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Articles

Page

Issues in Child Development in Nigeria

1 - 9

*Otunta Bertha Nwenna
Joy N. Ezeki*

**Impediments to Enforcement of Environmental Treaties
against Oil Pollution under International Environmental Law**

10 - 46

*Ibata S. Babalola
Lorhony M. Akin Alapamun*

**Examining Some Gains and Pitfalls of Nigeria's Companies
and Allied Matters Act: Urgent Need for Review**

47 - 65

*George K. E. Oluogbinan
Charles M. Eze*

**Delimitating the Prosecutorial Powers of Police Officers for
a More Efficient Criminal Justice Administration in Nigeria**

66 - 81

Joseph K. Udemezie

**An Appraisal of the Seminal Innovations between the
Defunct FEPA Act and NESREA Act in Nigeria**

82 - 98

Musallam J. D. Akin

**An Examination of Consumer Protection and its Link to
Trademark Law in Nigeria**

99 - 113

Ibimika P. Olorun

**Towards Repositioning the Industrial Arbitration Panel (IAP)
for the Effective Settlement of Trade Disputes in Nigeria**

114 - 129

David Tam Asong Eyongodi

**Person and citizen rights in the Constitution of the
Republic of Poland**

130 - 139

Jacques Słowia

Statelessness: a West African Reality

140 - 149

Adeniyi I. Olatunbosun

**Autonomy and Management of Federal Universities under the
Universities Autonomy Act**

150 - 160

P. Ehi Oshio

An Examination of Consumer Protection and its Link to Trademark Law in Nigeria

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Abstract

Trademark has an impact on the economic development of any civilised country. A trademark has grave economic value and it is the consumers that suffer harm if the goods and services rendered by the producers are of bad quality. Hence, the aim of a trademark is so that consumers will be able to identify and distinguish between all other goods that are offered up for sale. A trademark could therefore be likened to an indicator of source which serves as a subtle information to consumers that the goods they are about to buy are of good quality. A trademark therefore has economic value that could impact the society either negatively or positively. Hence, it is important that the law on trademark should be adequate enough so that the right of consumers would be protected at all times. Apart from that, the law of trademark should not only protect the owners of goods but it should also take the interest of consumers into consideration. As it is now, there is no provision under the Nigerian Trademarks Act of 1965 that specifically provides for consumers that may suffer damage to their health as a result of adulterated goods. The aim of this article is to therefore discuss the link between consumer protection and trademarks. This article will also review the Federal Competition and Consumer Protection Act (FCCPA) to know whether it addresses the interests of consumers. There will also be a brief overview of the other types of trademark and its recognition or not under the Nigerian Trade Marks Act (NTMA) and whether it can be accommodated under the new Consumer Protection Act.

Introduction

The concept of trademarks signifies the materialization of creative minds toward branding of products which is essential in the 21st century business as purchasing decisions are constantly influenced by trademarks which help distinguish products and services from those of competitors and help identify a particular company as a source. A

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trademark performs certain functions such as identifying a seller's goods and distinguishing them from others, associates the goods with the provider, serves as a representation of a certain level of quality and is regarded as a strong advertising instrument.¹

The owner of goods and services can only have the exclusive right to a product if it has been registered. A trademark that is to be registered, has to be situated in the country where it is found as the rationale behind every registration is that the owner of the trademark has the right to protect its trademark property from persons who do not have the right to use that trademark.² It prevents the simultaneous existence of similar trademarks which are confusing and serves as proof of ownership, especially in cases of infringement. Trademark registration gives the trademark owners the exclusive right to commercially use the protected names or symbols, including licensing them to third parties. These exclusive rights are enforced by a country's judicial system. For example, in order to immediately stop infringing activities, such as the sale of counterfeit products, trademark holders can request seizures or preliminary injunctions through the court system.³

When a trademark is not registered however, it creates confusion especially where two similar and the trademarks are used in the same market. When this occurs, consumers may become confused and disillusioned when a mark they think they know and recognise does not actually represent the source of the good they understood it to represent.⁴ The end result is that the goodwill of the first trademark user can be irreparably harmed.⁵ Infringement can occur when there are no effective laws and where the general consuming public are not educated on the law of trademarks and are therefore, illiterate. The trademark system is designed to protect the reputational assets of a

natural person or a legal entity by providing incentives for investments in the value of products sold to the public.⁶

Trademarks are recognized as identification factors which are used in distinguishing the source of one product from the other.⁷ In *Hanover Star Milling Co. v. Metcalf*,⁸ the Court upheld the function of the law on trade mark as being able to identify the origin or ownership because of the mark attached on the body of the product.⁹ The definition given by the World Intellectual Property Organization (WIPO) states that trademark is a distinct sign to identify the goods offered by a manufacturer to the public.¹⁰

It could also be defined as:

...a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person...¹¹

Types of trademarks

There are other types of marks which have not been given due recognition under the Nigerian Trade Marks Act. Since consumers have an important role to play in the production of a trademark, a problem would arise when the other types of a mark would arise. How the law would deal with it might be a challenge under the Nigerian Trade Marks Act (NTMA). Thus, the other types of trademark which the law has to take cognisance of are:

¹ McCarthy, J.T. 2004. McCarthy on Trademarks and Unfair Competition, 4th Edition. Section 26: 1-4, 29: 1-7 Retrieved August 12, 2013 from <https://www.carswell.com/product-detail/Mccarthy-on-Trademark-and-Unfair-Competition>

² Landes, W. M. & Posner, R. A. 1987. Trademark Law: An Economic Perspective, 30 *Journal of Law and Economics*, 265, 271-73

³ Eugenia Baroncelli, et.al., 2005. The Global Distribution of Trademarks: Some Stylized Facts. Blackwell Publishing Ltd. World Economy, Volume 28, Issue 6. Pages 765-782. Retrieved August 20, 2013 from <http://dx.doi.org/10.1111/j.1467-9701.2005.00706.x>

⁴ Ibid.

⁵ Ibid.

⁶ Landes, W. M. and Posner, R. A. 1987. Trademark Law: An Economic Perspective, 30 *Journal of Law and Economics*, 265, 271-73

⁷ See Kitchin, D., et.al. 2005. *Kelly's Law of Trademarks and Trade names*; (London: Sweet and Maxwell), p.9; Groves, P.J. 1997. *Intellectual Property Law*. Cavendish Publishing Limited, London, p.512.

⁸ (1916) 240 U.S. 403

⁹ See Groves, *ibid*.

¹⁰ WIPO Handbook, *op.cit*.

¹¹ Section 67, NTMA, Laws of the Federation 2004

Service Mark

A component of trademark is service mark which is in the same class as trademark but, applies to services rather than products.¹² Different services of various enterprises of business are identified even where the proprietor of the services is unknown.¹³ As a result of the competitive nature of trade, consumers come in contact with different types of goods and services which enables them to make informed choice about the goods that they want to purchase. Such services include insurance companies, car rental, firms, airlines, etc., and they basically have features similar to trademarks.¹⁴ It is to be noted that the use of trademarks under the NTMA, is in relation to goods and it does not cover service marks used by service organisations to distinguish their services from those of other persons.¹⁵

Get-up/Trade dress

Get-up seems to be recognized only under passing off in Nigeria and it is majorly found in the Law of Tort. This includes copying the packaging of the plaintiff to be similar to that of the defendant in a manner that is likely to confuse the public. Therefore, it includes the general appearance, package, label, or design of the product.¹⁶ Get-up is however not recognized under the NTMA and hence, there is no legislative protection for it. Hence, deceit would occur when a registered mark is imitated by an individual or company in relation to the goods or services which has acquired a distinctive reputation in the market and is known as belonging to a product by such individual

or company only.¹⁷ In *U.K. Tobacco Co. v. Carreras Ltd.*,¹⁸ the defendants were marketing cigarettes called "Barrister", and the packet showed a white man wearing a barrister's wig and gown. It was similar to that of the plaintiff's product which was called "Band Master" on which the packet of cigarettes also included a man in a band master's uniform.

The external packaging of a person's product in Nigeria is known as get-up and another name is for it is trade dress. Trade dress is what is used in the United States of America to describe product packaging. Trade dress refers to the visual appearance of a product that may include features such as size, shape, packaging, colour or combination of colours and this is considered the overall get-up of the product.¹⁹ The law focuses on the idea that the source of a product can be identified by the product's brand name, slogan, etc. However, there are also situations where a product has such a distinctive design or packaging, that the design/packaging itself acts as a source indicator. This distinctive "look and feel" of the product is known as trade dress and this is protected under the same trademark laws applicable to a brand name or slogan. For example, the shape and design of the original glass Coca-Cola bottle is so well known and recognized that it has become protectable trade dress. Coca-Cola could therefore prevent other soda manufacturers from distributing their colas in a similar bottle on the basis that there would be a likelihood of confusion.²⁰ In ascertaining the likelihood of confusion, it is not to be assumed that the two similar products would be placed together but the information of the product which is left on the minds of the consumer will suffice.²¹ However, if the identical marks are indeed placed together, the test will be adopting the features

¹² What is the difference between a Copyright and Trademark? Retrieved April 5, 2014 from www.wisegeek.com/what-is-the-difference-between-a-copyright-trademark...

¹³ The differences between trademark, service mark. Retrieved August 30, 2014 from www.vegastrademarkattorney.com/.../what-are-the-differences-between-trademark...

¹⁴ World Intellectual Property Organization (WIPO) Handbook, Policy, Law and Use (2004) Geneva. Second Edition, WIPO Publication, No. 489(E). Retrieved October 7, 2013 from <http://www.wipo.int/about-ip/en/iprml>

¹⁵ Oyewumi, A. 2015. *Nigerian Law of Intellectual Property*. University of Lagos Press and Bookshop Ltd., at p. 236. See the case of *Akesa (Nig.) Ltd. v. Union Bank of Nig. Ltd.*, Unreported suit No. FHC/L/95/81

¹⁶ Malemi, E. 2013. *Law of Tort*. Revised Edition. Princeton Publishing, at p. 638

¹⁷ Mondaq T & A Legal. 2018. Nigeria: An appraisal of Passing off Actions under Nigerian Law. Retrieved October 16, 2018 from www.mondaq.com>Nigeria>Trademark

¹⁸ (1931) 16 NLR 1. See also *De Facto Works Ltd. v. Odumotun Trading Co. Ltd.* (1959) LLR 33

¹⁹ Trade Dress Protection under Trademark Regime: An Analysis. Retrieved September 21, 2017 from <http://www.ficpi.org/news/trade-dress-protection-under/>

²⁰ Ibid.

²¹ The likelihood of Confusion. Retrieved April 5, 2014 from www.quizlaw.com/trademarks/how-is-likelihood-of-confusion.php

of the ear and the eyes to arrive at a conclusion on the consumer's capability to remember all that had been seen.²²

The major difference between the protective nature of trade dress and other types of trademarks is that, to be protected, trade dress must have secondary meaning and cannot be distinctive inherently.²³ Where a consumer cannot easily identify and make an informed choice of the kinds of goods he desires, then, it can be said that a sign has not passed the 'distinctive' test. For example, the word "Apple device for phones or computers" is not capable of being registered for apple fruit that can be eaten but it is highly recognized that such goods are from a particular trade source and are distinctive in their own class.²⁴ When a mark is not distinctive inherently, it can only acquire distinctiveness through the development of secondary meaning. Secondary meaning shows that the mark has some meaning to the public beyond the obvious meaning of the terms or images of the mark itself. In other words, if the primary significance of the mark in the consuming public's mind has become the source of the goods or services, rather than the product itself, it has acquired secondary meaning.²⁵

Importance of protecting Consumers

Consumers are important in all sphere of life especially as they aid economic development but it seems that in any commercial system, the interest of the consumer is constantly sacrificed to the producer as production is considered mostly and not consumption as the ultimate end and object of all industry and commerce.²⁶

The above quoted statement implies the concept of consumer sovereignty; the centrality of the consumer in the production process. *Black's Law Dictionary* defines the word consumer as one who consumes, individuals who purchases, 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.²⁷

A consumer is anyone who buys or uses goods and services. The basic needs of any consumer is the right to enjoy basic requirements when dealing with goods and services. According to Consumer International, which is a United Kingdom based international Federation of Consumer Protection organizations, there are eight (8) basic rights of a consumer which are the right to the satisfaction of basic needs; right to safety; right to choose; right to be heard; right to redress; right to consumer education and the right to a healthy environment. Hence, laws which regulate the protection and enforcement of these rights are known as consumer protection laws. Any law which is designed to protect consumers from unfair trade practices, dangerous or unsatisfactory goods or educate the consumer on his rights and remedies is a consumer protection legislation.²⁸ Consumers play a major part in differentiating and making choices between goods available for sale as this motivates owners of trademark in maintaining and thereby, improving the quality of the goods offered up for sale which would, meet the high expectation of consumers. Thus, manufacturers are rewarded because of the consistent quality goods that are produced and this aids economic growth and creates wealth for the owner.²⁹

Groves³⁰ stated that in identifying where the product originated from, it goes far beyond knowing only the owner and the source of the good on which it is used but that where it is able to distinguish the undertakings of one person from those of other undertakings, then, it can be said to have served the function of trade mark. With the advent

²² See *British American Tobacco & Anor. V. Int'l Tobacco & 2 Ors* [2003-2007] 5 I.P.L.R. 285

²³ What is trade dress? Retrieved April 5, 2014 from www.quizlaw.com/trademarks/what_is_trade_dress.php

²⁴ WIPO Handbook, op.cit

²⁵ What is secondary meaning? Retrieved April 5, 2014 from www.quizlaw.com/trademarks/what_is_Secondary_meaning.php

²⁶ Adam, S., Campbell, R.H. & Todd, W.B. 1981. *An Inquiry into the Cause of the Wealth of Nations*. (Indianapolis: Library Classics), p. 660

²⁷ Garner, B.A. 2009. *Black's Law Dictionary*. Ninth edition

²⁸ Oyewole, O. 2014. *Nigeria: Nigerian Laws on Media, Entertainment and Intellectual Property*. Retrieved 10 June, 2019 from [http://www.mondaq.com/Nigeria/x/293352/Trademark/...](http://www.mondaq.com/Nigeria/x/293352/Trademark/)

²⁹ WIPO Intellectual Property Handbook: Policy, Law and Use. 2004. Geneva. 2nd Edition. WIPO Publication. No. 489 (E). Retrieved October 7, 2013 from <http://www.wipo.int/about-ip/en/iprml>

³⁰ Groves, P.J. 1997. *Intellectual Property Law*. (London: Cavendish Publishing Limited), 512-513. Adewopo, A.A. & Oguamanam, C. 1999. The Nigerian Trademark Regime and the Challenges of Economic Development. *International Journal Review of Industrial Property and Copyright Law*. Volume 30, Issue II, 632-653

of trade between countries and border margins, there is the need for the owner of a mark to protect his goods because when this is not done, consumers will be baffled as to where the product originated from. Therefore, the role of trademark is to ascertain a product as suitable to be purchased by the society.³¹

Millot³² opined that trademarks constitute one of the most important assets of firms and it enables consumers to differentiate between competitive products and possibly to develop loyalty towards one preferred trademark. Armand³³ stated that when goods have been trademarked, it carries with it a warranty that the consumer is able to differentiate from the products of a known manufacturer from that of another manufacturer. Schechter³⁴ opined that trademark owners should be protected and that consumers should also be protected as the signs or symbols affixed to goods serves as a promise of a certain quality. It can be deduced that Schechter believed that both the trademark owner and the consumer had a great impact on the macro-economy as the mark sells the goods. The advantage being that the commercial regulation of trademarks maximizes goods through the encouragement of quality products whilst at the same time, decreasing consumer search costs and reinvigorates the economic sector.³⁵

Trademark cannot be ignored or set aside as it relates to the origin of the product and the ability of consumers to be able to distinguish one good from the other whilst at the same time, guaranteeing quality and a strong instrument of advertisement.³⁶ Hence, if there are no trademarks, there cannot be consumers. The primary reasons why trademark exists is majorly to enhance decisions of consumers in choosing appropriate goods known to them and to motivate

manufacturers to produce quality goods which should be known by consumers before they buy anything.³⁷

A trademark is protected not only to avoid consumer confusion, but also to provide firms with an adequate return on investments made to create and maintain strong brands.³⁸ In *Dyktrade Ltd. v. Omnia Nig. Ltd.*,³⁹ it was held that when a mark has been registered, it entitles the owner to use the trademark exclusively and also, would have a right to sue for passing off when the defendant uses such goods that are inconsistent with that of the plaintiff. The rationale for the protection of trademarks is that the owner has spent time and money in presenting a service or product to the consumer, the owner then should be able to protect this investment by being allowed to prevent others from using the trademark and profiting from the owner's investment. Therefore, the value of the trademark is determined by the strength, or goodwill, of the association between the trademark and its source, and it is the consumer who determines this value.⁴⁰ A trade mark can be viewed as a signature whereby this undertaking accepts commercial responsibility for the marked products and even as a guarantee to consumers concerning their overall quality.⁴¹

A trademark is an intangible asset that represents the investments made in the building of a brand. When a business is sold for example, or companies merge, the question of brand evaluation becomes an important issue.⁴² It provides business people with a remedy against unfair practices of competitors, which aim at causing confusion in consumers' minds by leading them to believe that they are acquiring such goods or services of the legitimate owner of the trademark, whereas they are in fact acquiring an imitated product, which may be

³¹ Groves, P.J., *ibid.*, at p. 515

³² Millot, V. 2009. Trademarks as an Indicator of Product and Marketing Innovations. Retrieved November 17, 2016 from <http://www.oecd.org/sti/working-papers>

³³ Armand, R. and Norman, H. 1994. *Blackstone's Guide to the Trademarks Act*. London: Blackstone Press Ltd., 15

³⁴ Schechter, F.L. 1927. Rational Basis of Trademark Protection, 40 *Harv. L. Rev.* 813. Schechter is regarded as the fore-father of trademark laws

³⁵ Schechter, F.L., *op.cit.* at p. 819

³⁶ Cornish, W. and Llewelyn, D. 2007. *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*. (6th Edition) Sweet & Maxwell, London at p. 603

³⁷ Economides, N.S. 1998. "Trademarks" in Newman (ed.) *The New Palgrave Dictionary of Economics and the Law* (Peter Newman ed.) Retrieved September 13, 2013 from <https://papers.ssrn.com/Sol3/papers.cfm?abstract=61148>

³⁸ Bottero, N., Mangani, A. and Ricolfi, M. 2007. The Extended Protection of "Strong" Trademarks. 11 *Intellectual Property L. Rev.* 265. Retrieved March 31, 2015 from <http://scholarship.law.marquette.edu/iplr/vol11/iss2/1>

³⁹ [1997-2003] 4, I.P.L.R. p.266, 267

⁴⁰ *Ibid.*

⁴¹ (2009) ETMR 987 at [58]

⁴² *Ibid.*

of lesser quality. The legitimate owner may thereby suffer from loss of potential customers, as well as harm to his own reputation.⁴³

A cursory review of the Consumer Protection Act

In order to protect the welfare of the Nigerian citizens, the president signed into law, the Federal Competition and Consumer Protection Bill. The previous Consumer Protection Act⁴⁴ was repealed in order to establish the Federal Competition and Consumer Protection Commission and the Competition and Consumer Protection Tribunal for the development and promotion of fair, efficient and competitive markets in the economy of Nigeria.⁴⁵ Lastly, it seeks to facilitate access by all citizens to safe products; secure the protection of consumers' rights in Nigeria; and other related matters.⁴⁶ It is pertinent to note that unlike the repealed Consumer Protection Act, the Federal Competition and Consumer Protection Commission covers all entities in Nigeria, whether they are engaged in commercial activities as bodies corporate, or as government agencies and bodies.⁴⁷

The Act lists an array of consumer rights ranging from but not limited to: right to information in plain and understandable language, right to disclosure of prices of goods and services, right to proper labelling and trade description, right to disclosure of re-conditioned or second hand goods, right to cancel advance bookings, right to examine goods, right to return goods and implied warranty as to quality.⁴⁸

The Act also makes provision for the duty of care in relation to manufacturers, importers, distributors and suppliers of goods and services. It imposes duties on manufacturers and producers to label goods properly and duty to withdraw hazardous goods from the market.⁴⁹ That is, a manufacturer, importer or distributor of goods has

the duty of care to label or describe the goods in a manner that will be easily traceable to the manufacturer and vice versa. If there is any unforeseen hazard arising from the use of goods already placed on the market, the manufacturer or distributor of such goods has the duty to notify the general public immediately of such risk or danger and cause such goods to be immediately withdrawn from the market.⁵⁰ It is obvious from the provisions that the protection and enforcement of consumer rights is of paramount consideration. It further imposes liabilities on manufacturers, importers and distributors for supplying defective goods and for misrepresentation.⁵¹ Any manufacturer that contravenes any provision as laid down in FCCPA, is liable on conviction to a fine not exceeding 10% of its turnover in the preceding business year if it is a body corporate.⁵² A natural person is liable on conviction to imprisonment for a term not exceeding three years or to payment of a fine not exceeding N10, 000, 000.00 or to both fine and imprisonment.⁵³ Where a consumer suffers personal injury and damage to property by the defective products, such a person has the right to sue and be awarded compensation by the Commission.⁵⁴

Linking Trademark with Consumer Protection.

There is an interrelationship between trademark and consumer protection. The Law sets to protect only the producer of any goods and services in the infringement of his exclusive right of ownership. However, the consumer is left to determine his fate. This fate is brought to light when there is evidence of fake and adulterated products in the market arena. Hence, the manufacturer or producer owes a duty to consumers that goods or services are of the highest quality and it would not endanger the lives of human beings. It pays therefore that the producer has the ultimate duty of care not to be negligent when goods and services are involved. The protection of trademark is thereby instrumental to consumer protection and well-being, by assuring the consumer about the qualities of the product and

⁴³ Ibid.

⁴⁴ Cap. C25, Laws of the Federation of Nigeria, 2004

⁴⁵ Everything you need to know about the Federal Competition and Consumer Protection Act. Retrieved 14 June 2019 from www.pulse.ng

⁴⁶ Okojie, Y. and Ibidapo, B. 2018. A Review of the Federal Competition and Consumer Protection Bill 2016. Retrieved 10 June 2019 from <https://www.spaajibade.com/resources/wp-content/uj.../>

⁴⁷ The Federal Competition and Consumer Protection Act. KPMG in Nigeria. 2019. Issue 3.3. Retrieved 10 June 2019 from home.kpmg

⁴⁸ Ibid. Sections 115-132, Federal Competition and Consumer Protection Act, Laws of the Federation of Nigeria 2004

⁴⁹ Section 134, FCCPA 2018

⁵⁰ Section 135 (1), FCCPA 2018

⁵¹ Part XVI, Federal Competition and Consumer Protection Act, Laws of the Federation of Nigeria 2004. Sections 115-132, *ibid.*

⁵² Section 135 (2) (b), FCCPA 2018

⁵³ Section 135(2) (a), FCCPA, *ibid.*

⁵⁴ Section 136, FCCPA, *ibid.* See also Section 146, FCCPA, *ibid.*

by certifying its producer as being the owner of such goods or services.⁵⁵

Where public health is involved as a result of the counterfeiting of goods and services, it poses a serious problem to the citizenry.⁵⁶ Counterfeit goods are those manufactured without the permission of the trademark owner or one of its agents which deliberately and fraudulently misleads consumers and such products are usually mislabeled as to its trade origin.⁵⁷ Suffice to state that such counterfeit goods may have the same ingredients or the component parts as the original product. Hence, the fraudulent act may involve the very essence of the product determining high health risks. For instance, during a meningitis epidemic in Niger in 1995, more than 50,000 people received fake vaccines, and this resulted in 2,500 deaths.⁵⁸

When determining whether goods create confusion and whether they are similar, it is better to look at them from three levels: visible, audible, or a pronunciation in the country's language where the trade mark is to be protected.⁵⁹ Therefore, the following are some of the marks which have given rise to similar goods calculated to deceive or at the same time, deceive or confuse the Nigerian public:

1. Casorina held to be similar to "Castoria"⁶⁰
2. Glucos-Aid held to be similar to "Lucozade"⁶¹
3. Peacock milk held likely to be confused with "Peak" milk⁶²
4. Pikin held to be similar to "Piccan"⁶³

⁵⁵ Vadi, V.S. 2009. Trademark Protection, Public Health and International Investment Law: Strains and Paradoxes. Retrieved 14 June 2013 from <https://academic.oup.com/ejil/article/20/3/773/40>

⁵⁶ Ibid.

⁵⁷ Gervais, D. 'Epilogue: A TRIPS Implementation Toolbox', in D. Gervais (ed.), *Intellectual Property, Trade and Development* (2007) 527.

⁵⁸ World Health Organisation. 2006. 'Counterfeit Medicines'. Fact Sheet No 275.

⁵⁹ Shyllon, F., op.cit. at p. 212, 213

⁶⁰ See *Alban Pharmacy v. Sterling Products* (1968) 1 All N.L.R. 300; 1968 N.C.L.R. 151

⁶¹ *Beecham v. Esdee Food Products* (1985) N.W.L.R. 112

⁶² *In re Marketing and Shipping Enterprises* (1971) 2 N.C.L.R. 81

⁶³ See *G.B. Ollivant v. Coker* (Unreported Case) HK/145/61. High Court of Western Nigeria

5. Bubble-up held to be similar and confused with "Seven-up"⁶⁴
6. Dosex held to be similar to "Durex"⁶⁵
7. Bandmaster cigarettes depicting a picture of a white man in a band master's uniform, held to be similar to "Barrister's cigarettes" with the picture of a white man in a barrister's robe⁶⁶
8. Sweet Hearts held to be similar to "Hearts"⁶⁷

Thus, with the Federal Competition and Consumer Protection Act, the manufacturers will own the duty of care not to mislead consumers in any of their business dealings. A trademark therefore serves as a link between the consumer and the manufacturer to ensure that good quality goods are produced and also that consumers are safe and are continuously assured of quality products.

In *Osemobor v. Niger Biscuits Co. Ltd. v. Nassars & Sons*,⁶⁸ the plaintiff had found decayed tooth in a biscuit purchased from a supermarket. She fell ill shortly after and required medical care. The defendants were held liable for negligence and the court said that, "a person who manufactures goods, which intends to be used or consumed by others, is under a duty of care to take reasonable steps in manufacturing so that they can be used or consumed in the manner intended without causing physical damage to the person or property.

It is pertinent to note that under the Nigerian Trade Marks Act 1965, the interest of consumers are not adequately provided for. Since consumers are at the end of goods or services, every trademark infringement would affect their well-being. It can occur especially where the incidence of counterfeit arises. In addition, the NTMA 1965 is in need of reform as it does not recognize all other types of marks such as service marks and get-up/trade dress. Trade dress is an increasingly important asset as it is described as the total overall impression created by a package design or label or the décor of a business.⁶⁹ In addition, it could be referred to as the visual appearance of a product, which is used in most cases to signify the

⁶⁴ *Bubble-up International v. Seven-up* (1971) 1 U.I.L.R. 154

⁶⁵ *L.R.C. International v. Jena Trading Company* (1976) 1 ALR Comm. 335

⁶⁶ *United Kingdom Tobacco v. Carreras* (1931) 16 N.L.R. 1

⁶⁷ *Soul Publications v. Sweet Hearts Publications*, unreported case FHC/JCS/370/97

⁶⁸ (1973) 7 CCHCJ 71

⁶⁹ Shyllon, F., op.cit. at p. 194

source of the product to consumers.⁷⁰ The non-recognition of packaging was brought out in the case of *Ferodo Nigeria Ltd. v. Ibeto Industries Ltd.*⁷¹ if this were to occur, how will the rights of consumers be protected? Though the enactment of the Federal Competition and Consumer Protection Act is well appreciated, it does not include infringement of trademark in relation to consumer interests which is a core aspect of any economic society.

Under the FCCPA, every consumer has a right to receive goods that are suitable reasonably for the purposes for which they are generally intended and such goods must be of good quality, in good working order and free of defects.⁷² It can be noted from this provision, that the interest of consumers is the heart of the FCCPA. Where there is an undertaking in relation to the goods delivered to the consumer, it may be returned if it is found that the products delivered are defective. The defective goods must be repaired or replaced or the consumer may be refunded the price paid for such products.⁷³

The FCCPA is indeed laudable in relation to consumer complaints or reports of product failures, defects of hazards; the return of any goods because of a failure, defect or hazardous injury, illness or damage to property caused wholly or partially as a result of a product failure, or any hazardous effect.⁷⁴ The FCCPA commission would therefore monitor the sources of information as laid out by the consumer and such information received will be analysed with the object of detecting or identifying any previously undetected or unrecognized potential risk to the public from the use of or exposure to those goods.⁷⁵ Investigations will be conducted into the nature, causes, extent of damage and the degree of the risk to the public. Such consumers will be notified on the nature, causes and the degree of risk pertaining to the goods.⁷⁶

Conclusion

There is a link between a trademark owner and the manufacturer as it enables the consumers to be aware of the origin of the products. The

⁷⁰ Ibid.

⁷¹ [2004] 5 NWLR, part 866 at p 317

⁷² Section 131(1) (a)- (b), FCCPA 2018

⁷³ Section 132(2), FCCPA 2018

⁷⁴ Section 133(1) (a), FCCPA 2018

⁷⁵ Section 133 (1) (b), FCCPA 2018

⁷⁶ Section 133 (1) (c) (d) FCCPA. *ibid.*

consumer has a role to play in any trademark issue and with the enactment of the Federal Competition and Consumer Protection Act, it gives consumers the right to seek redress for any harm done. It can therefore be stated that consumer protection laws are to protect consumers against fraudulent and unscrupulous manufacturers. However, the NTMA is still in need of reform as the basic needs of consumers is not laid out in the provisions and in an extreme measure of urgency has to reform its trademark law as intellectual property continues to play prominent role in global policy and economic development.