

LEGAL ALERT. JUNE 2006 . FALSE STATEMENTS & FALSE REPRESENTATIONS IN BUSINESS TRANSACTIONS.

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Business Quote of the Month.

"Put not your trust in money but put your money in trust". By Oliver Wendell Holmes.

Legal News.

The Corporate Affairs Commission has again announced that it is slating for de-registration more than 400,000 registered companies for their alleged inactivity, non-performance as businesses and also for lack of any evidence of these companies filing their annual returns with this Commission. In the event that your company has not filed its annual return for the current financial year, or for previous financial year(s) you are advised to do this immediately to prevent your enterprise being formally de-listed from the list of registered companies in Nigeria.

Legal Alert: False Statements & False Representations in Business Transactions.

In these days of competition and convincing Buyers to purchase all manner of goods or services, Sales Persons or Representatives, Marketers and other business people make all manner of promises and give all kinds of guarantees and assurances about the real content and value of their goods or services to prospective Buyers.

The above mentioned promises or statements, made on various areas of the goods or services ? its quality, quantity, value, functionality, etc - could be made innocently with the objective of closing a sale quickly or in some disturbing cases, falsely and or fraudulently.

Sometime, the false statements are made because the Sales Person or Representative is afraid to

admit that he or she is unaware of the details of the product or services or that he or she does not have an answer to the inquiry or because the extra effort of obtaining the information may result in the prospective Buyer's interest dwindling or disappearing entirely.

The Law does not however condone statements which are false or made fraudulently or made with the intention to mislead another party to enter into a contract. Of course, not all statements which turn out to be false will give rise to liability, under our Law, on the part of the Maker of the statement.

For a person, who has suffered a loss as a result of a false or fraudulent or misleading statement, to succeed in his or her petition, he or she must show that the following essential things have occurred: -

1. The statement or representation, where false or misleading or fraudulently made, must be material in influencing him or her to enter into such an agreement.
2. The statement or representation must be sufficiently material to ground his or her acceptance of the offer. Where it is ambiguous or unclear, the Law expects the recipient of the information to exercise CAUTION by requesting for clarifications on the ambiguous areas.
3. The Acceptor or Buyer must show that he accepted to enter into the contract because he relied on the false or fraudulent statement.

In a dispute that was concluded in the Supreme Court of Nigeria, an Employer who had sold a property to its employee on compassionate terms was held not to be entitled to terminate or cancel the Contract when it was revealed subsequently that the Employee was not legally married to the person that she claimed to be her Husband. The rationale for the Court's decision was that the marital status of the Employee, from the evidence, was not sufficiently material to the Employer's decision to sell the property; in its stead, what was sufficiently material, from the evidence, was the fact that the Employer wanted the Employee to reside to very near her place of employment.

Fraudulent Representation.

There are also representations which are made fraudulently. Fraud, as used in this article and in civil matters, in contrast to criminal ones, does not necessarily mean deceit or circumvention. Fraudulent misrepresentation in civil claims means an unconscientiously use of "seller power and influence" to make a sale. In a claim alleging fraudulent misrepresentation, the Claimant must prove, in addition to the above factors, that the "guilty" party made the false statement knowing it/them to be false or made the statements recklessly neither knowing or caring whether it was false or true and whether the Claimant suffers injury or not.

Conclusion.

All business people must exercise caution in making their purchases or spending their hard earned

money. This is because once your money or Cheque has left your hands or control, it would cost you more money to get the value you expected to receive or to have a return of your money at the same value.

Always ask questions where you are not sure of what is been offered. Where the answers are unsatisfactory, cease the transaction immediately or carry out your independent investigations; for example, who has used the products, are they prepared to recommend the product to you independently, can you contact the referees independently on the suitability of the goods or services offered, etc.

Next Legal Alert ? Nigerian Accounting Standards Board.

A key response to our Legal Alert for May 2006 was a complaint from one of our Subscribers requesting for an examination of the powers of the Nigerian Accounting Standards Board in view of the fact that they can allegedly visit any business without notice, charge arbitrary fees for their stay and investigation, etc. For small businesses, this was alleged to be another disincentive to new or further investments.

NASB and the Chartered Institute of Accountants of Nigeria are aware of the above complaints. We intend to serve you in the coming month with highpoints of the Law establishing NASB and how it affects you. In the interim, we welcome from you your contributions on your personal experience, if any, with NASB. Thank you.

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Recipients are advised to seek professional legal counselling to their specific situations when they arise. Questions, Comments, criticisms, suggestions, ideas, contributions, etc are always welcomed.

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