

Legal Alert September 2007 **Consumer Rights & Consumer Protective Reliefs'**

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Introduction to Consumer Rights & Consumer Protective Reliefs'

The competition to capture the customer's attention to spend his or her income on a particular product or products, or to purchase a particular service is becoming more fervent with manufacturers and producers daily promoting bonanzas, sales shows and making outlandish product claims which most of the time are spurious and sometimes outrightly fraudulent. Lip service is paid to the protection of the consumer or of his rights. The few attempts aimed at educating consumers on their rights are restricted to the regulatory powers of the Nigerian Consumer Protection Council (NCPC). NCPC is however mostly perceived as a regulator that has no strong enforcement machinery and mechanism due mainly to lack of sufficient funding on the part of the government and also the lack of enlightenment on the part of the consumer about his or her rights.

The majority of the available literature on consumer rights and consumer protection in Nigeria are also concentrated on the regulatory functions of the Nigerian Consumer Protection Council (NCPC). The consumer however has other protective reliefs in contract and or in tort whenever the consumer's rights are infringed. This Alert is our attempt to provide you with a brief and condensed summary of your rights as a consumer under Nigerian Law, i.e. Law of Contract, Law of Tort and Consumer Protection Council Law.

Consumer Protection Under Contract Law

A consumer who is also a purchaser for value can file a civil claim under the law of contract for breach of the express or implied terms of the contract of purchase of a product that turns out to be defective or incomplete in its value.

The three categories of terms implied by our law of contract are:

- (a) Terms of contract implied by custom and usage.
- (b) Terms of contract implied by statute.
- (c) Terms of contract implied by case law, i.e. formulated by our Courts of Law.

The common legal remedies available to a consumer/buyer for breach of a contract of sale are:

- (a) Specific performance of the contract.
- (b) Repudiation of the entire contract where the seller is in breach of a fundamental term or

condition of the contract.

(c) Damages for breach of warranty. In this situation, the consumer/buyer does not repudiate the contract in its entirety but in its stead files a civil suit for damages for the breach of a non fundamental condition or conditions of the contract.

The amount of damages that can be awarded by our Law Courts in any case of a breach of contract is the estimated amount of the loss directly and naturally resulting to the consumer/buyer as a result of the breach.

Note however that only a consumer/buyer that has privity of contact with a seller can maintain an action under contract for breach and loss. A person who is not a party to a contract has no remedy under the Law of Contract. In stead, the Law of Tort may be available to provide remedy if the neighbourliness nexus between the consumer and manufacturer is established.

Law of Tort and Consumer Protection.

The Law of Tort has as its foundation the principle of negligence. Negligence is in fact the legal fulcrum upon which the essence of human co-existence is concretised. Human co-existence require that we all love our neighbour in the same manner as we love ourselves by ensuring that we do or do not do - as appropriate - what would cause injury and loss to our neighbour. See the decision in *Odinaka V. Moghalu*. Thus everybody including manufacturers have a legal duty under the doctrine of negligence to all persons who come into contact with their product or services.

A duty of care is only legally recognised where a person is presumed to foresee that his actions or inactions may cause injury to his neighbour. The old legal requirement that there must be a subsisting contract before a claim in tort or negligence can be filed in Court is now abolished by case law.

Established by case law is the principle that a manufacturer of a product or service, for gain or profit, owes a duty to take care in the manufacture of the product or service that it delivers to members of the public. Therefore, a manufacturer as in the case of *Osemobor V. Niger Biscuit* was held liable for injuries resulting from the presence of a decayed tooth in a biscuit bought by the plaintiff.

Apart from the manufacturer or producer, other entities in the distribution chain of products and services like wholesalers, retailers, distributors, sub-dealers, etc could equally be held liable for negligence in the sale and or distribution of defective products.

Lastly on negligence, a claimant must, in addition to establishing that a producer or manufacturer or any other party owes him a duty of care and that this duty of care was breached by the defendant not exercising reasonable care, provide evidence that the direct result of the breach of

the duty of care is what resulted in his loss or injury and damage(s). Where there is no damage however, the court of law would not award compensation even if a duty of care and the breach of that duty of care are established by the claimant.

Consumer Protection Under the Consumer Protection Law

The Consumer Protection Council (CPC) unlike other Government Agencies which make indirect provisions on consumer protection, protects the consumer not only against hazardous products but also against attempts to compromise for profit the rights of the Nigerian Consumer. Some of the statutory functions of CPC include:

- a. Providing speedy redress to consumers' complaints through negotiation, mediation and conciliation.
- b. Seeking ways of removing from the market hazardous products and causing offenders to replace such products with safer alternatives.
- c. Publishing from time to time such products whose consumption and sale have been banned, withdrawn, severally restricted or not approved by the Federal Government of Nigeria or by any foreign Government.
- d. Causing an offending Company, Firm, Trade Association or Individual to protect, compensate, provide relief and safeguards to injured consumers and communities from the adverse effect of technologies that are inherent, harmful, injurious, violent or highly hazardous.
- e. Organise and undertake campaigns and other forms of activities as will lead to increase public consumer awareness.
- f. Issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligations under the Consumer Protection Act.

The statutory rights of the consumer under CPC include: -

- i. The right of the Consumer to receive products and services that are safe.
- ii. The right of the consumer to comprehensive information on the qualities, quantity and value of the product. False or misleading information on products that are likely to create a wrong impression as to quality, character, value, composition, merit or safety of the product are not tolerated under the Law.
- iii. The right of the consumer to be heard timeously and obtain redress expeditiously.
- iv. The right of the Consumer to receive compensation in spite of a successful criminal prosecution of the offending manufacturer or distributor or retailer or wholesaler of the product.

Conclusion

The down side of globalisation - without proper product quality policing - is the undermining of the rights of the Consumer to risks of fraud and in some case grievous bodily harm. The

governments on the one hand, consumers on the other and key industry players must enlighten themselves and the consumers on best product standards and practices, and where this falls, penalties and compensation should be imposed without protracted and or prolonged litigation or prosecution.

Consumer protection laws would need to be re-enforced and amended to cater for consumer exposure to trade on the Internet. The existence of up to date data online legislations in Nigeria would also go a long way in remedying this lacuna.

There is the need for case Law to revisit the current practice of only awarding nominal damages for product liability cases that do not result in the death or fatal permanent injury to the consumer. Exemplary damages are an alternative remedy that may serve as a deterrent and warning to all manufacturers to deliver only the best and safest products to members of the public.

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