

CONSUMER PROTECTION LAWS IN NIGERIA AND UNITED STATES OF AMERICA: A COMPARATIVE ANALYSIS

By

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ABSTRACT

Governments all over the world are making frantic efforts towards the protection of the rights of consumers from harmful and unfair practices from the manufacturers and producers of goods and services. These the governments have achieved through the enactments of laws. Nigerian government is not left out in this quest. At various times laws seeking to protect consumer rights have been enacted like its counterpart in United States of America. The aim of this paper is to examine some of these consumer protection laws in Nigeria and United States of America with a view to comparing both to see which laws that have more protective tendencies towards the protection of consumer rights. It is the conclusion of this paper that the consumer protection laws in United States of America are preferred to those of its Nigerian counterpart and hence the American consumers are more and better protected when compared with its Nigerian counterparts.

INTRODUCTION

The right to consumer protection is now a global phenomenon but was popularize by the then president of United States of America John F. Kennedy when he presented the Consumer Bill of Rights in his 15th March 1962 declaration to the American congress.¹ John Kennedy speaking of consumers stated thus, “they are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group... whose views are often not heard”²

The above statement no doubt may have informed the new level of protection the consumers have in United States of America. However, before this time there were some early legislative actions by United States Government toward consumer protection.³ Writing on consumer protection, learned authors⁴ identified some statute and agencies that protect the rights of consumers in United States of America as follows: the Federal Trade Commission Act which established the Federal Trade commission;⁵ Food and Drug Administration;⁶ Securities and

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¹. Ayozie, D.O. “Consumerism The Shame of Marketing In Nigeria: The Challenges to Corporate practices” *op.cit.* p. 18

². [Http://en.wikipedia.org/wiki/consumerprotection](http://en.wikipedia.org/wiki/consumerprotection). Accessed on 29/09/2014

³. Sherman Antitrust Act 1890

⁴. Hughes, T.T., and Lumpur, K., “Consumer Protection In The United State available on line at <http://www.aseanconsumer.org/misc/downloads/usftc-s1-th.pdf> accessed on 15/9/2005

⁵. The commission seeks to promote the interest of consumers by encouraging competition, represents consumers during policy making process, and responds to consumer complaints and conduct researches.

⁶. The Food and Drug Administration is responsible for assuring that foods sold in the United State are safe, wholesome and perfectly labeled. This applies to goods produced domestically as well as food from foreign countries. The Federal Food, Drug and Cosmetic Act and the Fair Packaging and labeling Act are Federal

Exchange Commission Act which established the Securities and Exchange Commission; Consumer Product Safety Act which established the Consumer Product Safety Commission; Federal Communication Commission Act which established the Commission; Environment Protection Agency Act which also established an Agency, *etcetera*.

However, it has been argued that the modern consumer protection movement began in the 1960s with reference to the Consumer Bill of Rights by president Kennedy, through the growth of the so-called “Great Society” program of the Johnson Administration and the efforts of Ralph Nader and other consumer advocates to highlight the existence of unsafe products and the need for great government regulation.⁷

In the case of Nigeria, before and after the United Nation Guidelines and African Model Law, Nigeria enacted numerous statutes which seek to protect the consumers. Some of these laws include: the Standard Organization of Nigerian Act, 1971.⁸ The Weight and Measures Act,⁹ The Price Control Act,¹⁰ Consumer Protection Council Act,¹¹ Trade Malpractices (Miscellaneous Offences) Act,¹² National Agency for Food and Drug Administration and Control Act,¹³ the Hire Purchase Act¹⁴, Penal Code and Criminal Code,¹⁵ Food and Drug Act¹⁶, and Nigerian communication commission Act¹⁷, amongst others.

A careful examination of the above mentioned statutes reveal a common feature of inadequacies which transform to their inability to provide consumers with the needed protection. According to Ukwueze,¹⁸ most of these statutes are penal in nature and do not provide the consumer with civil remedy for the breach of any of the consumer rights.¹⁹

Laws governing products under FDA’s Jurisdiction. See US Food and Administration www.fda.gov/foodlabelingguide. accessed on 8/9/2015

⁷Waller S.W., Brady J.G. and Acosta R.J., “Consumer Protection In the United States: An Overview. Available on line at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1000228 or http://www.luc.edu/media/lucede/centers/antitrust/pdfs/publications/workingpapers/usconsumer_protection_formatted.pdf accessed on 8/9/2015

⁸ Standard Organization of Nigerian Act, 1971 Now cap. S9 LFN 2010.

⁹ The Weight and Measures Act, 1974, Now Cap W 3 LFN 2010,

¹⁰ The Price Control Act, 1977, now cap P 28 LFN 2010

¹¹ Consumer Protection Council Act, No. 66, 1992, now cap C25, LFN 2010

¹² 1992 now T12 LFN 2010

¹³ No. 15 of 1993, now Cap 1 LFN 2010

¹⁴ Now Cap H4 LFN 2010

¹⁵ Now Cap P3 and C 8 LFN, 2010

¹⁶ Now Cap F3 LFN 2010

¹⁷ Now Cap N97 LFN 2010

¹⁸ Ukwueze, F.O.,” Legal challenges In Obtaining Consumer Redress in Nigeria”. *Journal of Contemporary Law*, Vol. 1, 2012 P. 116

¹⁹ Except The Consumer Protection Council Act

The penal sanctions provided under these relevant consumer statutes have become outdated and obsolete with a clear inability to achieve any deterring effect on the prospective offenders.

The result of the above is that American consumers are protected from unsafe products, fraud, deceptive advertisement and unfair business practices when compared with its Nigerian counterpart. The consumers in the United States are protected through a mixture of National, State and Local Governmental Laws and the existence of many private rights of actions. These public and private rights both protect consumers, and at a formal level, equip them with knowledge they need to protect themselves. Although United States mechanism for consumer protection often exist separately from each other, what the overall scheme lacks in centralization, it gains in depth and variety of protection.²⁰

This paper will focus on some of the laws on consumer protection in Nigeria and United States of America with a view of comparing to show how consumers on both jurisdictions have fared.

STATUTES RELATING TO CONSUMER PROTECTION IN NIGERIA AND UNITED STATES OF AMERICA NIGERIA

In Nigerian several statutes which seek to protect the right of consumers have been enacted. Some of these statutes includes the Weights and Measures Act²¹, Food and Drug Act²², Consumer Protection Council Act²³, National Agency for Food and Drug Administration and Control Act²⁴, Standard Organization of Nigeria Act²⁵, Sale of Goods Act²⁶, Price Control Act²⁷, the Trade Malpractices Act²⁸, Hire Purchase Act²⁹, Counterfeit and Fake Drug and Unwholesome processed Food (Miscellaneous Provision) Act³⁰, *etcetera*.

An examination of these statutes mentioned reveals a common feature of inadequacies which leads to their inability to provide consumers with the needed protection. This paper will narrow down these inadequacies in three major areas of weaknesses. They include: replication of provisions, absence of provisions of consumer's right of civil redress or compensation, and the pattern of penal

²⁰. *Ibid*

²¹. CAP W3 LFN 2010

²². CAP F3 LFN 2010

²³. CAP C25 LFN 2010

²⁴. CAP N1 LFN 2010

²⁵. CAP S 9 LFN 2010

²⁶. Sale of Goods Act, 1893. This is for the states that have not reenacted their own sale of Goods Act. See sale of goods edict No.5 of Rivers State 1988, the sale No.5 of Rivers State 1988, the sale of Goods Edict of Imo State, 1994 the sale of Goods Edict of Lagos State 2003

²⁷. Cap P. 28 LFN 2010

²⁸. CAP T3 LFN 2010

²⁹. CAP H3 LFN 2010

³⁰. CAP C3 LFN 2010

sanctions. In the first instance, the penal sanctions in the above statutes are basically criminal or quasi criminal in nature.³¹ This situation presents a challenge of burden of proof and involvement of law enforcement agents in the prosecution of offenders.³²

The Price Control Boards is empowered by the Price Control Act³³ to fix prices for designated goods.³⁴ It prohibits the sale, offer or agreement to sell a controlled commodity above the controlled price. Like many other Act on consumer protection, the Act did not provide for consumer right of civil action against violators. A consumer cannot even recover from the violator any money in excess of the control price.

The Food and Drug Act³⁵ and the Counterfeit and Fake and Unwholesome Processed Food (miscellaneous Provision) Act³⁶ basically relates to the prohibition of sale and distribution of counterfeit, banned, fake, substandard or expired drugs or unwholesome processed food, and the manufacture, sale and advertisement of regulated product. These statutory provisions under these Acts are already comprehensively covered by the National Agency for Food and Drug Administration and control Act.³⁷ Therefore, the provisions of these Acts³⁸ are mere replication and duplicity and hence should be repealed.

Again the Consumer Protection Council Act³⁹ and the Standard Organization of Nigerian Act⁴⁰ are statutes which were mainly to protect the consumers against hazardous and standardization of product. Unlike other statute, the Consumer Protection Council Act is the only consumer statute that made provision for consumers' right of civil action or compensation.⁴¹ There is no doubt that the Consumer Protection Council Act has mapped out even if vaguely the terrain of consumer protection law in Nigeria.⁴² It is submitted that the multiplicity of these statutes is one of the greatest challenge facing the consumers. In most cases, the consumers don't even know the proper law that protects them and where to take their complaint to in case of breach.

³¹. Except the sale of Goods Act and Hire Purchase Act

³². Odigie D., Is The Consumer Really Protected by Law?", *Uniujo Journal of commercial Law*, Vol. 2, December 2011 p. 95

³³. Section 5 of the Price Control Act

³⁴. *Ibid* section 6 of the Act

³⁵. Section 1 of the Food and Drug Act

³⁶. Section 1 of the Counterfeit and Fake Drug and Unwholesome Processed Food (Miscellaneous Provision) Act 1999

³⁷. Sections 5 and 24(5)(a) of the NAFDAC Act

³⁸. The Food and Drug Act, and Counterfeit and Fake Drugs and Unwholesome Processed Food (Miscellaneous Provision Act)

³⁹. Section 1 of the CPC Act

⁴⁰. Section 5 of the SON Act

⁴¹. *Ibid* Section 8

⁴². Apori, K.A., "Cutting Swath around the Nigerian Consumer, the Nigerian Protection Decree" *EDSU Law Journal* (1972) Vol.3. March p. 21

UNITED STATES OF AMERICA

In the United States, there are several Laws and Agencies that tends to protect the rights of consumers. Writing on consumer protection, learned authors⁴³ identified some statute and agencies that protect the rights of consumers in United States of America as follows: the Federal Trade Commission Act which established the Federal Trade commission;⁴⁴ Food and Drug Administration;⁴⁵ Securities and Exchange Commission Act which established the Securities and Exchange Commission; Consumer Product Safety Act which established the Consumer Product Safety Commission; Federal Communication Commission Act which established the Commission; Environment Protection Agency Act which also established an Agency, *etcetera*.

This Paper will focus more on the federal mechanisms for consumer protection more especially the Federal Trade Commission Act and Consumer Product Safety Act, but references may be made to other consumer protection mechanism in United States.

The Consumer Product Safety Act⁴⁶ which is a United States federal statute was enacted to protect the public against unreasonable risks of injury associated with consumer products. To assist consumers in evaluating the comparative safety of consumer product; to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations,⁴⁷ *etcetera*

Under the Act, it is unlawful for any person to sell, offer for sale, manufacture, distribute in commerce, or import to United States any product that is regulated by the commission or banned hazardous product,⁴⁸ *etcetera*.

Another Federal statute in the United States for the protection of consumer is the Federal Trade Commission Act.⁴⁹ The Act provides thus “unfair method of competition or affecting commerce, and unfair or deceptive acts or practices in or

⁴³. Hughes, T.T., and Lumpur, K., “Consumer Protection in the United State available on line at <http://www.aseanconsumer.org/misc/downloads/usftc-s1-th.pdf> accessed on 15/9/2005

⁴⁴. The commission seeks to promote the interest of consumers by encouraging competition, represents consumers during policy making process, and responds to consumer complaints and conduct researches.

⁴⁵. The Food and Drug Administration is responsible for assuring that foods sold in the United State are safe, wholesome and perfectly labeled. This applies to goods produced domestically as well as food from foreign countries. The Federal Food, Drug and Cosmetic Act and the Fair Packaging and labeling Act are Federal Laws governing products under FDA’s Jurisdiction. See US Food and Administration www.fda.gov/foodlabelingguide, accessed on 8/9/2015

⁴⁶. Consumer Product Safety Act was first enacted in 1972 and has been severally amended till the 2008 version

⁴⁷. *Ibid.* section 2(b), see also 15 U.S.C .A S.2052

⁴⁸. See generally section 19(a)(1-18) CPSCA

⁴⁹. Federal Trade Commission Act 1914

affecting commerce are hereby declared unlawful”⁵⁰ Under the Act deception occurs when there is a material representation, omission, or practice that is likely to mislead a consumer who is acting reasonably under the circumstances. Unfair practices are those which cause or are likely to cause reasonably unavoidable and substantial injury to consumers, without any offsetting countervailing benefits to consumers or competition.⁵¹

OFFENCES AND PENALTIES UNDER CONSUMER PROTECTION LAWS IN NIGERIA AND UNITED STATES OF AMERICA

NIGERIA

Under the Food And drug Act,⁵² it is an offence for any person to sell, import, manufacture or store any article of food article which has in it or upon it any poisonous or harmful substance not being a food additive or contaminant of a type, and within the level, permitted by regulation made under this Act, is unfit for human consumption or consist in whole or in part of any filthy, disgusting, rotten or disease substance.⁵³ Several other offences are provided under the Act.⁵⁴

The penalty for contravening the provisions of the Act or regulation made under it on conviction is a fine of not less than fifty thousand Naira (N50,000) or imprisonment for a period not exceeding two (2) years or both such fine and imprisonment.⁵⁵

However, a person charged with contravening the Act can prove that he sold the product in the same package it was when he bought it and that he did not know that the sale would be in contravention of the Act.⁵⁶

The National Agency for Food and Drug Administration and Control Act created an offence for contravention of the provision of the Act or the regulation made under it. The penalty is N50,000 or one year imprisonment or both.⁵⁷ The penalty for obstructing an officer of the Agency in the performance of his duties is N5,000 or imprisonment not exceeding 2 years or both.⁵⁸

Under the Standard Organization of Nigerian Act⁵⁹ it is an offence for any person other than a permitted manufacturer⁶⁰ to sell or expose for the purpose of sale or

⁵⁰. Section 5(a) of the FTC Act; See also 15 United State Code S. 45(a)(1)

⁵¹. Federal Trade Commission available at <http://www.ftc.gov>. accessed on 7/9/15, see also 15 U.S.C.A. S 6102(a)(3)(C)

⁵². Food and Drug Act *Supra*

⁵³. *Ibid* Section 1 of the Act Generally

⁵⁴. *Ibid* Sections 2,5,7,8 and 12 t

⁵⁵. *Ibid* Section 4(1) and 17(1)

⁵⁶. *Ibid* 17(2)

⁵⁷. Section 25(2) of the Act

⁵⁸. Section 25(1) of the Act

⁵⁹. Cap S 9 LFN 2010

advertisement, any material on which is portrayed and industrial or certification purporting to be issued in pursuance of the Act. The penalty upon conviction is a fine not exceeding N1,000.00 or an imprisonment for a period not exceeding one year or both.⁶¹

Where any persons sells to the public an item which does not comply with mandatory industrial standard, the person will be liable on conviction in the case of a manufacture to a fine of not less than N50,000 but not exceeding N100,000.00 or imprisonment for a term not exceeding five years or both, and in the case of a seller to a fine not less than N5,000 but not exceeding N10,000 or to imprisonment for a term not exceeding 2 years or both.⁶² Also failure to give information to the officers of the organization when requested from any person carrying on industrial or commercial undertaking in Nigeria is an offence and attract a fine of N400,00 or imprisonment for a period not exceeding six months or both.⁶³ Supply of false information attract a penalty of N200,00 or imprisonment for a period not exceeding three months or both.⁶⁴

The Counterfeit and Fake Drug and Unwholesome Processed Food (Miscellaneous Provision) Act⁶⁵ was enacted with the sole aim of stepping up the crusade against the sale and distribution of counterfeit, banned and fake and poisons without licence or registration. Under the Act, any person who produces, import, sells or distributes or aids or abets any person to so produce, import, manufacturer or sell any counterfeit, banned or fake substandard or expired drug or unwholesome processed food commits an offence under the Act and shall be punished as specified in the Act.⁶⁶ The penalty for dealing in drugs contrary to section 1 of the Act is now N500,000.00 or imprisonment for a term of imprisonment between five and fifteen years⁶⁷, while contravening section 2(1) is a fine of N500,000.00 or imprisonment for a term of two years or both.⁶⁸

The question therefore is why the parity in the amount and disparity on term of imprisonment on the contravention of the offences provided under the two sections. It has been argued⁶⁹ that the parity is unclear and as such it can be assumed that the parity on the Act is a legislative oversight or a printer error.

⁶⁰. A Manufacturer Permitted by the Council to use the Special Certification Mark , S. 10(1) and 19 of SON Act.

⁶¹. section 11(1) (a) and (b) of SON Act

⁶². *Ibid* section 12(4)

⁶³. *Ibid* section 14(1)

⁶⁴. *Ibid*. Section 14(2)

⁶⁵. Cap C34 LFN 2010

⁶⁶. *Ibid*. Section 1. See section 14 of the Act for the meaning of fake or adulterated drugs and unwholesome processed food. Other terms namely: counterfeit banned, substandard and expired were not defined. Perhaps the omission can be explained on the grounds that these terms are self-explanatory and so are intended to bear their ordinary dictionary meaning

⁶⁷. *Ibid*. Section 3(1)(a)

⁶⁸. *Ibid*. section 2(1)

⁶⁹. Monye, F.N. Consumer Protection Law, Spectrum Books Limited Ibadan (2003) p. 73

It is submitted that this may appear to be the only consumer protection statute that has a high penalty for offenders. The reason for this may not be unconnected with the desire of the government to deal with dealers of fake drugs bearing in mind the adverse consequences of such drugs on the consumers.

The question that readily comes to mind is whether this Act had lived up to its expectation? How has this Act deterred producers and manufacturers of fake and adulterated drugs? The fact remains that reliance on this Act may endanger the consumer as the issue of enforcement still remain a big challenge, hence it is advised that the consumers should shine their eyes rather than relying on an Act that is dormant.

The Consumer Protection Council Act⁷⁰ is another Act that seeks to protect the rights of consumers in Nigeria. Under the Act it is an offence for a manufacturer or distributor of a product who become aware of any unforeseen hazard on a product to refuse to inform the public and cause the product to be withdrawn from the market. Failure to do so attracts a fine of N50,000 or imprisonment for five years or both.⁷¹ Also issuing wrong advertisement about a consumer item is an offence and the penalty is a fine of N50,000 or imprisonment of five years or both.⁷²

There is also an omnibus provision in the Act that “any person who in contravention of any enactment for the protection of consumer.

- a) Sells or offer for sale any unsafe or hazardous goods, or
- b) Provides any service or proffers any information or advertisement thereby causing injury or loss to a consumer, is guilty of an offence under the Act and liable to N50,000 fine or to five years imprisonment or to such fine and imprisonment.⁷³

The use of the phrase in contravention of an enactment whatsoever is indeed ambiguous and has raised controversy. Some have argued that the provision enables penal sanctions to be imposed widely for offences or violation of statutes that comes within the provision.⁷⁴ Others contend that the phrase is bound to create absurdities as each of the existing laws on consumer protection creates its own offences and penalties, and as such it will be unreasonable to apply the penalty provision in the Consumer Protection Council Act to the offences in other statutes. That it will be logical to argue that despite the use of the phrase, the

⁷⁰. CAP C 25 LFN 2010

⁷¹. *Ibid* Section 9(1)

⁷². *Ibid* Section 11

⁷³. *Ibid* Section 12

⁷⁴. Badaki , A.D., “The legal Regime of Product in Nigeria” *MOJFIL* (2001) Vol. 5 No. 1 P.52 Cited by Nnadi I., Consumer Right and Production Under The Law, How Adequate ? *Journal Commercial and Contemporary Law*, Imo State University Owerre June (2014) Vol. 4 P. 235

penalties imposed by section 12 are confined to offences created by the Consumer Protection Council Act.⁷⁵

It is worthy of note that this is the only consumer statute in Nigeria that makes provision for the right of consumer for civil redress or compensation.⁷⁶ In addition where a person is convicted of an offence, the court in addition to dealing with such person in any other way may make an order requiring the person to pay compensation for any personal injury, loss or damage resulting from such damage.⁷⁷

Despite these revolutionary provisions as to consumer protection, the practical effect of this Act is yet to be felt by the consumers. More disturbing is the fact that the act does not have any substantive provisions protecting the rights of consumers, the protection afforded the consumer as discussed above are implied from the powers conferred on the Council or the State Committee.

From an examination of these statutes that seek to protect consumer, a common denominator of these laws is that they make provisions for penal sanctions which it is contended are abysmally low and cannot deter any manufacturer. There are no adequate civil remedies or compensation for the consumer. More so, most of the provisions of the law are replications of the provisions of the others and some are so dormant that their provisions have not been tested in any manner before a court. It is therefore submitted that if the fight for consumer protection will be achieved, most of these provisions should be repealed so as to streamline the laws on consumer protection in line with current realities in Nigeria.

UNITED STATES OF AMERICA

Under the Consumer Product Safety Act of the United States of America, it is unlawful for any person to sell, offer for sale, manufacture, distribute in commerce, or import to United States any product that is regulated by the commission or banned hazardous product,⁷⁸ *etcetera*.

Under the Act, penalty is divided into civil and criminal. Any person who knowingly violates section 19 of this Act shall be subject to civil penalty not to exceed \$100,000 for each such violation.⁷⁹ Under criminal penalty, violation of section, 19 of the Act is punishable for imprisonment for not more than 5 years for knowing and willful violation of that section or a fine determined under section 3571 of title 18, United States Code or both.⁸⁰

⁷⁵. Monye, F.N., *Law of Consumer Protection*, *op.cit.* pp. 60-61

⁷⁶. Section 8 of CPC Act

⁷⁷. *Ibid* section 13(1)

⁷⁸. See generally section 19(a)(1-18) CPSA

⁷⁹. *Ibid* section 20(a)(1)

⁸⁰. *Ibid* section 21(a)(1)(2) and (3)

The philosophy of the Act in providing for civil and criminal penalties is because of the procedure for imposition of the penalties. While in civil it is the Commission that determines the amount to be imposed based on the gravity of the violation, and the risk of the injury to be caused by such violation⁸¹. The Commission can initiate, prosecute, defend or appeal (other than to the supreme court of the United State) through its own legal representative and in the name of the Commission in any civil action where the commission makes any request to the Attorney General for representation in such civil action and the Attorney General does not within 45 days respond that it will represent the commission in such action.⁸²

On the other hand, the procedure for criminal penalties is obviously not the same with that of civil. More so, while the Commission can institute and define civil action, the Commission can only initiate criminal action through the attorney general or on its concurrence.⁸³

Outside the civil and criminal penalties provided under this Act, any person who is injured by reason of violation of consumer product safety rule may sue the person who violated any such rule in court and shall recover damages sustained and may if in the interest of justice recover the cost of the suit, including attorneys' fees, expert witness fees⁸⁴ or sue under the common law.⁸⁵

Under the Federal Trade Commission Act, it is an offence to engage in deceptive and unfair practices that will endanger the consumer.⁸⁶ Under the Act, deception occurs when there is a material representation, omission, or practice that is likely to mislead a consumer who is acting reasonably under the circumstances. Unfair practices are those which cause or are likely to cause reasonably unavoidable and substantial injury to consumers, without any offsetting countervailing benefits to consumers or competition.⁸⁷ In addition to its authority under section 5(a) of the Act, the Commission has enforcement and administrative powers under forty-six other statutes.⁸⁸ Some of these statutes⁸⁹ relates to the Commission consumer protection mission.

⁸¹. *Ibid* section 21(b)

⁸². *Ibid* section 27(b)(7)(A)

⁸³. *Ibid* section 27(b)(7)(B)

⁸⁴. *Ibid* section 23(a)

⁸⁵. *Ibid* section 25

⁸⁶ Section 5(a) of the FTC Act See also 15 United States Code S. 45(a)(1)

⁸⁷. Federal Trade Commission available at <http://www.ftc.gov>. accessed on 7/9/15, see also 15 U.S.C.A. S 6102(a)(3)(C)

⁸⁸. Waller S.W. et al *op.cit.* p. 12

⁸⁹. Amongst these laws include Truth in lending Act, Fair Credit Billing Act, Petroleum Marketing Practices Act Comprehensive smokeless tobacco Health Education Act, 1986; Do-Not – call Registry Act, 2003, controlling the Assault of Non-Solicited Pornography and marketing (“CAN-SPAM”) Act 2003 *etcetera*

The penalty for breach of the provision of section 5(a) of the Federal Trade Commission Act which is similar to section 45(a)(1) (A) of 15 United States Code Act is a fine of not more than \$10,000 recoverable through a civil action at the district court.⁹⁰ An aggrieved party may appeal the order to the full Commission, and subsequently to the court of Appeal and then the Supreme Court. Where the order is not appealed, it becomes final within sixty days.⁹¹ Under the Act, false advertisement is an offence and person who violates the provision of law on false advertisement is liable to fine not more than \$5,000 or imprisonment for six months for first offender and for subsequent offender liable to a fine not more than \$10,000 or imprisonment for one year.⁹²

The Consumer Product Safety Act⁹³ which is a United States federal statute was enacted to protect the public against unreasonable risks of injury associated with consumer products. To assist consumers in evaluating the comparative safety of consumer product; to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations,⁹⁴ *etcetera*

The Act created a regulatory agency called the Consumer Product Safety Commission⁹⁵ which is also a federal agency. The function of the commission is basically the implementation of the Act in ensuring consumer product safety.⁹⁶ It is unlawful for any person to sell, offer for sale, manufacture, distribute in commerce, or import to United State any product that is regulated by the commission or banned hazardous product,⁹⁷ *etcetera*.

It is obvious that the reason for imposition of these offences under the Act on both manufacturer and importers is to protect the American consumers and also prevent the making of United States a dumping ground for fake drugs.

Under the Act penalty is divided into civil and criminal thus:

*Any person who knowingly violates section 19 of this Act shall be subject to civil penalty not to exceed \$100,000 for each such violation. Subject to paragraph (2) a violation of section 19(a)(1), (2), (4)-(11) shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and if such violation is a continuing one, each day of such violation shall constitute a separate offense except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations.*⁹⁸

⁹⁰. Section 5(m)(1)(A), FTC Act

⁹¹ 15 U.S.C.A S. 45(b), S. 5 (b)FTCA

⁹². 15 U.S.C.A S 45(C) and (g), S. 5(C) and (g) FTCA

⁹³. Consumer Product Safety Act was first enacted in 1972 and has been severally amended till the 2008 version

⁹⁴. *Ibid.* section 2(b), see also 15 U.S.C .A S.2052

⁹⁵. *Ibid* Section 4, see also 15 U.S.C. A S. 2053

⁹⁶. *Ibid* Section 5, see also 15 U.S.C S.A S,2054. See also <http://www.CPSC.gov/>, accessed on 7/9/2015

⁹⁷. See generally section 19(a)(1-18) CPSCA

⁹⁸. *Ibid* section 20(a)(1)

Under criminal penalty, violation of section, 19 of the Act is punishable for imprisonment for not more than 5 years for knowing and willful violation of that section or a fine determined under section 3571 of title 18, United States Code or both.⁹⁹

The philosophy of the Act in providing for civil and criminal penalties is because of the procedure for imposition of the penalties. In civil it is the Commission that determines the amount to be imposed based on the gravity of the violation, and the risk of the injury to be caused by such violation¹⁰⁰. On the other hand, the procedure for criminal penalties is obviously not the same with that of civil. More so, while the Commission can institute and define civil action, the Commission can only initiate criminal action through the attorney general or on its concurrence.¹⁰¹

Outside the civil and criminal penalties provided under this Act, any person who is injured by reason of violation of consumer product safety rule may sue the person who violated any such rule in court and shall recover damages sustained and may if in the interest of justice recover the cost of the suit, including attorneys' fees, expert witness fees¹⁰² or sue under the common law.¹⁰³

COMPARATIVE ANALYSIS OF CONSUMER PROTECTION LAWS IN NIGERIA WITH UNITED STATES OF AMERICA

In the first place, unlike the consumer protection laws in Nigeria, the Consumer Product Safety Act provides for a high penalty for violating the provision of the Act both for civil and criminal violation. The amount of penalty is in itself a check on manufacturers to do all that it takes not to violate the provisions of the Act. This indeed can deter manufacturers unlike the situation in Nigeria where the penalties are very low. Again in Nigeria, the consumer protection laws did not make provision for civil penalty, all penalties provided are criminal in nature.¹⁰⁴

Another protection afforded United States consumers under this Act unlike the situation in Nigeria is the tripartite nature of commencement of action, where the Commission, the Attorney General and the individual consumer who has suffered injury for the violation of product safety rule can sue. More especially, the injured consumer can recover damages, cost of litigation including attorney and witness fees. This indeed will be a booster to consumer and will spur them to institute action when there is an alleged violation. This is not the case in Nigeria. Even the Consumer Protection Council Act which provides for civil right of redress and

⁹⁹. *Ibid* section 21(a)(1)(2) and (3)

¹⁰⁰. *Ibid* section 21(b)

¹⁰¹. *Ibid* section 27(b)(7)(B)

¹⁰². *Ibid* section 23(a)

¹⁰³. *Ibid* section 25

¹⁰⁴. See section 9(1), 11 and 12 CPC Act, section 25(3) NAFDAC Act. Section 12(4) SON Act etcetera, except section 8 CPC which provides for Civil redress.

compensation to consumers¹⁰⁵ does not provide for recovery of cost of litigation considering the high cost and protracted litigation in Nigeria.

Section 19 of the United States Consumer Product Safety Act is comparable to section 12 of the Consumer Protection Council Act of Nigeria. While section 20 of the United States Consumer Product Safety Act made provision for civil penalties for violation of section 19, section 12 of the Nigerian Consumer Protection Council Act makes violation of the provision of the Act subject to conviction thereby making it a criminal liability, whereas under section 27 of the Consumer Product Safety Act a criminal penalty is imposed for ‘willfully and knowingly’ violating the provision of the Act. In other words, liability for civil penalty when it comes for violation of product safety regulation in United States is strict liability. This is not the case in Nigeria that is the reason why manufacturers who causes injury to Nigerian consumers as a result of adulterated products always escape liability.

Another Federal statute in the United States for the protection of consumer is the Federal Trade Commission Act.¹⁰⁶ The Act established the Federal Trade Commission.¹⁰⁷ The principal but not the only consumer agency at the federal level is the United State Federal Trade Commission.¹⁰⁸ The two principal goal of the commission is to maintain competition by preventing anticompetitive business practices and to protect consumers by preventing fraud, deception, and unfair business practices in the market place.

The authority of the Commission is derived from the Act which provides thus “unfair method of competition or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful”¹⁰⁹

According to the Commission, deception occurs when there is a material representation, omission, or practice that is likely to mislead a consumer who is acting reasonably under the circumstances. Unfair practices are those which cause or are likely to cause reasonably unavoidable and substantial injury to consumers, without any offsetting countervailing benefits to consumers or competition.¹¹⁰ In addition to its authority under section 5(a) of the Act, the Commission has enforcement and administrative powers under forty six other statutes.¹¹¹ Some of these statutes¹¹² relates to the Commission consumer protection mission.

¹⁰⁵. Section 8 CPC Act

¹⁰⁶. Federal Trade Commission Act 1914

¹⁰⁷. Section 1 FCT Act

¹⁰⁸. Waller S.W. et al, “Consumer Protection in the United State: An overview *op. cit.* p. 2., See also the web site of FTC, <http://www.FTC.gov>.

¹⁰⁹. Section 5(a) of the FTC Act; See also 15 United States Code S. 45(a)(1)

¹¹⁰. Federal Trade Commission available at <http://www.ftc.gov>. accessed on 7/9/15, see also 15 U.S.C.A. S 6102(a)(3)(C)

¹¹¹. Waller S.W. et al *op.cit.* p. 12

¹¹². Amongst these laws include Truth in lending Act, Fair Credit Billing Act, Petroleum Marketing Practices Act Comprehensive smokeless tobacco Health Education Act, 1986; Do-Not – call Registry Act,

The penalty for breach of the provision of section 5(a) of the Federal Trade Commission Act which is similar to section 45(a)(1) (A) of 15 United States Code Act is a fine of not more than \$10,000 recoverable through a civil action at the district court.¹¹³

Where there is a perceived violation of the provision of the Act, the Commission will through its bureau of consumer protection issue a civil investigation demand to explore possible violation.¹¹⁴ Upon conclusion of investigation, if the Commission believes that a violation exists, and that an enforcement is in public interest, it may issue a complaint to the violating person or body and a hearing will be held in front of an administrative law judge. If the action in issue is deemed a violation, the administrative law judge may recommend entry of a cease and desist order.¹¹⁵ Cease and desist orders are the Commission's primary tools to stop anti-consumer practices. Where the order is violated the Commission is to use courts to seek civil penalties and restitution for consumers who are harmed.

An aggrieved party may appeal the order to the full Commission, and subsequently to the court of Appeal and then the Supreme Court. Where the order is not appealed, it becomes final within sixty days.¹¹⁶

Under the Act, false advertisement is an offence and a person who violates the provision of law on false advertisement is liable to a fine not more than \$5,000 or imprisonment for six months for a first offender and for a subsequent offender liable to a fine not more than \$10,000 or imprisonment for one year.¹¹⁷

The Commission is empowered to make victimized consumers whole through restitution and force the wrongdoers to disgorge their ill-gotten gains and can go to court for an injunction to prevent the violation of the Act from occurring.¹¹⁸ It is important to note that the Commission is only empowered to bring civil claims, it has no power to bring criminal charges. Federal criminal cases in consumer protection are brought in federal courts by the United States Department of Justice. A criminal offense is only upon proof beyond a reasonable doubt before a judge or Jury.¹¹⁹

2003, controlling the Assault of Non-Solicited Pornography and marketing ("CAN-SPAM") Act 2003
etcetera

¹¹³. Section 5(m)(1)(A), FTC Act

¹¹⁴. 15 U.S.C.A. S. 576-1(C)(1),

¹¹⁵. 15 U.S.C.A. S. 576-1(C)(1),

¹¹⁶. 15 U.S.C.A. S. 45(b), S. 5 (b)FTCA

¹¹⁷. 15 U.S.C.A. S 45(C) and (g), S. 5(C) and (g) FTCA

¹¹⁸. 15 U.S.C.A. S.52(a) and 54(a). See also S.12 and 13 F.T.C.A

¹¹⁹ 15 U.S.C.A Section 45(1)

In carrying out its functions, the Commission has seven divisions of bureau of consumer protection through which it carries out its mandate to protect consumer against unfair, deceptive or fraudulent practices.¹²⁰

To show that the Commission has Jurisdiction to regulate data security under its authority to bring enforcement action against unfair or deceptive practices, in *FTC V. Worldwide Corp*,¹²¹ a federal district denied a motion to dismiss an action brought by the Commission affirming the authority of the Commission to bring the action.

Looking at the offences and penalties created under the Federal Trade Commission Act and the role of the Commission comparatively with consumer protection laws and the role of regulatory agencies in Nigeria. Firstly, the regime of consumer protection in the United States has high premium on remedying the consumer from injury suffered from such fraudulent and deceptive practices through, civil penalties unlike the case in Nigeria where the laws are basically criminal and quasi-criminal that ends in payment of fines which are generally low.¹²²

Secondly, the civil penalties under the Federal Trade Commission Act are generally between \$5,000 and \$10,000 respectively. These penalties not only that they are high and can deter offenders, they are recoverable through a civil action which is on mere preponderance of evidence as against the criminal proceedings under our jurisprudence which requires proof beyond reasonable doubt. There is no doubt that civil action proceedings will be faster than criminal proceeding. Thirdly, civil penalties is consumer friendly as it is aimed at remedying the injured consumer against the injury suffered through the violation of the Act, whereas criminal penalties is not consumer focused as it is aimed at remedying a crime which is an offence against state by punishment and payment of fine which goes to the government.

Whist the United States consumer protection law are balanced by protecting both the consumer and the public, consumer protection laws in Nigeria are basically for the protection of the public without recourse to the individual consumer who has suffered the injury. There lies the bane of consumers under the consumer protection laws in Nigeria. Any law that seeks to protect consumer without any provision to cushion the damage done to the victim leaves much to be desired.

¹²⁰. Waller, S. W. et al *Op. cit* P.5. These divisions include: Advertising Practices, Financial Practices, Marketing Practices, Privacy and Identity Protection, Planning and information, Consumer and Business Education, and Enforcement.

¹²¹. Civil Action No.13-1887 (D.N.J. Apr.7, 2014). It is important to note that this case is currently on appeal to Supreme Court of United State.

¹²². See Section 5(a) F.T.C.A and 15 U.S.C.A Section 45(a)(1)(A) Cf with section 25(3) NAFDAC Act, Section 9(1) CPC Act; Section 12(4) SON, *etcetera*

More revolutionary is that the Commission has an internal mechanism to hear violators of consumer protection laws and impose penalties where it is satisfied that there was violation and its decision may be final, if the violator accepts it and chooses not to appeal against it. This procedure is indeed a good one for the consumers and it is strongly recommended to enhance consumer protection in Nigeria. Again, outside the state of the laws, regulatory agencies in the United States are more proactive and have mechanism for effective implementation of the consumer protection laws against its Nigerian counterpart where lethargic and bureaucratic bottleneck is bedeviling the agencies for prompt implementation.

More so, in the United States of America, outside the federal statutes and federal agencies for consumer protection, state governments act as both consumer law enforcement agencies and consumer advocates, again highly decentralized and without the presence of any single overarching consumer protection department or agency.¹²³ The state governments have their laws on consumer protection which is enforced by the Attorney General of state. Attorney General may file law suits on behalf of consumers, investigate possible violations, issue injunction to terminate ongoing illegal activities, obtain restitution on behalf of consumers,¹²⁴ *etcetera*. There is also a National Association of Attorneys General which facilitates cooperation among Attorney Generals to enhance their consumer protection effectiveness and support multi-state consumer protection activity and litigation.¹²⁵

In Nigeria, all the consumer protection statute are Acts of the National Assembly except the Sale of Goods Law for the states that has enacted same as shown earlier in this research. This dearth of state consumer protection laws in Nigeria may not be unconnected with the fact that issues like weight and measure, trade and commerce and export are within the exclusive legislative list in the Nigerian constitution.¹²⁶ However, under the concurrent list there is also the right to make laws on commercial activities.¹²⁷ It is indeed a surprised why there are no states laws in Nigeria as is the case with United State. It is contended that the reason for a dearth of consumer protection laws within the state in Nigeria is as a result of lack of commitment on the part of the state government to effectively protect consumers.

Outside the federal and state laws and their agencies in the United States of America, there are also a number of non-governmental associations which perform various consumer protection functions.¹²⁸ Consumerism in the United States is a social movement to be reckoned with. Consumerism, it is argued is not a new phenomenon

¹²³. Waller, S.W., et al *Op. cit.* P.17

¹²⁴. *Ibid*

¹²⁵. See http://www.naag.org/consumer_Protection.php accessed on 8/9/2015. See also Section 20 of New York City Consumer Protection Code which prohibits defective and unconscionable practice in dealing with consumers

¹²⁶. See items 25, 62 and 65 of part 11 second schedule of the 1999 constitution of the Federal Republic of Nigeria.

¹²⁷. See item 18 of part 111 second schedule of the 1999 constitution of the Federal of Nigeria.

¹²⁸. These includes: Automotive Consumer Action Program; Consumer Union of United State; The Council of Better Business Bureau, *etcetera*

in the United States.¹²⁹ As a result of this American consumers are more educated and enlightened over their rights and its enforcement in case of breach unlike their Nigerian counterpart that are predominantly unenlightened illiterates who prefers to sleep on their rights in cases of obvious breach.

Furthermore, the Nigerian courts have through its pronouncement actively contributed to weaken the protection afforded the Nigerian consumers in the law. While the Nigerian courts are still heavily relying on the manufacturers foolproof system of production and other legal technicalities to deny the consumer of damages in obvious breach of consumer rights in cases of product liability and food poisoning as shown earlier,¹³⁰ the court in America has adopted strict liability against manufacturers who put defective products in the overt market for consumers use. In *Greenman V. Yuba Power production Inc*,¹³¹ a man was injured while using an all-purpose power tool given to him as a present by his wife. The injured consumer brought an action. The supreme court of califonia held the manufacturer liable and stated in its judgment thus:

A manufacturer is strictly liable in tort when an article he places on the market knowing that it is to be used without inspecting for defects proves to have a defect that causes injury to a human being...the purpose of such liability is to ensure that the costs of injuries resulting from defective products are borne by the manufacturer that put such product on the market rather than by the injured person who are powerless to protect themselves.

It is submitted that the Nigerian courts should follow suit.

CONCLUSION

From the above, it is crystal clear that the government of Nigeria has made frantic efforts by enacting laws that gears towards the protection of consumers rights in Nigeria. The only missing gap is that most of these laws have not really provided the needed protection to Nigerian consumers. Hence, it is safe to argue that the protection provided for Nigerian consumers is at best on paper. This is so evident in the comparative analysis of consumer protection laws in Nigeria with that of United States of America. It is therefore submitted that Nigerian government should draw a lesson from their American counterpart in framing its consumer protection laws to provide the much needed protection to Nigerian consumers. It is recommends that the model of the United States Consumer Product Safety Act by separating civil penalties from criminal penalties be applied in Nigeria so that the consumers will be provided the adequate protection they deserve.

¹²⁹. Staton, W. J., *Fundamental of Marketing* 5th ed. (New York: McGrace-Hill Book Company; 1978) P.557

¹³⁰. See *Boardman V. Guinness Nig. Ltd (supra)*, *NBC V. Olarewaju (supra)*, *Nathaniel Ebelamu V. Guinness Nig. Ltd (supra)*, *Okonkwo V. Guinness Nig. Ltd (supra)* etcetera

¹³¹. (1963) 27 Cal Reporter 697