some writers ascribe to it two or more meanings which may be considered conflicting. Black’s Law Dictionary is a good example. Perhaps the aim is to achieve comprehensiveness and ensure that anyone adversely affected by a product is covered.

The reference to the term by *Collins Cobuild English Language Dictionary* as something\(^{22}\) that uses up a supply or amount of something introduces some controversy. The implication is that an inanimate object may be regarded as a consumer. This extended meaning appears untenable. This is because all inanimate things are the subject of ownership. It, therefore, follows that only owners of such things can rightly be regarded as consumers. A contrary interpretation would amount to conferring a right on an object which cannot exercise it. Some practical illustrations are useful. First, a motorist buys some fuel which turns out to be adulterated. His car is consequently damaged. Who should be regarded as the consumer of the fuel? The motorist or the car, which actually consumed the fuel? The realistic answer is that the motorist is the consumer. He is the only one who has the right to use. The car being an inanimate thing cannot exercise any right and so cannot be regarded as a consumer.

\(^{22}\) Emphasis supplied
Second, a person feeds his dog with a product purchased by him; who is the consumer of that product? Is it the owner of the dog or the dog itself? The obvious answer is that the owner is the consumer. He is the only one that can use.

The attempt by some writers to confine the term consumer to purchasers of goods or services is rather restrictive. This implies that only a contractual plaintiff is qualified as consumer. This approach will adversely affect possible claims of many end users and so cannot be supported.

The reference to the consumer as individual in some of the above definitions is remarkable. Individual is defined by the Consumer Credit Act 1974 (UK), as including partnership or other unincorporated body of persons not consisting entirely of bodies corporate. In this work the term consumer is confined to natural persons.

Some restrictions inherent in some of the definitions considered above can be said to have been effectively taken care of by judicial interpretations. The decision in Donoghue v Stevenson and other subsequent cases clearly illustrate that the term consumer goes beyond the realm of contract. Thus in Stennett v. Hancock and Peters, the owner of a lorry took the wheel of the lorry, the flange of which had come off, to a motor repairer for repairs. After the work was done, the flange came off again while the lorry was being driven on the highway, and bowling along the road, it was held, following Donoghue v Stevenson, that the repairer was liable to the plaintiff in negligence as he was in the same position as that of the manufacturer of an article sold by a distributor in circumstances which

23. Supra p. 15
24. S. 189(1)
25. (1932) AC. 562
26. See Grant v. Australian Knitting Mills Ltd., (1940)3 ALL E.R 575
prevented the distributor or ultimate purchaser or consumer from discovering by inspection any defect in the article.

It is seen that the concept of consumer has assumed a very wide connotation. As rightly observed by Charlesworth and Percy, the category of persons who may be deemed to be ultimate consumers has been extended to include the user of the product as well as the person who comes into contact with it whether accidentally or deliberately.

It follows that the term consumer is not confined to purchasers. It extends to contractual consumers; ultimate users as well as any person who comes into contact with a product or service in any way whatsoever. This is the sense in which the term is used in this work.

**Consumerism:** The new encyclopedia Britannica defines consumerism as movement or policies aimed at regulating the products, services, methods, and standards of manufacturers, sellers and advertisers in the interest of the buyer.

The term is defined by The Encyclopedia Americana as the movement towards increased consumer protection.

---

27 Charlesworth and Percy on Negligence 8th ed. (London: Sweet & Maxwell, 1990), P. 1089
28 Grant v. Australian Knitting Mills Ltd. (1936) A.C 85
29 Brown v. Cotterill (1934)5 TLR 21 (a tombstone fell on a child. He was held entitled to recover);
   Power v the Bedford Motor Co. Ltd. (1959) I.R. 391 (track rods of a car were ser incorrectly and
   caused a fatal accident hrough faulty steering). See Charlesworth and Percy, op cit 1089
30 Barnett v H.J. Packer & Co. Ltd (1940)3 ALL E.R. 575. (a shop assistant suffered injury while picking a
   protruding wire from a sweet; held entitled to recover).
32 The encyclopedia American international Edition; vol. 7 (Danbury, Connecticut: Grolier Incorporated,
   1981) p. 628
The Oxford English Dictionary\textsuperscript{33} simply defines it as protection of the consumer’s interest. According to Webster’s Dictionary,\textsuperscript{34} it is a programme to promote consumer interest including protection of the environment and restraints on abuse by business.

Stanton expresses a wider view\textsuperscript{35}. He defines consumerism as the actions of individuals and organizations (consumer, government, and business) in response to consumers’ dissatisfaction arising in exchange relationships. He writes that consumerism is:

(a) a protest against perceived business injustices and

(b) the efforts to remedy those injustices.

From the foregoing definitions, it can be summarized that consumerism is a social movement aimed at enhancing the position of the consumer. The primary objective is to ensure that the consumer obtains the worth of whatever he buys. The movement could be championed by an individual, a group of individuals, business concerns or by the government. This movement which is a product of consumer discontent has assumed a greater significance today. A prominent prompting factor is industrialization with its attendant side effects. The essence of consumerism is to maximize consumer satisfaction. Satisfaction in this sense cuts across diverse issues including product quality, prices, relevant information, metrology and environmental protection.


\textsuperscript{35} Op.cit., p. 556.
**Consumer Protection:** The phrase *consumer protection* has been defined as “legislation which protects the interests of consumers.”\(^{36}\) This definition is clearly restrictive. It excludes other forms of protection which are not statutory, such as protection by the judiciary, trade associations, and other voluntary consumer organizations. The definition is, therefore, not very helpful. *The Encyclopedia Americana\(^ {37}\)* defines consumer protection as “safeguarding the buying public from dangerous or inferior goods and services and from fraudulent and other unfair selling practices.” This definition suffers some limitations. It has been shown that the concept of consumer goes beyond the notion of buyer.\(^ {38}\) Consequently, a definition which confines consumer protection to the buyer is not appropriate.

A broader definition which comprises all aspects of consumer protection is preferable. Thus consumer protection can be defined as the act of safeguarding the interests of the consumer in matters relating to the supply of goods and services, fraudulent and hazardous practices as well as environmental degradation.

### 2.5 WHAT ARE CONSUMER RIGHTS

A consumer right is the hallmark of consumer protection law. There is an inequality of bargaining power between the consumer and the producer which leads to the exploitation of the consumer.\(^ {39}\) Consumer protection covers the rights and privileges of consumers and how these rights should be accorded to them. It also deals with several issues relating to the welfare of the consumer and is also concerned with raising the standard of

---


\(^ {38}\) See definitions of consumer, above pp. 13-17

\(^ {39}\) B.W. Harvey & D.L Parry; *the law of consumer protection and fair trading*, 1996, London: Butterworth’s, at pg. 15-16.
living in terms of improving the political and social well-being of consumers. The major aim of consumer protection laws is to empower the consumer so as to enable him to enjoy these rights.

The rights of consumers are increasingly important around the world. Governments have passed numerous laws to assure that end user of products and services have the same rights as manufacturers and providers of services. However, the inclusion of consumer rights in the constitution of a country will enhance effective consumer protection.

2.6 THE CONCEPT OF RIGHTS

Right has been defined as something that is due to a person by a just claim, legal guarantee, or moral principle. It also means a power, privilege, or immunity secured to a person by law, a legally enforceable claim that another will or will not do a given act, a recognized and protected interest, the violation of which is a wrong.

Right has been construed in the judicial sense to mean a correlative duty. This is because where there is no duty, there can be no right. But there may be duties without rights. In order for a duty to create a right, it must be a duty to act or forbear. For example, it may consist of our duty to love our neighbour, but he has no right to our love. The subject of human right is as old as man and indeed its origin, scope and deeper meaning cannot be explained in isolation from the history of man. Human rights are natural

40 L.G. Schiffman, L.L Kanut, Consumer Behaviour Eaglewood Cliffs, Pretice-Hall Inc, 1978, pp. 4-8
42 Ibid at p. 7348
rights and are rights conferred on men and women because they are human beings created by God in his own image.\textsuperscript{43} They are inherent entitlement and arise from the very nature of man as a social animal and are recognized and protected in a civilized legal order.\textsuperscript{44}

2.7 THE RIGHTS OF CONSUMERS VIS-À-VIS THE CONSTITUTION

Consumers all over the world are accorded various rights. John F. Kennedy\textsuperscript{45} in 1962 proposed four ideals for consumer protection law which he called rights. The rights to safe products, the right to demand information about a product or service, the right to a competitive market place and the right to get redress against a manufacturer or a distributor.

Consumer rights emerged after the second generation rights as a reaction to a post modern global world engulfed by scientific evolution. The consumer international proposed eight consumer rights.\textsuperscript{46} These rights includes, the right to safe products, the right to demand and receive information, the right to be heard, right to choose, the right to consumer education, right to redress the right to the satisfaction of basic needs and the right to healthy environment. It is pertinent at this juncture to examine these rights more closely.

a) The right to safety: a consumer has the right to demand safe goods. He is entitled to protection from hazardous, unsafe and substandard goods.\textsuperscript{47} This right entails that a manufacturer must ensure

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{43} Ibid at p. 7349
\item \textsuperscript{44} Eze, O. Human Rights in Africa: Selected Problems, 1984, Lagos, Macmilliam, P. 5, Gasiokwu, M.O.U, Human Rights History, Ideology and Law, 2003, dos, Feb Educational books, p.2
\item \textsuperscript{45} Famous American President 1917-1963
\item \textsuperscript{46} http://www.consumrinternational.org (accessed on 16/04/2015)
\item \textsuperscript{47} O.Okpara, Human Rights Law & Practice in Nigeria 2005, Enugu Chengel Ltd, P. 1
\end{itemize}
\end{footnotesize}
that their products are safe for use by the ultimate consumer. A manufacturer therefore owes a duty of care to ensure that the goods are safe and free from harmful defects.\(^48\) In **Donoghue v Stevenson**.\(^49\) Lord Atkin held that:

“A manufacturer of products which he sells in such a form as to show that he intends to sell 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 or putting up of the products will result in injury to the consumers life or properly, owes a duty to take reasonable care”\(^50\).

In **David Greigh Ltd v Goldfinch**\(^51\) a consumer claimed that a pork pie brought from the defendants had some patches of mould. It was established that a small amount of mould had been present at that time of sale. It was held that the mould, although harmless in nature, made the pie unfit for human consumption. The court stated here that the question was whether the product was dangerous to health and it was not necessary if it were not. In **J. Miller Ltd v Baltersea Borough Council**,\(^52\) a chocolate cream burn was found to contain a piece of metal. The appellants were charged under section 9 of Food and Drugs Act 1938 (UK), for selling food unfit for human consumption. Similarly, in **Turner & Sons Ltd v Owen**\(^53\) a


\(^{49}\) Donoghue v Stevenson (1932) AC 562

\(^{50}\) Donoghue v Stevenson op cit at p. 562

\(^{51}\) (1961)105 sol. Jo 367

\(^{52}\) (1956)1 Q.B 43

\(^{53}\) (1956)1 Q.B 48
loaf of bread which contained a piece of string was held not unfit for human consumption.

The above decisions do not in any way suggest that there is no liability in the case of presence of foreign bodies in articles of food. In Lindley V George W. Hornes Co. Ltd, a sweet was found to contain a snail. The respondents were convicted under section 3 of the food and Drugs Act, 1938 (UK) for selling to the prejudice of the purchaser food which was not of the nature, substance of quality demanded. The consumer’s right to safety is recognized when damages are awarded to a consumer who suffered harm as a result of the manufacturer’s negligent act as examined in the above cases. Consumers have the right of protection against industrial activities, goods and services, which may damage or destroy their property, injure or even kill them. However, consumer's ability to exercise the right to safety depends wholly on a full prior disclosure being made by operators of chemical, pesticides and allied industries, manufacturers of goods, products and services provider concerning the degree of safety of their industrial activities or reliability of goods products or services. Precautions that should be taken to avoid accidents, or to mitigate damage or injuries in the case of accidents, who is to be held liable in the event of consumers having grievances concerning such activities, goods, products or services must be exhaustively communicated to the consumer.

(b) Rights to be informed: Every consumer has the right to complete information on the pricing quality, and ingredients of goods, products, and services, as well as the identify of manufacturers or producers. Consumers

54 (1950) 1 ALL E.R. 234
55. Consumer rights as constitution rights – A comparative analysis of some selected jurisdiction, pdf.
have the right to disclosure of information about the production, storage transportation, use or release of hazardous substances that could potentially endanger human health or life.

c) **Right to the Heard:** Consumers have the right to be heard on issues, policies, plans, programmes and decisions that concern them. The scope of this right entitles consumers to redress of grievances concerning substandard, unsafe, unduly expensive goods and services, unfair claims which are not substantiated by tests and other unfair practices against them.

d) **Right to choose:** Consumers have the right to choose from a variety of quality goods and services available at competitive prices. Where a monopoly is the supplier or provider, consumers have the right to quality goods and services at reasonable prices. However, this right can be exercised only once consumers are able to clinch their freedom to receive or impact information or ideas on goods and services available at the market.

e) **The Right to Consumer Education:** The term consumer education refers to the process of exposing people to the knowledge about their rights and duties as well as skills needed by individuals, groups and institutions to be able of priorities their needs, minimize waste, maximize opportunities for purchasing and utilizing goods and services.\(^{56}\) Consumer education is also about enabling citizens adapt to personal environmental, economic, social and technological changes and be able to take rational decisions and act efficiently in the market place.\(^{57}\)

\(^{56}\) E. Ehide "Consumer protection law" pg 78-80

\(^{57}\) P.E. Okwuraiwe; perspective on consumer as missing link in the court of consumer protection available at http://www.nigerianobserver.com pg 16.
A consumer has the right to make himself aware of consumer “ evils” in society.\(^{58}\) The greatest asset any consumer can have is education. This is because an educated consumer is a sure bulwark against the phenomena of consumer evils. There is need for the consuming public to be properly educated on the menace and health hazards arising from the consumption or use of product with false claims. Consumers should be educated on the existing regulatory and protection agencies in the country. Education engenders enlightenment and awareness. Every consumer has the right to be aware of basic consumer rights and responsibilities in order to make an informed decision concerning choice of goods, services and pricing thereof.

**f) The Right to clean and Sustainable Environment:** The consumer has a right to live and work in an environment that does not threaten their health and life and which does not pose a danger to present and future generations. Consumers and communities who live around industrial units and workers in such industries are entitled to information on such industries’ toxic release inventors. Furthermore, governments by way of legislation should ensure that industries take productive initiative to discharge their obligation to society, to share information on the products and processes on potential threats to safety arising out of them.

**g) The Right to the satisfaction of basic needs:** by this right, a consumer is entitled to enjoy the goods or services rendered to him her. This implies that with respect to products, the goods must be fit for the purpose they were bought. Also, the product in issue should as much as possible correspond with the description given to a consumer or any

---

\(^{58}\) I.M Chukwu; Advertising practice and consumer protection, consumer journal (2007) vol. 3 pg. 36
description he is relying on. The scope of this right is reproduced under the sale of Goods Act.59

In Varley v Whipp,60 channel , J held that the term sale of goods by description must apply to all cases where the purchaser has not seen the goods but is relying on the description alone. In Arcos Ltd v Ronaasen & Sons61 the contract was for the supply of some staves of ½ inch thickness. About five percent of the staves supplied complied with this specification while others suffered slight deviations. It was held that the buyers were entitled to reject.

2.8 CONSUMERISM IN NIGERIA

Wikipedia defined Consumerism is defined62 as a social and economic order and ideology encourages the acquisition of goods and services in ever-greater amount. The term “consumerism” also refers to the consumerist movement, consumer protection or consumer activism. Agbonifoh B.A. Ogvo E. O., Nnolim D.A., A.D. Nkamnebe63 defined consumerism as “organized efforts of consumers aimed at promoting and enforcing the rights of consumers in their exchange relationship with all organizations and individuals”. In their own contribution, Griffin R.W. and Ebert R.J64 looked at consumerism as “a form of social activism dedicated to protecting the rights of consumers in their dealings with businesses”. They noted that their first formal declaration of consumer rights protection came in the early 1960s when president John F. Kennedy identified four

59 The sale of Goods Act 893 CAP 164 of 1958
60 (1900) 1 Q.B 513
61 (1933)A.C, 470 at P. 479
62 http://en.m..wikipedia.org/wiki/consumerism, accessed on 17/04/2015
basic consumer rights. These rights are now backed by numerous federal and state laws worldwide.

1) Consumers have a right to safe products
2) Consumers have a right to be informed about all relevant aspects of a product.
3) Consumers have a right to be heard.
4) Consumers have a right to chose what to buy.

Ijewere A. A\(^{65}\) noted that the level of consumer awareness in Nigeria is relatively low, while Omenazu P\(^{66}\) submitted strongly that the Nigerian consumer remains one of the most exploited in the world. According to Agbonifoh B.A “there appears to be widespread dissatisfaction among Nigerian consumers in virtually every area of marketing practice. It has been found that about 58% of the 225 consumers interviewed felt that the made-in-Nigeria-products which they had purchased in the preceding months were of lower quality than expected”.

Furthermore, a study revealed that consumers believe that in the area of service and engineering, manufacturers are not very careful and meticulous. The technology of the goods is relatively backward, goods are limitative rather than inventive or original that they are somewhat unsafe. In an unscrupulous attempt to mislead consumers, some manufacturers and middlemen have formed the habit of fixing foreign labels on goods made in Nigeria. Edoreh P\(^{67}\) noted that “these various acts of deception in


the Nigerian market have seriously disturbed the faith of the consumer in the ability of market forces alone to protect them….”

2.9 TO WHAT EXTENT ARE CONSUMER RIGHTS PROTECTED IN NIGERIA

A consumer is logically entitled to some rights, which include the right to satisfaction of basic need, the right to safety the right to information, the right to choose, the right to redress, the right to consumer education etc. Essentially consumer protection laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves. Consumer protection laws are a form of government regulation, which aims at protecting the right of consumers.

Where a consumer is not satisfied or feels short changed, he or she is entitled to seek redress by possible compensation through a regulatory body. In Nigeria for instance, such a body is the Consumer Protection Council (CPC). The consumer protection council was established in line with the United Nations Guidelines for consumer protection of 1985.

The CPC is an agency of the Federal Republic of Nigeria, supervised by the federal ministry of trade and investment. Though it was established by an Act in 1992, it commenced operations only in 1999, when its institutional framework was put in place. This was the first step towards giving the Nigerian consumer hope of redress when wronged by a product or service he chose to use. It became imperative for the state to protect

---

itself and the populace from the Antics of unscrupulous producers and service providers by way of administrative intervention. There is a conscious legal policy by the government inspired by the recognition of the vulnerable position which the consumer occupies in the market place.69 The government has sought to ensure the protection of consumer by assigning specific functions to some government agencies.70

The consumer protection council established by the consumer protection council Act71 is the most direct consumer administrative agency in Nigeria, others are the National Agency for Food and Drugs Administration and Control72 to control and standardize the manufacture, importation, sale, advertisement of regulated Products such as food and drugs, the standard organization of Nigeria73 to safeguard product standards, and the Nigerian communications Commission74 set up to carter for the interests of telecommunication services.

These agencies are conferred with extensive functions relating to setting of standard, control of quality and investigation of consumer complaints.75 Their mandates are basically administrative in nature, they seek to regulate the production, supply and provision of goods and services.

The Consumer Protection Council being the most direct consumer protection agency in Nigeria merits some detailed comments here. The

---

71. These include ministries of trade and industry; Health human resources
72. Consumer protection council Act cap, C25 LFN 2004
73. Established by Decree No. 15 of 1999, now NAFDAC cap N 1 LFN 2004
74. SON Decree No. 56 of 1971, now SON Act Cap, S9 LFN 2004
council was established perhaps to fall in line with the UN Guidelines on consumer protection.\textsuperscript{76}

The mandate of the council covers both goods and services and its functions\textsuperscript{77} include providing redress to consumer complaints through negotiations, mediation and conciliation, eliminating hazardous products from the market and causing offenders to replace defective products with safer and more appropriate alternatives, publishing from time to time list of products whose consumption and sale have been banned, withdraw, restricted or not approved within or outside the country, issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligation under the Act; encourage trade industry and professional associations to develop and enforce in their various field quality standards designed to safeguard the interest of the consumer and to encourage the formation of voluntary consumer groups or associations for consumer well being.

The council is charged with the administrative responsibility of ensuring that consumers interests receive due consideration at appropriate forum and providing redress in cases of unscrupulous exploitation of consumers by producers and service providers.\textsuperscript{78} The council is empowered to apply to court to prevent the circulation of products which constitute imminent public hazard. Compel a manufacturer to certify that all safety standard, are met in their products, cause quality test to be conducted on consumer products, demand production of label showing date and place of manufacture of a product and certification of compliance, compel

\textsuperscript{76} Boma, at p. 179
\textsuperscript{77} The UN General Assembly adopted guidelines in 1985 by Resolution 39/248 of April 1985
\textsuperscript{78} See SS. 2 and 3 of the Act
manufacturers, dealers or service providers to give public notice of health hazards inherent in their products, and ban the sale, distribution and advertisement of products which do not comply with safety or health regulations. The mandate of the council focuses on the health and safety of consumers by empowering the council to eliminate oppressive trade practices, through unfair bargains, consumer education and information, and adequate compensation and relief for consumers who have suffered injuries from defective goods and services. Monye, has queried whether an aggrieved consumer who has obtained redress through the council or state committee may maintain a civil action against the offending producer or service provider.\(^{79}\) She contends that to allow the consumer maintain such civil action in addition to the action taken by the council or state committee will weaken the position of the council or state committee which took pains to investigate the complaint with a view to securing appropriate remedy for the consumer, and further raises the issue of double jeopardy against the accused person.\(^{80}\) Monye concludes 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.\(^{81}\)

Secondly, while the Act empowers the council to investigate cases of unfair trade practices and enforce compliance against unscrupulous traders, the constitution\(^{82}\) guarantees the consumer’s right to institute an action against anyone who infringes or threatens to infringe his constitutionally guaranteed rights.\(^{83}\)

\(^{79}\) S. 2(i) of the Act

\(^{80}\) Monye, “Enforcement of consumer protection laws in Nigeria”, at P. 95

\(^{81}\) Monye op cit at p. 96

\(^{82}\) Monye, “Enforcement of consumer protection law in Nigeria, at p. 97

\(^{83}\) S. 46 CFRN 1999
A question that may be posed is whether the consumer protection Act is necessary in view of the existence of other agencies performing similar functions. A comparison of this Act with other laws on consumer protection shows that most of the functions conferred on the council and the state committees are already being performed by some existing agencies such as standard organization of Nigeria.\(^{84}\) This organization ensures the compliance with quality standards through the certification of products and routine factory inspections.\(^{85}\) Both NAFDAC and SON ensure the elimination of hazardous Products from the market through the issuance of public alerts and closure of offending factories. In view of the foregoing analysis, a possible argument is that the CPC Act is an unnecessary duplication. What is needed is effective machinery and not a proliferation of agencies. But a counter argument is that many of the existing agencies such as SON NAFDAC are professional in character and are saddled with a lot of scientific work, such as the prescription of standards and analyses of suspected fake and substandard products. Besides, the functions of these three agencies are producer-focused.

The laws are in place, the bodies to tackle issue of unfair trade practices. So we ask why many Nigerian consumers are left helpless when they receive goods and services that are below standard? Mrs. Ify Umenyi, Director General, Consumer Protection Council (CPC), said,\(^{86}\)

“Our mandate requires us to, among others, eliminate hazardous products from the market, provide speedy redress to the consumers complaints,

\(^{84}\) S. 35 (1) CFRN 1999  
\(^{85}\) Even though this is not a direct function under the Act, it can be justified on S. 4(1) – in law of consumer protection, spectrum books ltd by Felicia Monye, published 2003  
\(^{86}\) Felicia Monye “Law of consumer protection”, Spectrum law series, p. 66
undertake campaigns as will lead to increased consumer awareness, ensure that consumers interest receive due consideration at the appropriate forum, and encourage trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of consumers…while using all legitimate means to eliminate the scourge of consumer rights abuse in the Nigerian market place, we are conscious of the fact that an uniformed consumer population cannot be effectively protected if they do not know that they have rights, what the rights are, and how the rights could be protected.

To ameliorate the plight of consumers in Nigeria, the CPC currently runs a radio program tagged “Consumer Speaks Radio Network; But beyond that, the CPC should organize town hall meetings and road shows to major markets and cities to educate both the sellers and buyers on their duties and responsibilities, it might also be helpful if they open up more offices nationwide to make their services more accessible to the average Nigerian.

Another Agency in Nigeria that its functions are tailored towards protecting the consumer is the National Agency for Food and Drug and administration and control (NAFDAC). NAFDAC was established in 1993 with functions to regulate and control the importation, exportation manufacturing, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals. It is important to note here that NAFDAC has been very effective in the past and if its potential and activities are properly harnessed, if would certainly be crucial in protecting consumers in Nigeria87.

---
2.10 CONCLUSION

Despite the fair attempts that have been made by these agencies, the truth of the matter still remains that the Nigerian consumer is a long way from being king in the real sense of the word. It has been observed by commentators that although the CPC Act recognizes the right of consumers, it does not specifically provide for these rights as they are merely implied and subsumed into the functions of the council and the state committees established by the Act. It is therefore safe to conclude that mere existence of the law is not enough. Specific protective and compensatory measures should be clearly established for any infringement on any of the consumers rights. Doing so would strengthen the CPC Act in Nigeria. Furthermore, the consumer protection council need to embark on sustained sensitization of consumers on their rights and also push for the amendment of specific sections of the CPC Act to give aggrieved consumers unfettered access to counts to pursue their right.88

CHAPTER THREE

APPRAISAL OF CONSUMER PROTECTION LAWS AND ENFORCEMENT IN NIGERIA

3.1 INTRODUCTION

The previous chapter looked at conceptual framework of consumer protection, consumerism in Nigeria and concluded with the extent wherein consumer rights are protected in Nigeria. This chapter will cover the appraisal of consumer protection laws and enforcement in Nigeria. It will examine different Acts and laws that enhance consumer protection and also examine judicial attitude with respect to consumer rights cases and to what extent the courts are willing to assist in protecting consumers.

3.2 FOOD AND DRUG ACT

The Food and Drug Act\(^{89}\) makes provision for the regulation of the manufacture, sale and advertisement of food, drugs, cosmetics and medical devices, and respects existing state laws on those matters.

It creates five main classes of offences relating to the manufacture, labeling and advertisement, importation, storage and distribution of those articles. It empowers the minister of health, interaction, on the recommendation of Food and Drugs Council set up under the Act to designate persons as inspecting officers or analysts. An inspecting officer or analyst so designated has wide powers of entry, examination and seizure of suspected or offending articles in any person’s possession for the purpose of or preparation for sale.

\(^{89}\) Food and Drug Act Cap F32 LFN 2010 hereinafter referred to as "the FAD".
Section 1 of the Food and Drug Act provides for prohibition of sale of certain food, drugs and cosmetics devices.

Under section 1\textsuperscript{90}, it provides that no person shall sell, import, manufacture or store any article of food which;

a) has of food or upon it any poisonous or harmful substance not being a food additive or contaminant of a type and within the level permitted by regulations made under this Act;

b) is unfit for human consumption; or

c) Consists in whole or in part of any filthy, disgusting rotten or diseased substance.

Sale of Poisonous or Harmful Food, Drugs and Cosmetics

Black’s Law Dictionary\textsuperscript{91} defines poison as a substance having an inherent deleterious property which renders it, when taken into the system, capable, of destroying life. A substance which on being applied to the human body, internally or externally, is capable of destroying the action of the vital functions or of placing the solids and fluids in such a state as to prevent the continuance of life. The word harmful as used in connection with food means noxious, hurtful, pernicious, likely to cause illness or damage.\textsuperscript{92}

It can be inferred from these definitions that any substance which is capable of producing any adverse effect on the health of the consumer can be regarded as harmful or poisonous.

\textsuperscript{90} Section 1 of the Food and Drug Act.

\textsuperscript{91} Black’s Law Dictionary, 6\textsuperscript{th} ed (St. Paul: Minn. West Publishing Co., 1990) p. 1156

\textsuperscript{92} Black H.C pg. 718
SALE OF FOOD UNFIT FOR HUMAN CONSUMPTION

Section 1(6) prohibits any sale of any article of food which is unfit for human consumption like the terms considered above, the phrase “unfit for human consumption is not defined by the Act. Also, there are no local decisions on this issue.

A review of some English decisions however shows that the phrase applies to unwholesome, putrid or diseased articles. In David Greig Ltd V. Goldfinch the court stated that for the offence to be committed, it was not necessary to show that the product in question was dangerous to health. It is sufficient if the article is unsuitable for human consumption.

The presence of a foreign body may not necessarily make an article unfit for consumption. In J. Miller Ltd V. Battersea Borough Council, it was held that the presence of a metal in a chocolate cream bun did not render the bun unfit for human consumption.

Similarly, in Turner & Sons Ltd v Owen, a loaf of bread which contained a piece of string was held not unfit for human consumption.

In Chibnall’s Bakeries v Cope Brown John Mickleburgh observers that to be unfit, the additional matter must cause the food to be actually or potentially unwholesome.

Section 1(2) of the Act also provides that no person shall sell, import, manufacture or store any article of food which is adulterated.

---

93 (1961)105 Sol J.o 367
94 (1956)1 Q.B. 43
95 (1956)1 Q.B. 48
96 (1956) CRIM L.R. 236
97 Established by the Standards Organization of Nigeria Decree 56 of 1971 now the Standard Organization
Section 1 (3) of the Act also provides “no person shall sell, import, manufacture or store any article of food or any drug or cosmetic which was manufactured, prepared, preserved, packaged or stored under unsanitary conditions.

The Act under section 2 stipulates that except as otherwise provided by regulations, no person shall –

a) Advertise to the general public any food, drug, cosmetic or device as treatment, preventative or cure for any diseases, disorders or abnormal physical states specified in the first schedule to this Act.

b) Sell any food, drug, cosmetic or device that is represented on the label or is advertised to the general public as treatment, preventive or cure for any of the diseases, disorders or abnormal physical states specified in the said first schedule to this Act.

One possible reason for the prohibition of advertisement of these products is to discourage abuse and ensure strict professional supervision by relevant health providers. Osibanjo and Fogam also rationalize the prohibition on the ground that since the listed diseases like AIDS has no known cure; such advertisements are likely to be false.

With respect to the interpretation section certain items are excluded from the definition. They include live animals, birds, fish and other articles used as drugs.

Act CAP, 59 LFN 2010 and hereinafter simply called “the SON Act.”, S.1(2).

. S1(3) Food And Drug Act.

In addition to the foregoing, drug is defined\textsuperscript{100} to include any substance or mixture of substances manufactured, sold or advertised for use in:

\begin{enumerate}
\item[a)] The diagnosis, treatment, mitigation or prevention of any disease, disorder, abnormal physical state, or the symptoms thereof, in man or in animals.
\item[b)] Restoring, correcting or modifying organic functions in man or in animals.
\item[c)] Disinfection or the control of vermin, insects or pests or
\item[d)] Contraception.
\end{enumerate}

“Food” includes any article manufactured, processed, packaged, sold or advertised for use as food or drink for human consumption, chewing gum and any ingredient which any be mixed with food for any purpose whatsoever and excludes.

\begin{enumerate}
\item[a)] Liver animals, birds or fish,
\item[b)] Articles or substance used as drugs
\end{enumerate}

\textbf{Food and Drug Act provides for penalties under section 17.}

1) Any person who contravenes any of the provisions of this Act or the regulations made under if or faults to comply with any requirement imposed on him by a notice under subsection (1) of section 4 of this Act shall be guilty of an offence and liable on conviction to a fine not less than fifty thousand naira or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

\textsuperscript{100} S.20, Food And Drug Act.
2) Where an offence under this section committed by a body corporate is provide to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

**Trial of offences**

Section 18\(^{101}\) provides that the Federal High Court shall have exclusive jurisdiction to by offences under this Act.

**3.3 STANDARD ORGANIZATION OF NIGERIA ACT**

The Standard Organization Act\(^{102}\) is one of the administrative preventive strategies put in place by the Nigerian government which objective is to prevent the consumer from getting shortchanged in the quality of products. The basic aim of this enactment is to establish an umbrella organization for the standardization of methods and products in Nigerian industries and to provide for other matters relating thereto.

**Section 3(1)\(^{103}\)** of the Act creates a governing council for the organization while section 4 endows it with far reaching functions. It is empowered.

a) To advice the Federal Government generally on the national policy on standards, standards specifications, quality control and metrology.

---

101 S.18, Food and Drug Act.
102 SON MANCAP IN BRIEF 2007
103 S. 3(1) Standard Organization of Nigeria Act.
b) To designate, establish and approve standards in respect of metrology, materials, commodities, structures and processes for the certification of products in commerce and industry throughout Nigeria.

c) To provide the necessary measures for quality control of raw materials and products in conformity with the standard specification;

d) To determine the overall policy of the organization, in particular with regard to the financial, operational, and administrative programmes of the organization and to ensure the implementation of the said policy, and

e) To carry out other functions imposed on it under this Act or any other written law.

The organization itself is assigned specific functions under section 5 of the Act which include *inter alia* the duty:

a) To organize tests and do everything necessary to ensure compliance with standards designated and approved by the council;

b) To undertake investigations as necessary into the quality of facilities, materials and products in Nigeria, and establish a quality assurance by stem including certification of factories products and laboratories.

c) To ensure reference standards for the calibration and verification of measures and measuring instruments.

d) To compile an inventory of products requiring standardization.

e) To compile Nigerian standards specification.
f) To foster interest in the recommendation and maintenance of acceptable standards by industry and the general public.

g) To development methods for testing of materials supplies and equipment including items purchased for use of departments of the government of the Federation or a State and private establishments.

h) To register and regulate standards marks specifications;

i) To undertake preparation and distribution of standards samples – etc.

The Mandatory Conformity Assessment programme (MANCAP) is put in place by the standards organization of Nigeria (SON).

To ensure that all locally manufactured products conform to the Nigerian industrial Standards (NIS) before such products are presented for sale in the Nigerian market or exported\textsuperscript{104}.

The scheme aims at protecting consumers from locally manufactured substandard and unsafe products while they do not meet the minimum requirements of the relevant Nigerian Industrial Standard (NIS) thereby generating value for money. The scheme is designed to protect genuine consumers against unhealthy trade practices, counterfeiting and unfair connection in the market place and to encourage investment. Conformity to NIS specification is also mandatory requirement for Imported Products.

Section 15 provides for offences in relation to standards. Section 15 (1) any person other than the permitted manufacturer who makes or sells or exposes for sale or uses for the purpose of advertising any material or document on or in which is portrayed –

\textsuperscript{104} SON SONCAP IN BRIEF P. 4
(a) an industrial standard in any way resembling or purporting to be any
of the Nigerian industrial standard established in pursuance of this
Act or

b) a certification mark resembling or purporting to be a certification
mark issued in pursuance of section 14 of this Act.

1. Shall be guilty of an offence and on conviction, liable to a fine not
exceeding N1/000 or to imprisonment for a term not exceeding one
year to both such fine and imprisonment.

2. Where a person is convicted under this section, the court may make
such order as to the forfeiture or destruction of the material or
document in issue at it may think appropriate in the circumstances.

Under section 17 the Director General upon being satisfied that the quality,
purity or potency of any product as such is detrimental or hazardous to life
and property to the magistrate court having jurisdiction in the area for an
order

   a) To seize, destroy or prohibit any person from selling or offering
      for sale such product or

   b) To seal up premises where such product is manufactured or
      stored or

   c) To direct the manufacturer to rectify the deficiency in the product.

The enactment as amended forms the legal framework put in place by the
federal government to enhance the actualization of consumer protection in
Nigeria.
Without exaggeration if the elaborate provision of the law put in place are religiously observed or applied, it will certainly go a long way in enhancing the position of the consumer. The fact that the average Nigerian consumer remains largely illiterate or uninformed complicates the matter and militates against the realization of the laudable policies and objectives of the law.

### 3.4 CRIMINAL CODE ACT

The criminal Code Act\(^\text{105}\) is yet another statute that make, provisions that impact on consumer protection.

Section 243(1)\(^\text{106}\) provides any person who sells as food or drink or has in his possession with intent to sell it as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, or is in a state unfit for food or drink is guilty of a misdemeanors, and is liable to imprisonment for one year.

2. any person who adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink is guilty of a misdemeanor, and is liable to imprisonment for one year.

Also under **Section 244**\(^\text{107}\)

Any person who……

1) Knowingly takes into a slaughter-house for the slaughter of any animals intended for food of man, the whole or any part of the carcass of any animal which has died of any disease, or

---

\(^{105}\) Criminal Code Act CAP 77 LFN 1990 CAP c38 LFN 2010  
\(^{107}\) S.244 Criminal Code Act.
2) Knowingly sells that whole or part of the carcass of any animal which has died of any disease or which has disease when slaughtered is guilty of a misdemeanor, and is liable to imprisonment for two years.

It can be noticed from these provisions that the criminal Code Act duplicates some of the existing statutes already discussed particularly, the Food & Drug Act. This will invariably lead to the problem of choice of law. It is suggested that the above provisions be expunged from the criminal Code since existing consumer protection laws adequately covers them.  

3.5 SALE OF GOODS LAW OF RIVERS STATE

The Sale of Goods Law of Rivers State also provides for section relevant for consumer protection in Nigeria. For instance, section 12 provides for sale by description.

Under Section 12 (1) where there is a contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description.

2. If the sale is by sample as well as descriptive, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not correspond with the description.

Section 13 provides for conditions as to quality or fitness.

Under Section 13(1) except as provided by this section 14 of this law and subject to any other enactment, there is no implied condition as to the

---

108. Felicia Monye, Law of Consumer Protection, Spectrum series, First Published 2003, p 70
110 S.12(1)SOGL R/S 1999.
111 S.13(1) SOGL
quality or fitness for any particular purpose of goods supplied under a contract of sale.

2) Where the seller sells goods in the course of business, there is an implied condition that the goods supplied under the contract are of merchantable quality except that there is no such condition:
   a) As regards defects specifically drawn to the buyer's attention before the contract is made, or
   b) If the buyer examines the goods, before the contract is made, as regards defects which that examination thought to reveal.

Section 14 Provides for Sale by Sample

14(1) A contract of sale is a contract for sale by sample, where there is an express or implied term to that effect in the contract.

2. In the case of a contract for sale by sample there is an implied condition.
   a) That the bulk will correspond with the sample in quality (b) that the buyer will have a reasonable opportunity of comparing the bulk with the sample (c) that the goods will be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

3.6 COUNTERFEIT AND FAKE DRUG ACT

The government of Nigeria by this Act stepped up the crusade against the sale and distribution of counterfeit, adulterated, banned and fake drug,
and poisons without license or registration. It also makes provision for the establishment of federal and state task forces charged with responsibility for the seizure of any drug or poison illegally displaced for sale in any unlicensed or unregistered premises.

Under section 1\textsuperscript{114} of the Act, any person who

a) Produces, import, manufactures, sells, distributes or in possession of
or

b) Sells or displays for the purpose of sale, or

c) Aids or abets any person to produce, import, manufacture, sell, distribute for the purpose of sale, any counterfeit, adulterated, banned or fake, substandard or expired drug or unwholesome processed food in any form or whatsoever commits an offence under this Act and shall accordingly, be punished as specified in this Act.

Section 2\textsuperscript{115} makes provision that any person who

a) hawk or sells or

b) displays for the purpose of sale or

c) aids or abets any person to hawk, sell, display for the purpose of sale, any drug or poison in any place not duly licensed or registered by the appropriate authority, including any market, kiosk, motor park, road side stall or in any bus, ferry or any other

\textsuperscript{113} Counterfeit and Fake drugs and unwholesome processed foods (Miscellaneous Provisions Decree No. 25. 1999 ACT CAP C34 LFN 2010.

\textsuperscript{114} . S.1 . Counterfeit and Fake drugs and unwholesome processed foods (Miscellaneous Provisions Decree No. 25. 1999 ACT CAP C34 LFN 2010.

\textsuperscript{115} . S.2 Counterfeit and Fake Drug Act.
means of transportation is guilty of an offence under the Act and shall accordingly be punished as specified in this Act.

Penalties created under this Act include the following-

**Under S. 3(1)**\(^{116}\), any person who commits an offence under

a) Section of this Act is liable on conviction to a fine not exceeding N500,000 or imprisonment for a term of not less than 5 years or more than 15 years or to both such fine and imprisonment.

b) Section 2(1) of this Act, is liable on conviction to a fine not exceeding N500,000 or imprisonment for a term of not less than 2 years or both fine and imprisonment. (2) Where an offence under section 1 or 2 of this Act has been committed by a body corporate, every person who at the time of the commission of the offence was proprietor, director, general manager or secretary or other similar officer, servant or agent of the body corporate or a person purporting to act in any such capacity as well as the body corporate shall be deemed to be guilty of the offence and may be proceeded against and punished accordingly.

By **Section 4**, the Federal High Court shall have exclusive jurisdiction to try offenders and impose penalties under this Act.

**3.7 TO WHAT EXTENT ARE CONSUMER RIGHTS PROTECTED IN NIGERIA?**

The judiciary is generally seen as the last hope of the common man, the hope of the hopeless, the help of the helpless, and the sanctorum for the legally injured.\(^{117}\)

---

\(^{116}\) S.3 (1) Counterfeit and Fake Drug Act.

\(^{117}\)
In the power relation between the consumer and the producer, the consumer is seen as a weeping child, the common man. He therefore looks up to the courts for protection from unscrupulous businessmen, who would usually resort to sharp and unfair trade practices to maximize profits at the consumers expense.

The judiciary provides the primary venue of obtaining redress in consumer protection matters. From the judiciary perspective therefore, consumption is perceived as one of the rights of citizens.

The constitution of the Federal Republic of Nigeria provides for fundamental right of a citizen. \(^{118}\)

Section 33 of the constitution provides for right to life. This presupposes the right to consume safe food, water, air, service and other articles for the sustenance of the citizen is life. If would seem that the judiciary views issue of consumer protection as a matter that is very fundamental and near life threatening in Nigeria as reflected in the possible dangers adulterated and fake products pose to the life of the consumer.

Commenting on the susceptible state of the Nigerian consumer, Aniagolu Jsc in *Nigerian Bottling Co. Ltd v. Ngonadi*, \(^{119}\) expressed, “Nothing appears to be more elementary in this country where it is often the unhappy lot of the consumers to be inflicted with shoddy and unmerchantable goods by some pretentious manufacturers, entrepreneurs, shady middlemen and unprincipled retailers whose avowed interest seems

---


\(^{118}\) Constitution Federal Republic of Nigeria 1999

\(^{119}\) (1985)1NWLR (pt. 4)639, at p. 753
only, and always, to maximize their profits leaving honesty a discounted and shattered commodity”.

This expression by the apex court in the land would give the impression that our consumer protection is given the highest attention by the court. In reality, consumer protection appears to be a concept that is yet to be fully acknowledged by the courts.  

This position reflects in the dictum of Edozie JCA in *Hill station Hotel Ltd v Adeyi* when he said “I have myself scanned through the law of the country but have not been able to find any statute bearing in the subject Hotel proprietors and in keepers liability. It seems doubtful if there exists any law in this country similar to the English Hotel Proprietors Act (1956)”.

This expression by His lordship is bereft of support, and for a number of reasons reveals the shallowness of the judiciary in the perception of consumer protection matters. It was as if the statute of general application) common law distinction in bailment was inapplicable in Nigeria.

The expression which appears to be a mirror of the attitude of the court of consumer protection in Nigeria can at times be said to be a product of hastily conclusion. Although Nigerian courts of all legislation, there are possibilities that the courts may not just be familiar with the consumer protection. With *Ngonadi’s case* decided in 1985 by the Supreme Court, the legal development of consumer protection in Nigeria would have by far be quite advanced today but the cheers were short-lived.

---

121. (1996)4 NWLR (pt. 442) 294 at p 312
122. Supra
Also in the case of *Anyah v Imo Concorde Hotels Ltd and 2 ors*\(^{124}\) the High Court entered judgment for the appellant, but which the court of Appeal up turned. Upon appeal to the Supreme Court, the judgment of the court of Appeal was allowed leaving the consumer without a remedy. In this case, the Supreme Court ostensibly placed a near impossibility to discharge burden of proof on the consumer, when it said, per Kalgo JSc.

….the appellant gave evidence of the loss of his car but gave no detailed evidence of the fact and circumstances giving rise to the loss of the car. Nor did he explain the relationship between him and the respondents upon which the duty of care for his car would arise, and how that duty was breached.\(^{125}\)

It is doubtful how the court expects this burden “of giving detailed evidence of how the car was stolen”, is to be discharged by a consumer, in matter which was not argued under bailment where it is under bailment, the burden of proof would have been shifted to the respondent to disprove his negligence. One wonders why the Supreme Court came to the decision in Anyah’s case without advertising to the English case of *Williams V. Linnith*\(^{126}\)

In most cases, the courts appear to have sacrificed the consumer’s interest in the alter of technicalities.\(^{127}\) The courts must be considered as one of the institutions for the advancement of consumer protection, the other being the legislative administrative processes.

\(^{124}\) (2002)12 NSCQR 231, 12sc (pt 11) 77
\(^{125}\) Supra p. 245-246
\(^{126}\) Williams v. Linnith (1951) 1 ALL ER 278
\(^{127}\) Etefia, E.E *op cit*, p. 41
In Boardman v Guinness Nig. Ltd\textsuperscript{128} the plaintiff brought an action for injuries resulting from the consumption of a beer alleged to have been brewed by the defendant. He averred that he opened the beer in an ill lit room and drank part of the contents. He noticed that it tasted sour and shortly afterwards took ill. One of his companions then examined the bear and discovered that it was cloudy and contained certain bacteria, but did not establish that the bacteria caused plaintiff’s illness. The plaintiff was dismissed on the ground that the plaintiff failed to prove that the beer was contaminated when it left the defendant’s factory.

Again in Ebelamu v. Guinness Nig. Ltd,\textsuperscript{129} the plaintiff complained that he suffered from gastro enteritis as a result of some sediments contained in defendant’s harp beer. It was held that since poor storage conditions could produce sedimentation, the plaintiff did not discharge the burden that the defendants were responsible for the defect. The position of the courts in the Guinness case enumerated above shows clearly that the law tills heavily in favour of manufacturers and brewers, it has been suggested that the courts should go a step further by inquiring into the state or quality of other products in the same batch and where such a defect is found in another product in the same batch, the claim should succeed.\textsuperscript{130}

In Soremi v. Nigerian Bottling Co. Ltd\textsuperscript{131} the plaintiff bought to crate of mixed minerals bottled by the defendant and stored the bottles in his fridge. One afternoon, he drank bottle of coca-cola, had his lunch and then took out a bottle of sprite from the fridge to drink. Floating in the bottle was an extraneous object a paper screwed up in the bottle. The plaintiff

\textsuperscript{128} (1980) NCLR 109  
\textsuperscript{129} Fca/l/101/82  
\textsuperscript{130} Monye F.N. \textit{op cit}, p.78.  
\textsuperscript{131} (1977) CCHCJ 2743
claimed that the sight of the object made him vomit. He brought an action for negligence against the defendant.

It was held that the defendant owed him a duty of care and that there was no reasonable possibility of intermediate examination before he took the bottle out of the fridge with the intention to consume its contents.

In **Dumuje v Nigeria Breweries Plc**, the plaintiff drank a bottle of maltina and felt something solid in his mouth which had followed the drink from the bottle, the plaintiff vomited and the object turned out to be a cockroach, the plaintiff was admitted in the clinic for two days where he was examined and treated by a doctor, he paid for medical services. He was admitted at another hospital where he was later discharged and was asked to return for checkup. The plaintiff claimed that he suffered from a muscular tremor, sleeplessness, stomach upset, high blood pressure and he also suffered septic shock and his immune system was impaired. The plaintiff sued the manufacturers, the distributors and the retailers of the drink. The court found for the plaintiff and awarded damages of two million naira.

In **Osemobor v. Niger Biscuits (Nig.) Ltd**, a manufacturer was held liable to the ultimate consumer for injuries resulting from the presence of a decayed both in a biscuit.

**Okwejimnior v. Abakeji and Nigerian bottling Co Plc** the fact of the above case has it that Mr. Edward Okwejimnior returned from work hungry and thirsty. He reached for a bottle of fanta from a crate he purchased from the 1St respondent while drinking the fanta Orange, he allegedly felt some

---

132. Unreported judgement of High Court of Delta State; in suit No. EHC/236/94 delivered on 4/7/2001
133. (1973)N.C.L.R 382
134. (1998)8 NWLR 295, CA
sediments and rubbish down his throat. He stopped half way and look a closer look at the content of the bottle and found that it contained a dead cockroach. To Mr. Okwejiminor, the quantity of the fanta that he took gave him much discomfort, which led to incessant spitting and loss of appetite. He later developed stomach pain and was rushed to the hospital, where he was diagnosed as suffering from food poisoning after his stool and a sample of the fanta were sent for laboratory analysis.

The trail High Court held that the particulars of negligence pleaded by the plaintiff were proved and entered judgment in favour of the plaintiff. The 2nd respondent, Nigerian bottling Co. Plc, appealed to the court of Appeal, that court allowed the appeal and entered judgment for the NBC.

Dissatisfied with the court of Appeal decision, the appellant appealed to the Supreme Court. The Supreme Court unanimously allowed the appeal, set aside the judgment of the court of Appeal and restored that of the High court. Concern was however raised for consumers when the court held as Pa Mohammed JSc that from the totality of the evidence adduced, it would amount to a serious miscarriage of justice to hold Gbakeji, the first respondent, who was the retailer of the drink liable.¹³⁵ The statement by his lordship on Gbakeji seems to have adjusted the principle in the tort of negligence.

Until then, the general perception was that those in the claim of distribution could not absolve themselves from liability on the sole excuse that they were not manufacturers. It was believed that the principle of joint and several tort feasors, the retailer or the consumer could claim contribution from the manufacturers. The rationale for this could have been that the victim/consumer may not be able to reach the manufacturers, especially

¹³⁵ Etefia E.E. Op cit, p. 42
for imported product. Whereas, the retailer is more often than not known and accessible by the consumer, the manufacturer may never be known or reached by him. Nevertheless, there exists privity of contract between the retailer and the consumer (buyer), which by principle of contract may exclude the manufacturer.

**Okonkwo v Guinness (1980)**\(^{136}\) in this case the plaintiff went out for a drink with one Peter Ajayi in a hotel where he (plaintiff) ordered for a bottle of stout, while his friend ordered for a beer, the drinks were paid for and they drank.\(^{137}\) While drinking the plaintiff complained about abdominal disorder and started vomiting when the light was switched on, they discovered that there were certain particles in the drink which looked like roots, leaves and bark of tree. He later tested positive for food poisoning. He sued for Negligence using the *locus classicus* of *Donogbue v Stevenson* as a shield, thinking it would give him verdict. Following the fool proof of production process of the defendant, and the act that the plaintiff did not call any other witness, the court dismissed the case. The court ruled that the defendant fool proof of production process was recognized and the plaintiff’s case was dismissed as being baseless and frivolous. Here the consumer is left in its own. There was no justice or fairness to the poor consumer.

**Conclusion**

One of the aims of the law is to solve the changing problems of the society, from the cases reviewed above; the present institutional framework in place in Nigeria is far from meeting the needs to the consumer even if it is goods or services. Protecting the consumer is a social challenge in

---

\(^{136}\) (1980)NCLR, 109

Nigeria\textsuperscript{138} and social justice require if here and now, to solve social problems that now exists with laws and legal procedures tailored to suit the peculiar circumstances of the society. To protect the Nigeria consumer requires the progressive application of the fundamental policies like the United Nations Guidelines on consumer protection in Africa, the principles of equality, justice and purposeful advancement of consumer welfare.

Chapter 2 of the Nigerian Constitution\textsuperscript{139} provides that the security and welfare of the people shall be the primary purpose of government. In the light of this provision, government should ensure the rights and safety of consumers is protected and also enact laws ensuring this protection. Judicial activism is the only lifeline available to the consumer and the court should enforce the rights of consumers and award damages when necessary. Adumbrating judicial activism, Oputa JSc posits:

\begin{quote}
“We (the judiciary) are not to fold our hands and do nothing. No. our judges have to so interpret the law that it makes sense to our citizens in distress and assure them of equal protection of the law, equal freedom under the law, and equal justice. And this is what judicial activism is all about.”\textsuperscript{140}
\end{quote}

\begin{flushleft}
\textsuperscript{138} Etefia E.E. “Institutional, Framework for consumers protection in Nigeria op cit, p. 44
\textsuperscript{139} CFRN 1999, s.14 (2)(a).
\textsuperscript{140} Oputa, Chukwudifu A., “Juridical Activism or judicial rascality: A catalyst for political development or rascality”, 37 at P. 58 cited in Note 69
\end{flushleft}
CHAPTER FOUR

THE NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL: FUNCTIONS AND POWERS, ACHIEVEMENTS AND CHALLENGES

4.1 INTRODUCTION

The previous chapter appraised different Consumer Protection Acts and law in Nigeria and also the attitude of the courts towards consumer protection and the extent to which it would go to redress trade malpractices.

This chapter will focus on an agency, the National Agency for Food and Drug Administration and Control (NAFDAC), its functions and powers, fake drugs and substandard regulated products identified by the agency, its efforts and challenges in tackling the menace of fake, adulterated food and drugs in Nigeria. It shall also examine National Agency for Food and Drug Administration and Control rules and regulation for registration of consumer products.

4.2 HISTORY AND DEVELOPMENT OF NAFDAC

Like the Food and Drug Act, the National Agency for Food and Drug Administration and Control Act deals with the importation, manufacture, advertisement, sale and distribution of food, drugs cosmetics and medical
devices. But unlike the former, the National Agency for Food and Drug Administration and Control Act extends to bottled water, chemicals and detergent power.\textsuperscript{141} The agency created by this Act is a body corporate with perpetual succession and may sue or be sued in its corporate name.\textsuperscript{142}

The organization was formed to checkmate illicit and counterfeit products in Nigeria in 1998 under the country’s health and safety law. Adulterated and counterfeit drugs are a problem in Nigeria. In one 1989 incident, over 150 children died as a result of paracetamol syrup containing diethylene glycol. The problem of fake drugs was so severe that neighbouring countries such as Ghana and Sierra lone officially banned the sale of drugs, foods and beverages product made in Nigeria.

Such problem led to the establishment of National Agency for Food and Drug Administration and Control, with the goal of eliminating counterfeit pharmaceuticals, foods and brewages products that are not manufactured in Nigeria and ensuring that available medications are safe and effective.

The formation of National Agency for Food and Drug Administration and Control was inspired by a 1988 World Health Assembly resolution requesting countries help in combating the global health threat posed by counterfeit pharmaceuticals.

In December 1992, National Agency for Food and Drug Administration and Control first governing council was formed. The council was chaired by

\textsuperscript{141} Section 5 & 24(5)(a) NAFDAC Act
\textsuperscript{142} S. 1 of NAFDAC Act
Tanimu Saulawa. In January 1993, supporting legislation was approved as legislative Decree No. 15 of 1993. on January 1, 1994 National Agency for Food and Drug Administration and Control was officially established as a “parastatal of the federal ministry of Health”.¹⁴³

National Agency for Food and Drug Administration and Control replaced an earlier federal ministry of health body, the Directorate of Food and Drug Administration and Control, which had been deemed ineffective, partially because of laws concerning fake drugs.

This Act mandates the National Agency for Food and Drug Administration and Control to regulate and control the manufacture, importation, exportation, distribution, advertisement, sale and use of food, drugs, cosmetics, chemicals, detergents, medical devices and packaged water known as regulated products.¹⁴⁴

4.3 NAFDAC’S FUNCTIONS AND POWERS UNDER LFN 2010

Section 5 of the Agency Act spelt out its functions which among others include.¹⁴⁵

a) Regulate and control the importation, exportation, manufacture, advertisement, distribution, sales and use of food, drugs, cosmetics, medical devices, bottled water and chemicals.

---


¹⁴⁴ [www.nafdac.gov.ng/about_nafdac/nafdac_act](http://www.nafdac.gov.ng/about_nafdac/nafdac_act)

¹⁴⁵ Section 5 of NAFDAC Act 1993
b) Conduct appropriate test and ensure compliance with standard specifications designated and approved for the effective control of the quality of food, drugs, cosmetics, medical devices, bottled water and chemicals and their processes in factories and other establishments;

c) Undertake appropriate investigation into the production premises and raw materials for food, drugs, cosmetics, medical devices, bottled water and chemical and establish relevant quality assurance systems, including certificate of the production sites and of the regulation of products;

d) Undertake inspection of imported food, drugs, chemicals and establish relevant quality assurance systems including certification of the production sites and of the regulated products;

e) Compile standard specifications and guidelines for the production, importation, exportation, sale and distribution of food, drug, cosmetics, medical devices, bottled water and chemical.

f) Undertake the registration of food, drugs, cosmetics, medical devise, bottled water and chemicals;

g) Establish and maintain relevant laboratories or other institutions in strategic areas of Nigeria as may be necessary for the performance of its functions under the Act.

h) Advice federal state or local governments, the private sector and other interested bodies regarding the quality, safety and regulatory provisions on foods, drugs, cosmetics, medical devices, bottled water and chemicals;
i) Collaborate with the National Drug Law Enforcement Agency in measures to eradicate drug abuse in Nigeria;

j) Determine the suitability or otherwise of medicines, drug, food products, medical devices or chemicals for human and animal use; and other functions.

As at November, 2010, these functions are carried out under nine directorates in the agency headed by directors who report to the Director-General (DG). These are establishment inspection, regulation and regulatory affairs, laboratory service, ports inspection, enforcement, Narcotics and controlled substances, planning, research and statistics, finance and accounts, administration and human resources.

The function of the regulation and regulatory affairs directorate include

a) Registration of drugs, food, medical devices, cosmetics, chemicals, detergent, drinks, bottled and packaged water.

b) Formulation and periodic review of regulations to control products registration by the agency.

c) The processes and manages all documents relating to the clinical traits of novel drugs and new chemical entities.

d) Ensures that only drugs of proven safety and efficacy are allowed to be manufactured, imported, sold or distributed in Nigeria etc.

The laboratory service directorate undertakes the following.

---

a) Analysis and pronouncement in quality and safety of foods, drug, cosmetics, medical devices, detergents, chemicals and packaged water registration purposes.

b) Analysis and pronouncement on compliance of foods, drugs and other regulated products with compendia requirements/registration status.

c) Analysis of export commodities, quality control of agrochemicals.

d) Services as references laboratory for other government agencies e.g the Nigerian custom service by analyzing samples for traffic classification etc.

The ports inspection directorate\(^{149}\) regulates and controls (a) the importation of food, drug, medical devices, cosmetics, chemicals, detergents, drinks and bottled water, (b) screening of import documents before the issuance of pre-release stamps (c) bonding of unregistered NAFDAC regulated products for mandatory registration and release (d) undertakes the inspection of imported food, drugs, medical devices, cosmetics, chemicals, detergents, drinks and bottled water at the port of entry before release (e) control the exportation and issue quality certification of food, drugs, medical devices, cosmetics, detergents, drinks and bottled water intended for export etc.


4.4 FAKE DRUGS AND SUBSTANDARD REGULATED PRODUCTS AS IDENTIFIED BY NAFDAC

National Agency for Food and Drug Administration and Control has identified good number of fake drugs and Substandard Regulated Products in Nigeria. On Monday, 10 November 2014 National Agency for Food and Drug Administration and Control issued a public alert notice on the Recall of seven (7) Batches of ceftriaxone injection and fake Chinese medicines.

The agency alerted the general public of reports on the resell of (7) batches of ceftriaxone injection, 10g vial (DIN 0232564) due to the presence of visible particulate matter in some vials of the drug product observed upon reconstitution 2. The affected batches of the ceftriaxone injection are listed hereunder; 4CN1349CA, 4CN1350CA, 4CN135ICA, 4CN1352CA, 4CN1353CA, 4CN1354CA, 4CN1355CA.

If this particulate matter is infused, it could lead to patient injury such as local inflammation, phlebitis, allergic response, and/or thrombo-embolism and death.

Also two unregistered proprietary Chinese medicines (Pcms), labeled as Jin Bel Brand Lu Shen Wan (Lu Shen wan) with registration number: HKP-03253,, and Heart Tonic pills with reg no: HKP-12601 were recalled. The drugs were produced for treatment of tonsillitis and palpitation respectively. The registration holder of these two PCMS is the Hong Kong medicine manufactory, which had its manufacturer’s licence in PCMS became invalid in April 2014. However these recalled products are not registered

http://nafdac.gov.ng/welcome/itemlist/category/101-catestalerts.accesed on 23/04/15
by National Agency for Food and Drug Administration and Control and hence not approved for sale in the Nigerian market.

SLIMMING BEAUTY BITTER ORANGE SLIMMING CAPSULE

National Agency for Food and Drug Administration and Control on Monday 15 July 2013 alerted the general public about the dangerous skin and hair creams known as Carson magic skin conditioning power currently circulating the country. It has been discovered that Carson magic skin conditioning cream causes cancer and damage to vital organs of the body.

In view of this, National Agency for Food and Drug Administration and Control has banned the injurious creams any cancer-inducing cosmetic product.151

I SOTAB 20MG (ISOSORBIDE MONOTRATE

The attention of National Agency for Food and Drug Administration and Control has been drawn to the World Health organization (WHO) information exchange system, Alert No. 125 on contaminated isotab (isosorbide monitrate incident in Lahore, Pakistan.

The drug purported manufactured by Efroze, Kavach 1, Pakistan was implicated in the deaths of 107 patients and serious adverse reactions in more than 450 patients in Pakistan.

Consequently, on the above National Agency for Food and Drug Administration and Control hereby alerts health care providers and patients on this medication to be vigilant and ensure they do not purchase or use the contaminated batch brand/trade name: avandia.

In June 2012, diabetes drug avandia was banned from circulation in the Nigerian market following a directive from National Agency for Food and Drug Administration and Control. The drug was banned due to fears that it increases the risk of heart attack and stroke in patients.

Avandia was similarly banned in Europe but in the United States, though the Food and Drug Administration (FDA) decided to severely limit the availability of avandia, it did not issue an outright ban.

**Gentamycin 280mg**

On Oct 7, 2010 National Agency for Food and Drug Administration and Control announced a ban on gentamycin 280mg, an antibiotic used in the treatment of bacterial injection. The use of high dose (280mg/2ml single unit). Gentamycin injection according to National Agency for Food and Drug Administration and Control was associated with high risk ototoxicity, nephrotoxicity and increased incidences of endotoxin reactions. Citing international best practices, National Agency for Food and Drug Administration and Control deregistered and withdrew the high dose Gentamycin injection from circulation in the Nigerian market but was quick to point out that the lower strengths of Gentamycin injection were not affected by the withdrawal.

---

Potassium Bromate as Dough Improvers/ingredients in flour and Bread Improvers.

In 1993, the National Agency for Food and Drug Administration and Control by virtue of the powers conferred on it by Decree No. 15, made it a crime for local manufacturers in Nigeria to employ potassium bromate in preparation of food and consumables. National Agency for Food and Drug Administration and Control began the enforcement of this directive on June 4, 2004.

There are also cloned drugs with the same quantity of active ingredients as the original drug. Cloning is hiding behind fast moving registered product to rake up profits without the associated liabilities and if is solely driven by financial motives. Examples include panadol by GSK containing 500mg of paracetamol powder cloned by some criminals to contain the same 500mg content as the original. What these fraudsters fail to understand is that minimal effective blood concentration, which determines the efficacy of the drug is not only dependant on the quantity of active ingredient, but also on the quality, excipients, and formulation techniques. The big question, however is who takes responsibility when there are adverse effects of a cloned drug?

Other forms of substandard/unwholesome products includes syringes with poor calibrations or blunt to semi-blunt tips contaminated and/or pyrogenic syringes, needles, surgical blades, blood bags and infusion sets, non-sterile gloves, sutures and condoms, expired products and those products without expiry dates or best before dates, or relabeled with the intention of extending their shelf life and contaminated chemicals.

Other products are alcoholic drinks without stated alcohol content, regulated product not registered by National Agency for Food and Drug Administration and Control and products marked “for export only”. National Agency for Food and Drug Administration and Control has used every opportunity at its disposal to inform the international community that products labeled “for export only” for whatever reason, are totally unacceptable to Nigerians. Drugs, food, or other regulated products that cannot be used in the country of manufacture should never be imported into Nigeria.\(^{154}\)

### 4.5 ACHIEVEMENTS AND CHALLENGES

In the campaign against fake drugs, National Agency for Food and Drug Administration and Control has made several achievements over the years. The war against fake and counterfeit medicines is one that the National Agency for food and Drug Administration and Control has fought for several years since the agency was established. The achievements of the agency are so numerous and due to this reason, I shall venture into

expatiation on few as posted in National Agency for Food and Drug Administration and Control official web site.

NADFAC WINS LANDMARK JUDGEMENT AGAINST COUNTERFEITER

The National Agency for Food and Drug Administration and Control (NAFDAC)\textsuperscript{155} had won a landmark judgment securing an 11 years imprisonment against a middle aged man who specializes in counterfeiting various alcoholic drinks.

The landmark judgment was delivered by the presiding judge of the Federal High Court Port-Harcourt division, Justice R.M. Aikawa who sentenced the accused person, Sunday Okeke, on a four count charge of violating counterfeit and fake drugs and unwholesome processed food laws of the Federal Republic of Nigeria.

After rigorous prosecution of the case by National Agency for Food and Drug Administration and Control legal team, Okeke had his day in court when the presiding judge handed down the judgement on a four count charge with option of fine of N600,000.

This recent conviction has been hailed by National Agency for Food and Drug Administration and Control as very significant as it will send a strong signal to counterfeiters, and fakers of the agency’s regulated products.

\textsuperscript{155} Dr. Abubakar Jimoh “Nafdac wins landmark judgement against counterfeiter available at \url{http://www.nafdac.gov.ng/about-nafdac/directorates/laboratory-services/item/257-nafdac-wins-landmark-jdgement-against-counterfeiter.accessed} on 24/05/2015
NAFDAC DESTROYS N500 MILLION FAKE PRODUCTS IN ANAMBRA

National Agency for Food and Drug Administration and Control (NAFDAC)\(^{156}\) has destroyed fake drugs and other substandard regulated products worth N500 million in Awka, Anambra State.

Director General of National Agency for Food and Drug Administration and Control, Dr. Paul Orhii who led stakeholder in the destruction exercise said the drugs which comprise of fake anti-malaria – antibiotics, anti-hypertensive, multivitamins, ingestible, cosmetics and other range of regulated products were seized from manufacturers, importers and distributors of regulated products in Anambra State as well as expired products voluntarily handed over by Onitsha Head Bridge market union.

Dr. Orhii commended the vigilance and timely intervention of National Agency for Food and Drug Administration and Control regulatory officers who worked tirelessly in removing the harmful products from circulation and reiterated the agency's commitment to zero tolerance for fake drugs and other substandard regulated products.

NAFDAC IMPOUNDS N270 MILLION FAKE DRUGS

In its bid to rid the country of counterfeit drugs, National Agency for Food and Drug Administration and Control\(^{157}\) has seized more than five

containers of suspected fake and unregistered Drugs valued N270 million. The Director-General Dr. Paul Orhii made this known during a media briefing on the seized medical products, also paraded two suspects involved in forgery of the agency’s document and illegal production facilities that pose serious threat to public health.

The Director General said the containers was seized with the assistance of Nigerian customs service (NCS) and were filled with Heregra (120mg tablets) 21 agra (120mg tablets, tramadol (200mg capsules) among others.

NAFDAC ARRESTS INDIAN FOR IMPORTATION OF FAKE PRODUCTS

The National Agency for Food and Drug Administration and Control (NAFDAC)\textsuperscript{158} has arrested an Indian for importing and distributing fake and unregistered regulated products into Nigeria.

This was sequel to a special raid and enforcement operation in some markets and locations in Port Harcourt, Rivers State by the investigation and enforcement directorate of the agency from Lagos.

Addressing journalists after the exercise, the leader of the team, Mr. Folorunso Idowu, a chief leader of the team who gave his name as Mr. Prakarsh Mohinani was arrested along with several cartons of unregistered

\textsuperscript{157}“Nafdac impounds N270 million fake drugs” available at http://www.nafdac.gov.ng/componet/k2/item/266-nafdac-impounds-n270-million-fake-drugs. accessed on 24/05/2015

\textsuperscript{158}“nafdac arrest Indian for importation of fake products”. Available at http://www.nafdac.gov.ng/component/k2/item/264-nafdac-arrests-indian-for-importation-of-fake-products. accessed on 24/05/2015
confectionery worth millions of naira following a tip off in one of the hotels in Port Harcourt.

KOGI STATE GOVERNOR COMMENDS NAFDAC DG FOR TREMENDOUS ACHIEVEMENTS

Kogi State Governor, chaplain Idris Wada has commended the Director General of National Agency for Food and Drug Administration and Control, Dr. Paul Orhii for the tremendous milestones recorded in the fight against counterfeit drugs and other unwholesome regulated products in the country. The governor made this recommendation when he paid a courtesy visit to National Agency for Food and Drug Administration and Control in Abuja to forge a partnership with the agency on diversifying the economy of the state through the processing of the value-added agriculture products.

CHALLENGES OF NAFDAC

Outdated laws, deficiency in the implementation of laws and threat to the security of staff and their families have been identified as challenges to the drive by the National Agency for Food, Drugs Administration and Control (NAFDAC) to rid the country of fake and counterfeit drugs.

Deputy Director and Head of the North-West zone of National Agency for Food and Drug Administration and Control, Dr. Eric disclosed this while delivering a lecture organized by the advancement office of the University.

of Jos entitled “pharmacy career, practice and Drug regulation in Nigeria”.

He said the continued existence of “open drug markets” was another major challenge but added that a lot has been achieved by National Agency for Food and Drug Administration and Control in standardizing the production and distribution of drugs in the country.

CONCLUSION

The establishment of National Agency for Food and Drug Administration and Control is an expression of government’s desire to ensure the well being of the generality of the society in Nigeria.

In carrying out its mandate, National Agency for Food and Drug Administration and Control seeks to ensure the public is protected not only from substandard and fake processed foods, medicines, cosmetics or bottled-packaged water but also from those products which contain the right composition but due to lapse in raw materials, methods of preparation or dirty environment may have introduced contaminants that have harmful effects.

National Agency for Food and Drug Administration and Control in carrying out its function have recorded tremendous achievements. However, if the challenges this Agency faces is eliminated, it will go a long way for

---

National Agency for Food and Drug Administration and Control to carry out its functions effectively and also ensure food and drugs are safe for consumption.
CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATION

5.1 INTRODUCTION

In the previous chapters, the reality of consumer protection was proved in the light of the rationale for consumer protection and also the enforcement of consumer right. The previous chapter examined the role of National Agency for Food and Drug Administration and Control as a regulatory agency in the protection of consumer right, their powers and functions and concluded with the achievements and challenges of National Agency for Food and Drug Administration and Control.

In this chapter, some recommendation that may lead to the attainment of a fully protected consumer sources in Nigeria will be examined as well as summary of findings.

Many consumers in Nigeria have little knowledge about existing laws that protect their rights as consumers of products and services. This low awareness is not class, education gender or location sensitive. The low
awareness is further compounded by the low literacy level and apathy for litigation and the cost of litigation (finance and time and other resources) is high.  

In a survey carried out, a thirsty young lady eagerly opened a bottle of a popular brand of soft drink, as she poured the fizzy carbonated liquid inside a glass cup, a closer observation revealed that the remaining contents in the bottle contain a half decomposed rat. When asked of what action she would take, all she could say was to pour out the content and thank God for not consuming the filth.

Beside the challenges associated with litigation in Nigeria, some participants also noted that most business operators do not display customer care numbers that could be used by aggrieved consumers.

**ATTITUDE OF CONSUMER TO THE ENFORCEMENT OF THEIR RIGHTS**

Equity aids the vigilant and not those who sleep on their rights. The challenge and my findings here is that most Nigerians sleep on their rights in the issue of consumer protection and only few cases are being taken to court. The above survey of the thirsty young lady clearly shows the attitude of a typical Nigerian in the enforcement of their rights. Another participant of this survey expressed that some consumers may not want to soil their relationship with service providers even when they known they have been cheated by them.

**Adequacy of existing consumer protection laws**

---

161. “Research report on the state of consumer protection in Nigeria”, in partnership with consumer awareness organization, January 2004 @ pg. 138

162. Project work “Consumer protection in Nigeria: Myth or reality” by Edwin Chimankpam@ pg 62-63.
Some people are not comfortable with the provisions of Nigerian laws with regards to consumer protection. According to them, the laws are too old and inadequate to protect the contemporary Nigerian consumer.

**Judicial Reforms**

The rigidity of the Nigerian judiciary to the role of negligence in *Donoghue v. Stevenson*\(^\text{163}\) has led to manifest injustice in the enforcement of consumer rights. It is worthy to note that several jurisdiction have adopted the strict liability system where the fact that the consumer can prove that the product caused him some harm or loss, the manufacturer or any other in the distribution chain would be held liable for the breach as established in the American case of *Escola V Coca Cola Bottling Company of Fresno*.\(^\text{164}\)

It would be wise that the Nigeria judiciary acts on this without waiting for the legislature so as to protect the rights of the consumer as Lord Denning MR posited in *Trendtex Trading Corporation V. Central Bank of Nigeria*\(^\text{165}\) as it has to do with judicial activism further more, findings reveal that ignorance, cost of litigation, poverty and lack of faith in the judicial system seems to be a clog in the protection and enforcement of consumer rights in Nigeria.

**5.3 CONCLUSION**

The level of consumer’s protection in food and drug marketing is not impressive. A greater effort is needed on the part of the government to address the issue of consumers safety in the drug market. It is evident from this research that combating counterfeit and private goods as a

---

\(^{163}\) Supra

\(^{164}\) 24 cal. 2d, 453, p. 2d. 436 (1994), also Green man V. Yuba power products 59 cal. 2d 57 (1963)

\(^{165}\) (1977)2 WLR 356
collective global responsibility needs effective institutional collaboration and cooperation, information sharing on best practices and analysis of impact, current trends, issues, challenges and viable options. It is obvious that from Nigerian perspective, there is a limit to which legal and enforcement/regulatory mechanisms can go in protecting the ultimate consumer against counterfeit and pirated goods. This is partly because the legal regimes have the reputation of lagging behind the 21st century ICT age and obviously the laws, though quite ambitious in anti-piracy and counterfeit products or services, remain slow or weak and inadequate. The efforts of enforcement/regulatory mechanisms need to be strengthened technically, materially, financially to live up to expectation for the health, safety and security of consumers and for sustainable development of our societies.

Finally, consumer education need to be aggressively pursued to raise effective awareness about consumer rights and responsibilities.

5.4 RECOMMENDATION

Based on the findings, the following recommendations were made\textsuperscript{166}.

The government should work closely into the activities of the task force set up to tackle offenders and fake drugs miscellaneous decree to include the hawking of drugs in the bus as an offence.

Drug offence should be taken more seriously because it involves human lives, any one that violates the drug law resulting to death of people should

\textsuperscript{166}“The fight against Fake drugs by NAFDAC in Nigeria” by Olike Chinwendu. 44\textsuperscript{th} International course in Health development (ICHID) Sept. 24, 2007-Setember 12, 2008 @ Pg 39-42
as well receive strict penalty of life imprisonment as the maximum punishment.

The government should empower General of National Agency for Food and Drug Administration and Control by provision of adequate workforce, equipments and materials for enforcement activities as well as provide finance for building of quality assurance laboratories that is well equipped in every state of the country as these will reduce the workload of staff and increase efficiency.

**NAFDAC**

The tariff placed for drug importation should be reviewed, because it creates high cost in the market as importers wants to make back what they lost during registration, hence poor people who cannot afford genuine drug because of price goes for the cheap ones that might be fake.

Every state in the country where NAFDAC is situated should have its mini laboratory for prompt analysis. This will reduce the stress of staff that has to travel long distance with loads of product for registration.

Public enlightenment strategy to reach petty drug sellers that enter moving transport buses, because they feel they can easily make quick sale without being detected by the authorities. This we can do by meeting with transport unions and telling them that they too will be sanctioned if they allow such in their business.
There is need for NAFDAC to develop better strategies in promoting public awareness since the drug fakers have become very sophisticated in their activities making it more difficult to distinguish originals from fake.

Adequate incentives and welfare such as security, insurance for the enforcement officers that risk their lives fighting fake drug in the country as occasions have shown attacks of officer during or after raids.

**THE MANUFACTURERS AND DRUG DEALERS**

The manufacturers and drug dealers should distribute their products only to licensed premises and people, as this will create a better drug distribution channel that can be monitored. It is important and necessary for manufacturers to brand their products by imparting vital product information and designs on them for easy identification.

**For Consumers/Buyers**

To purchase drugs only from sources that are registered by NAFDAC, these should be done through continuous public awareness.

Consumers/buyers should be at alert all the time in double checking what they buy, and being alert to detect differences in quality of packaging, label and ensure the drug has leaflets and NADFAC registration number before consumption. Consumers should report immediately of any drug whose quality is in question or adverse reaction felt for any drug product.