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Oluchukwu Precious Obioma and Daniel Thomas Etim

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CONSUMER COMPLAINTS AND DEFAMATION LIABILITY IN NIGERIA: BALANCING FREE SPEECH AND REPUTATION PROTECTION TOWARDS NATIONAL DEVELOPMENT

Oluchukwu Precious Obioma* and Daniel Thomas Etim**

Abstract

Consumer complaints are essential for maintaining transparency, accountability, and safeguarding consumer rights in Nigeria's marketplace. However, the exercise of free speech in the form of consumer feedback can sometimes intersect with defamation liability, posing challenges for both consumers and businesses. This paper analyses the intricate balance between free speech and reputation protection in the context of consumer complaints and investigates its implications for national development in Nigeria. Adopting the doctrinal research design, this paper examines Nigeria's legal framework regulating consumer complaints and defamation liability. Furthermore, the paper discusses the potential effect of defamation liability on consumer confidence, business reputation, and market dynamics. It considers the challenges consumers face in expressing complaints and opinions freely without fear of legal repercussions, as well as the responsibilities of businesses in managing their online reputation and responding to consumer feedback constructively. It focuses on the tension between protecting free speech rights and safeguarding the reputational interests of the producer. In light of these considerations, the paper proposes policy recommendations and legal reforms aimed at striking a balance between free speech and reputation protection in Nigeria. It advocates for the development of clearer guidelines for distinguishing between legitimate consumer complaints and defamatory statements, as well as the promotion of alternative dispute resolution mechanisms to resolve consumer grievances efficiently. This paper recommends maintaining a harmonious equilibrium between the rights of consumers to voice their grievances and the reputational concerns of firms and advocates for an innovative strategy in dealing with the potential hazards of defamation in consumer feedback. Ultimately, the paper argues that achieving a harmonious balance between free speech and reputation protection is essential for fostering consumer trust, promoting business accountability, and advancing national development goals in Nigeria's dynamic marketplace.

Keywords: consumer, consumer complaints, consumer protection, defamation, freedom of expression, national development, Nigeria

* PhD, Lecturer, Faculty of Law, University of Nigeria, Enugu Campus; Email: oluchukwu.obioma@unn.edu.ng (corresponding author).

** Doctoral Researcher, Faculty of Law, University of Nigeria, Enugu Campus; Email: danthomasetim@gmail.com.

1. Introduction

Consumer feedback is crucial in the digital era since it significantly impacts market dynamics, influences purchase choices and holds firms responsible for their goods and services. Due to the widespread availability of online platforms and social media channels, consumers now have unprecedented chances to express their opinions, discuss their experiences, and file complaints regarding businesses, brands, and transactions. Nevertheless, the exercise of this essential entitlement to freedom of expression has legal and ethical obstacles, especially regarding the issue of liability for defamation. This highlights the importance of maintaining a balance in this digital era between the right to free speech and safeguarding the reputation of the producer/manufacturer in Nigeria.

The nexus between free speech and defamation laws is getting more and more attention in Nigeria due to the growing consumer activism and advocacy. Consumers, empowered by the influence of social media and online forums, are utilising these platforms to voice complaints, draw attention to matters of public concern, and insist on responsibility from businesses and service providers. However, engaging in criticism or complaints about a firm might subject consumers to defamation litigation, hindering their capacity to exercise their rights and advocate for change. Hence, consumers and businesses encounter legal and ethical challenges when dealing with the overlap between free speech and defamation laws while expressing grievances or addressing unfavourable feedback.¹

This article examines the intricate interplay between consumer complaints and defamation liability in Nigeria, specifically addressing the challenge of balancing the preservation of free expression with the protection of reputational interests. This article analyses the legal framework for consumer complaints and defamation liability in Nigeria, consumer issues, and policy consequences related to this issue. It provides insight into the problem's complex nature and suggests practical solutions to enhance fairness, transparency, and accountability in interactions between consumers and businesses.

Following this introduction, part 2 analyses the legal framework for consumer complaints and defamation liability in Nigeria. Part 3 examines the challenges faced by consumers in exercising their right to complain in Nigeria while part 4 delves into the defamation laws and freedom of expression in Nigeria. Part 5 looks into a select jurisdiction and how they have balanced the consumer's right to complain and the protection of the reputation of producers/manufacturers so as to draw lessons for Nigeria. Part 6 provides recommendations and concludes the work.

¹ Chiamaka Leslie Elezieanya, 'Analysis of Freedom of Expression and Online Defamation in Nigeria' (LLB Long Essay, Baze University Abuja 2023).

2. Legal Framework for Consumer Complaints and Defamation Liability in Nigeria

2.1 Consumer Complaints

The exact definition of a 'consumer' is a topic of debate among authors and legal draftsmen, but one possible definition is someone who purchases goods or services for domestic, family, or personal use without planning to resell them; a natural person who uses goods for personal rather than business purposes.² Similarly, according to section 167(1) of the Federal Competition and Consumer Protection Act 2018³ (FCCPA) which is the primary legislation governing consumer protection in Nigeria,

A consumer includes any person who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or to whom a service is rendered.

This definition is deemed limiting, restrictive, and insufficient, thereby rendering it susceptible to criticism on three grounds. First, it seeks to restrict the definition of 'consumer' to individuals who buy products and services, hence excluding non-contractual consumers. It is implied that only a consumer who has entered into a contract is eligible for consumer protection. In addition, the transaction in question must adhere to contract notions such as invitations to treat, freedom, sanctity, and privity of contract. However, the application of these concepts is sometimes disadvantageous to the consumer. Furthermore, it is evident that the aforementioned definition specifically targets ordinary scenarios where the individual obtaining goods is a private person and the goods are needed for personal use, rather than for resale or use in the manufacturing of other goods intended for sale (it is worth mentioning that, according to the explicit language of the law, this limitation does not appear to be applicable in the case of services). Considering these considerations, an individual will not be considered a consumer if they are a business or if the commodities are not typically provided for personal use. Essentially, it restricts a consumer to an individual who buys products or services for personal use and does not engage in any business-related activities. In addition, it strongly emphasises the requirement of a 'purchase', indicating that the products must be obtained through a transaction involving the exchange of money. Therefore, items obtained by means other than a purchase, such as a gift or trade sample, are not included in the coverage, and if they are faulty, there may be no way to seek compensation. The restriction on the type of transaction that generates protection directly restricts the extent of the protection.

² Bryan A Garner (ed), *Black's Law Dictionary* (7th edn, St Paul Minn: West Publishing Co 1999) 311.

³ No 1 2019.

It is worthy of note that section 136(3) of the FCCPA, which holds undertakings liable for defective goods and services irrespective of their contractual relationship with the aggrieved consumer, is in fact in direct opposition to this provision. Additionally, it conflicts with section 137 of the FCCPA, which forbids the exclusion or limitation of liability for loss or damage in the event of defective goods used by consumers or caused by the negligence of the manufacturer or distributor. Moreso, the constraints imposed by the definition of the 'consumer' in section 167(1) of the FCCPA differ from the broader definition of a consumer in section 32 of the now-repealed Consumer Protection Council Act 1992. This Act, which was repealed by the FCCPA, defines a consumer as 'an individual who purchases, uses, maintains, or disposes of products or services'. Cases like *NBC v Ngonadi*⁴ highlight the hardship this definition under the FCCPA would cause consumers. In that case, Constance Ngonadi was a beer and soft drink trader who also ran a beer parlour. She purchased a kerosene refrigerator from NBC Ltd, which exploded and injured her severely. The Supreme Court upheld her claim against NBC Ltd. By the definition of consumer under the FCCPA because she bought the refrigerator for purposes of her business, she would not qualify as a consumer, although she would under section 32 of the Consumer Protection Council Act 1992. Also, *Solu and Ors v Total Nigeria Ltd*,⁵ involving a defective gas cylinder which exploded and caused serious injuries to members of the claimant's family. In both cases, damages were awarded in favour of the ultimate users.

Hence, a more desirable interpretation of 'consumer' involves both goods and services. It includes not just individuals who make purchases, but also those who ultimately use the product or service, as well as everyone who legitimately interacts with it. A consumer is defined as an individual, group, or organisation (excluding incorporated bodies) who receives or seeks to receive goods or services from another person in the context of their business. This definition also includes anyone who uses or is impacted by the use of these goods or services.

2.2 Consumer Complaints Framework in Nigeria

2.2.1 Consumer Protection Laws

Nigeria has several laws and regulations aimed at safeguarding consumers' rights and interests. These include the National Communications Act 2003, Consumer Code of Practice Regulations 2007, Telecommunications Networks Interconnection Regulations 2007, General Consumer Code of Practice 2007, Standards Organization of Nigeria (SON) Act 2015, Electricity Act 2023, among others. However, Nigeria's principal legislation governing consumer protection is the Federal Competition and Consumer Protection Act (FCCPA)

⁴ [1985] 1 WLR (Pt 4) 739 at 747.

⁵ HC Lagos State, ID/619/85; 1988.

2018.⁶ The FCCPA contains numerous sections pertaining to consumer rights, this includes **right to proper labelling and adequate trade descriptions**,⁷ **right to disclosure of second-hand or reconditioned goods**,⁸ **right to select suppliers**,⁹ **right to return goods**,¹⁰ **right pertaining to the quality and safety of goods and services**,¹¹ and **right to safe good quality goods**.¹² The FCCPA also imposes the duty to label goods properly and withdraw hazardous goods from the market¹³ on manufacturers, importers, distributors, and suppliers of goods and services. They are also liable for the supply of defective goods, breach of implied obligations by law, and misrepresentation.¹⁴ The Act establishes that the responsibility of proving the delivery of defective goods or services lies with the supplier. It states that ‘where it is alleged that the goods or services are defective, the onus of proof shall lie on the undertaking that supplied the goods or services’.¹⁵

In order to administer the Act, the FCCPA creates two regulatory bodies. These are the Federal Competition and Consumer Protection Commission (FCCPC) and the Federal Competition and Consumer Protection Tribunal (FCCPT).¹⁶ The FCCPC promotes and protects the interests and welfare of consumers by providing them with a wider variety of quality goods at competitive prices and ensuring the adoption of measures to guarantee that goods and services are safe for intended or normally safe use. The FCCPC also sets out consumer rights and responsibilities and these include to complain, here the consumer has the responsibility to inform businesses and appropriate regulatory authorities about their satisfaction with a product or service, in a fair and honest manner; consumers are also to share their experience, here they have the responsibility to inform other consumers about their experience with a product or service.¹⁷ The FCCPC also has its complaint handling procedure. The FCCPT’s function is to adjudicate over matters which arise from the operation of the Act and exercise the jurisdiction, powers and authority conferred on it under this Act or any other enactment.¹⁸ More so, the Tribunal is also empowered to hear appeals from or review any decision from the exercise of the

⁶ No 1 2019.

⁷ FCCPA 2018 s 116.

⁸ FCCPA 2018 s 117.

⁹ FCCPA 2018 s 119.

¹⁰ FCCPA 2018 s 122.

¹¹ FCCPA 2018 s 130.

¹² FCCPA 2018 s 131.

¹³ FCCPA 2018 ss 134-135.

¹⁴ Ibid ss 136-140.

¹⁵ Ibid s 145.

¹⁶ Ibid s 39(2).

¹⁷ FCCPC, ‘Rights and Responsibilities’ <<https://fccpc.gov.ng/consumers/consumer-rights-responsibilities/rights-responsibilities/#>> accessed 21 April 2024.

¹⁸ Ibid.

powers of any sector-specific regulatory authority in a regulated industry in respect of competition and consumer protection matters.¹⁹ The Tribunal can impose administrative penalties for breaches of the Act,²⁰ and oversee forced divestments, partial or total, of investors from companies.²¹

The Sale of Goods Act 1893, an English Law, is the primary governing legislation for the sale of goods in Nigeria. It is one of the statutes of general application in the country. The Sale of Goods Act regulates the sale of goods in Nigeria and grants consumers certain rights and remedies for defective or substandard goods. Various states in Nigeria have gone ahead to enact their own Sale of Goods Laws. The Sale of Goods Laws of various states imply certain terms in every contract of sale. These include compliance with description,²² fitness for purpose and merchantable quality,²³ and compliance with sample.²⁴ Hence, consumers are entitled to obtain goods that meet the standards of quality, are suitable for their intended use, and match the description provided by the vendor. If consumers discover that the goods are defective or do not meet the contract terms, they have the right to repudiate the contract, reject the goods, or pursue remedies such as repair, replacement, or a refund.²⁵

2.2.2 Contract and Tort Law

A. CONTRACT-BASED ACTIONS

The parties to the contract are entitled to contractual rights. A fundamental principle of contract law is that the individuals involved in a contract have the right to initiate legal action and be subject to legal action for any obligation specified in the contract. This principle applies to contracts made between consumers and suppliers of goods and services. In each situation, the rights and obligations of the parties are governed by the terms of the contract between them, as well as provisions inferred by law known as express or implied terms. Express terms are contractual provisions explicitly agreed upon by the parties, while implied terms are those that are inferred by the law governing the contract.²⁶ Therefore, a consumer who also purchased defective goods has the right to file a civil action in contract against the party responsible. A consumer has the right to file a lawsuit for any provision of the contract or the violation of any of the provisions implied by law. It is important to note that certain

¹⁹ FCCPA 2018 s 47.

²⁰ Ibid s 51.

²¹ Ibid s 52.

²² Sale of Goods Law of Lagos State Cap S1 2014 s 12.

²³ Ibid s 13.

²⁴ Ibid s 14.

²⁵ Monye, *Law of Consumer Protection*, Vol 2 (n 23) 111.

²⁶ Felicia Monye, 'Synopsis of Consumer Protection Law in Nigeria' in Felicia Monye, Adedeji Adekunle, Festus Emiri, Hudu Ayuba and Nyitor Shenge (eds), *Compendium of Consumer Protection Law in Nigeria* (Princeton & Associates Publishing Co Ltd Lagos 2022) 55.

necessary circumstances must be met in order to apply implied terms. These standards are so strict that it might be challenging for the consumer who feels wronged to provide sufficient evidence to prove their case.²⁷

Only parties to a contract may bring legal action or be sued under contract-based actions to enforce the rights and duties specified in the contract. This is the privity of contract principle, which forbids third parties from suing under a contract.²⁸ Nevertheless, although the law of privity of contract is basic, a court may have valid reasons to construe it more broadly in cases when individuals closely connected to one of the contract parties bring legal actions that are necessary for the case.²⁹ In general, if a case is proven successful, the consumer who has been harmed will have the right to repudiate the contract and reject the goods, or take legal action to seek compensation, depending on the specific term that has been violated. It is also important to note that subject to the principle of exclusion clauses,³⁰ terms implied by law apply irrespective of the intention of parties. Further, liability for contractual obligations is strict.³¹ This means that due diligence will not absolve a defendant from liability.³²

B. TORT-BASED ACTIONS

When the term ‘tort-based action’ is used in relation to product and service liability, it primarily refers to the tort of negligence. Nigerian courts have clearly established that suppliers of goods and services have an obligation of care to consumers.³³ Thus, a person who has been harmed by a defective product has the right to pursue a legal claim for negligence against any party involved in the

²⁷ Felicia Monye, *Law of Consumer Protection*, Vol 2 (2nd edn, Kraft Books Ltd Nigeria) 111.

²⁸ The primacy of this doctrine was re-iterated by the Supreme Court in cases like *Leonard Ezeafulukwe v John Holt Ltd* (1996) LPELR-1196 (SC); *Rebold Industries Ltd v Olubukola Magreola & Ors* [2015] 8 NWLR (1464) 210; and *Osoh v Unity Bank Plc* [2013] 9 NWLR (Pt 1358) 1 SC.

²⁹ *Mainstreet Bank Ltd v Lilian Chahine* [2015] 11 NWLR (Pt 1471) 479, 508.

³⁰ This is the practice by suppliers to use exclusion/exemption clauses to exclude obligations contained in the contract. However, the application of the exemption clause is subject to some established rules such as the requirement that the clause must be incorporated into the contract (*ABC Transport Co Ltd v Omotoye* [2019] 14 NWLR (Pt 1692) 197 (SC)); that it does not cover a case of negligence (*Narumal & Sons (Nig) Ltd v Niger/Benue Transport Co Ltd* [1989] 2 NWLR 730 SC); does not protect a third party (*Alfotrin Ltd v AGF* [1996] 44 LRCN 2376); may not protect a party in fundamental breach (*Eagle Super Pack (Nig) Ltd v ACB Plc* [2006] 19 NWLR (Pt 1013) 20; and the rule of *contra proferentem* (*Delmas & Ors v Sunny Ositez Int'l Ltd* [2019] 9 NWLR (Pt 1677) 305) which means that the words of an exclusion clause are to be construed against the person who inserted it if there is an ambiguity (this shows that the courts treat exclusion clauses with disfavour).

³¹ *MTN Nigeria Communications Ltd v Ganiyu Sadiku* (2013) LPELR- 21105 (CA).

³² Monye, *Law of Consumer Protection*, Vol 2 (n 23).

³³ Monye, ‘Synopsis of Consumer Protection Law in Nigeria’ (n 22) 73.

production and distribution of the goods. However, in order to achieve success, it is necessary to establish that the person being sued was responsible for the defect concerned. The plaintiff bears the burden of proving negligence against the defendant. The case of the plaintiff has now been boosted by the decision of the Court of Appeal in *NBC Plc v Ibrahim*³⁴ which has recognized the applicability of *res ipsa loquitur* (the fact speaks for itself)³⁵ to product liability cases. It is suggested that in addition to this positive judicial evolution, a strict product liability regime³⁶ be adopted as a means of getting around the onerous challenge posed by the burden of proof of negligence.

2.3 Defamation Liability

*The Supreme Court in Chilkied Security Services & Dog Farms Ltd v Schlumberger (Nig) Ltd & anr*³⁷ defined defamation as the injury occasioned to another person's reputation by either written or spoken words. Hence, defamation is said to be the intentional act of disseminating false statements about an individual, leading to harm or detriment to their reputation.³⁸ A defamatory statement can potentially diminish a person's reputation among other members of society, provoke hatred, contempt, or ridicule towards them, lead others to avoid or reject them, discredit their office, trade, or profession; or injure their financial credit. Thus defamation refers to the publication of a written or printed article about a person that lacks lawful justification or excuse. This publication tends to subject the person to public contempt, scorn, obloquy, ridicule, shame, or disgrace. Additionally, it aims to create a negative opinion of the person in the minds of reasonable individuals or harm their professional,

³⁴ (2016) LPELR – 41943 (CA).

³⁵ This doctrine applies where the accident or injury speaks for itself so that it is sufficient for the plaintiff to aver the facts of the case and nothing more. Once the facts pleaded by the plaintiff disclose a *prima facie* case, the burden will lie on the defendant to prove that the accident arose without negligence. It is noteworthy that the accident must be such that does not ordinarily happen in the absence of negligence *National Electric Power Authority v Alli & Anor* [1992] 8 NWLR (Pt 259) 279 SC, *Alao v Inaolaji Builders Ltd* [1990] 7 NWLR (Pt 160) 36 CA. There is no doubt that this will be the case regarding many defective products, especially where the allegation is that of the presence of foreign substances. If it can be shown that the product reached the claimant in the condition in which it left the person being sued and that the defect was present all along, then a *prima facie* case would have been made.

³⁶ Here, the case does not depend on the respondent proving negligence by the appellants or the intent to harm but is based on the breach of an absolute duty to make something safe *MTN Nigeria Communications Ltd v Ganiyu Sadiku* (n 27); *Michael Adeyemo v The State* (2015) LPELR – 24688 SC.

³⁷ (2018) LPELR-SC.85/2007.

³⁸ [Ebunoluwa Bayode-Ojo](https://oal.law/defamation-and-the-law-in-nigeria/), 'Defamation and the Law in Nigeria' (Olisa Agbakoba Legal, 6 July 2022) <<https://oal.law/defamation-and-the-law-in-nigeria/>> accessed 27 April 2024.

occupational, or trade interests. Such defamatory publications are considered libellous and actionable, regardless of the writer's intention. The term does not necessarily imply that the plaintiff engaged in genuine disgusting behaviour; it is enough if it made him appear despicable and ridiculed. Section 4 of the Defamation Law³⁹ defines defamation as:

a published matter concerning a person which tends to affect adversely the reputation of that person in the estimation of ordinary persons; to deter ordinary persons from associating or dealing with that person(s); or to injure that person in his occupation, trade, office, or financial credit.⁴⁰

The comment must be defamatory to the general public, not simply 'a certain portion of the public' in order for a defamation lawsuit to proceed hence, that the plaintiff's reputation is lowered in the eyes of a particular segment of the public may not be considered defamation. In *Egbuna v Amalgamated Press of Nigeria Ltd*,⁴¹ the term 'a particular section of the public' was defined as 'a body of persons who subscribe to standards of conduct which are not those of society generally'. More so, it is not only a human person that can be defamed. A company with a trading character, which is in law regarded as an artificial person, can also sue for defamation.⁴²

There are two types of defamation in Nigeria: Libel and Slander. Libel is the act of spreading false and damaging statements about someone in a written or permanent form and it is actionable per se i.e. it is legally actionable without the need to prove specific harm. This can encompass various forms of communication, such as an email, a blog post, a tweet, a text or WhatsApp message, a newspaper article, a television or radio broadcast, a video clip posted to the internet, or even a handwritten letter. On the other hand, slander is temporary, usually expressed through gestures or spoken words. There is a saying that slander is directed at the ear, whereas libel is directed towards the eye.⁴³

There are three elements of defamation. First, it must be established that the words were defamatory. During a trial, it is the responsibility of the judge to determine whether the words that are being complained are reasonably capable of being defamatory. In the case of *Omo-Osagie v Okutubo*,⁴⁴ Adefarasin J provided guidance on the method that a judge should employ when determining if certain words have the potential to be defamatory. Therefore, 'the judge... has

³⁹ Defamation Law, Cap39 Laws of Osun State of Nigeria 2002 s 4.

⁴⁰ Ibid.

⁴¹ [1967] 1 All NLR 25 at 30.

⁴² *Edem & Anor v Orpheo Nigeria Ltd & Anor (2003) LPELR-SC.171/199 (Pp 22-24, paras G-C).*

⁴³ Gilbert Kodinliye and Oluwole Aluko, *The Nigerian Law of Torts* (Ibadan: Spectrum Book Ltd 2001) 139.

⁴⁴ [1969] 2 All NLR at 179.

to consider what is the natural and ordinary meaning in which these words would be understood by reasonable men to whom they were published...’ Second, it must be established that the words referred to the plaintiff. It is not obligatory for the words to explicitly identify the plaintiff by name. If the words may be interpreted by rational individuals as pertaining to him, then it is satisfactory. The criterion for determining whether words that do not explicitly mention a plaintiff actually refer to them is whether such words, under the given circumstances, would reasonably cause individuals who are familiar with the plaintiff to conclude that they are the person being referred to.⁴⁵ Third, the words must be published. In order to succeed, the plaintiff must prove that the defendant communicated the words in question to at least one individual other than the plaintiff. The act of publishing information solely to the plaintiff is not actionable, as defamation laws are designed to defend an individual's reputation among others, rather than their personal feelings about themselves. To succeed in a defamation lawsuit, the plaintiff must prove that the words were conveyed to individuals other than himself.⁴⁶ Also, each instance of repeating a defamatory statement constitutes a new dissemination and gives rise to a new cause of action.⁴⁷

It is worthy of note that there is also commercial defamation. This is a false assertion that harms the reputation of another person's products, services, or business. The elements of commercial defamation include:

that the statement was disparaging or damaging to his goods or services, the statement was false, the statement was published; and that damage was suffered by the plaintiff, especially financial loss.⁴⁸

Under the Criminal Code defamation is defined as a ‘defamatory matter likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by any injury to his reputation’.⁴⁹ By the provisions of Section 375 of the Criminal Code Act, any person who publishes any defamatory matter is guilty of a misdemeanor and is liable to imprisonment for one year; and any person who publishes any defamatory matter knowing it to be false is liable to imprisonment for two years. A defendant who publishes a defamatory matter with the intent to extort is guilty of a felony and is liable to imprisonment for seven years.

⁴⁵ *Dalumo v The Sketch Publishing Co Ltd* [1972] 1 All NLR 130.

⁴⁶ *Okotcha v Olumesi* [1967] FNLR 174.

⁴⁷ *Truth (NZ) Ltd v Holloway* [1960] 1 WLR 997.

⁴⁸ Action4Justice Nigeria, ‘Defamation and Freedom of Expression’ <https://nigeria.action4justice.org/legal_areas/right-to-freedom-of-expression-2/what-are-the-other-limitations-of-freedom-of-expression-under-nigerian-law/> accessed 28 April 2024.

⁴⁹ Criminal Code Act Cap C 38 LFN 2004 s 373.

The Penal Code also provides that ‘whoever, by words either spoken or reproduced by mechanical means or intended to be read by signs or by visible representations makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said to defame that person’.⁵⁰ According to Section 392 of the Penal Code Law, any person who defames another shall be punished with imprisonment for a term that may extend to two years, or with a fine, or with both. The Penal Code Law further extends the punishment of any person who prints or engraves a matter knowing it to be defamatory with imprisonment for a term that may extend to ten years, a fine, or both, while the sale of printed or engraved material containing defamatory matter is punished with imprisonment for a term that may extend to five years, with a fine, or both.

The Cybercrime (Prohibition, Prevention) Act 2015 governs online defamation. Section 24 provides inter alia that:

any person who knowingly sends a message or other matter by means of computer systems or that he knows to be false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent commits an offence under this Act and shall be liable on conviction for a fine of not more than ₦7,000,000.00 or imprisonment for a term of not more than three years or to both such fine and imprisonment.

It is well recognised that individuals who post content on social media platforms are considered publishers and can be subject to legal action if they make false statements or defamatory remarks. The standard of proof for online defamation is the same as the normal standard for defamation in general.⁵¹

These laws above provide criminal remedies for defamation. The civil remedies for defamation include damages and, in certain situations, injunctive relief and an offer of amends. The amount of damages awarded for defamation is primarily determined by two factors: the gravity of the defamatory statement and the reach of its dissemination. The principles guiding the assessment of damages for defamation are:

- (i) The station in the life of the plaintiff which includes his position and status, and in particular the geographical spread of his influence. (ii) The extent and level of damage done to the plaintiff by the defamatory publication. (iii) The nature of the defamation, i.e. the mode and spread of the publications. (iv) The totality of the conduct of the defendant. That is any apologetic or remorseful conduct of the defendant, his desires to make amends and possibly to settle out of court, any retraction, or apology if any.⁵²

⁵⁰ Penal Code Law Cap P3 LFN 2004 s 391.

⁵¹ Bayode-Ojo (n 34).

⁵² *Williams v The West African Pilot Ltd* [1961] 1 All NLR 866.

Injunctive relief refers to a legal remedy that involves a court order requiring a party to either do or refrain from doing a specific action. At times, courts may grant injunctive remedies in order to stop the spread of further defamatory content. Interim injunctive relief may be granted in some cases to prevent the publication of defamatory content or to halt further publication if it has already begun while the trial is ongoing. In general, the award of damages is considered adequate. However, courts usually grant injunctive relief only in extraordinary circumstances when it can be proven that the right to free expression has been or will be misused.⁵³ Offer of amends usually involves the publication of a suitable retraction or correction of the defamatory story; an apology with or without payment of a token of damages, and so forth. An offer of amends is a form of accord and satisfaction. Criminal defamation, unlike civil defamation, does not treat libel and slander differently. Whether the statement is in transient or permanent form, it is criminal defamation with the same punishment.⁵⁴

The defences available to a person sued for defamation are:

a) Justification (Truth)⁵⁵: The publication of defamatory matter is not an offence if it is made for the benefit of the public at the time and is true. Unless it is definitively proven that a supposed defamatory statement is false, it cannot be determined that any right has been violated. When using a plea of justification, the defendant has the responsibility to prove that the accused defamation is true. Therefore, any relief sought by a party who sues for defamation is rendered null and void by a justification defence. Hence, truth is an absolute defence to any legal action for defamation.

b) Fair comment: It is a defence for a defendant in a defamation lawsuit to show that he made the statement complained of, in the interest of the public. A person who makes an allegedly defamatory statement can escape liability by showing that the statement he made was an honest comment on a matter of public interest. The requirements for this defence to succeed are:

The matter commented on must be one of public interest. (ii) The statement must be a comment or opinion and not an assertion of fact. (iii) The comment must be based upon facts truly stated. (iv) The comment must be honestly made. (v) The comment must not be actuated by express malice.⁵⁶

⁵³ Tamaraemi Jombai, 'Defamation and Privacy Law in the Federal Republic of Nigeria' (Nigeria Media Law Guide, January 2024) <<https://www.carter-ruck.com/law-guides/nigeria-2/#:~:text=Defamation%20can%20take%20the%20form,words%20referred%20to%20the%20claimant>> accessed 27 April 2024.

⁵⁴ Fatima Sulaiman Musa, 'A Critical Analysis of Defamation under the Nigerian Tort Law' (LLB Long Essay, Baze University Abuja 2022) 24.

⁵⁵ Criminal Code Law s 377; Penal Code Law s 391(2)(i).

⁵⁶ *Makinde & Ors v Omaghomi* (2010) LPELR-4461(CA).

In the case of *Chilkied Security Services & Dog Farms Ltd v Schlumberger (Nig) Ltd & anor*,⁵⁷ the appellant claimed that the respondent's letter to the Commissioner of Police, which accused the appellant of employing armed robbers, was motivated by malice and therefore defamatory. The Supreme Court rejected the appellant's petition and determined that the respondent just requested the protection that was required of him by documenting all the accusations in the letter. Therefore, the statement was not motivated by malice and thus cannot be considered defamatory.

c) Privilege:⁵⁸ Privilege can be categorised as either absolute or conditional. The former protects the speaker or publisher regardless of their motives or whether the words are true or not. This assertion can be made concerning remarks made when fulfilling a political, judicial, social, or personal obligation. Conditional or qualified privilege provides legal protection to the speaker or publisher unless it can be proven that they acted with true malice and had knowledge that the statement was false. The matters which may enjoy qualified privilege:

- (i) Fair and accurate reports of the proceedings of the legislature. (ii) Fair and accurate reports of judicial proceedings. (iii) Statements made in the performance of a legal, moral, or social duty. (iv) Statements made in self-defence. (v) Statements made to the proper authorities in order to obtain redress for public grievances. (vi) Statements made between parties having common interests. (vii) Statements privileged under the Defamation laws (e.g. statement between solicitor and client).⁵⁹

d) Unintentional defamation: Unintentional defamation is not a defence at common law against a lawsuit for libel or slander. The defendants in the case of *Hulton v Jones*⁶⁰ published a fictional story in their newspaper detailing the extramarital affairs of an individual named 'Artemus Jones'. Artemus Jones, an actual individual, filed a lawsuit against the defendants for defamation, and he was victorious in his legal action, even though the use of his name was purely unintentional. The English Legislature recognised the clear irrationality of decisions such as *Hulton v Jones* and implemented new legal protection in situations of unintended defamation. Section 6 of the Defamation Law of 1961⁶¹ introduced this defence in Nigeria. In this context, if a defendant is ready to publish an acceptable correction and apology known as an 'offer of amends', they may avoid being held responsible for damages.

e) Public Interest Defense: The public interest defense permits persons to express things that may otherwise be considered defamatory, provided that these statements are made in the public interest and without malice. In Nigeria, like in

⁵⁷ (2018) LPELR-SC.85/2007.

⁵⁸ Criminal Code Law s 378 and Criminal Code Law s 379.

⁵⁹ Musa (n 50) 34-35.

⁶⁰ [1909] UKHL 591.

⁶¹ Defamation Law, Cap 34 Laws of Lagos State 1973 s 6.

many legal jurisdictions, remarks regarding public concerns or interests are given enhanced protection under defamation law. If it can be determined that a statement in question was not motivated by malice, the defamation suit will not be successful. In the case of *Sketch v Ajagbomkeferi*,⁶² the Supreme Court of Nigeria ruled that the defendant, who had made a statement on a religious issue, was eligible to claim this defence. The court determined that the religious topic on which the defendant spoke was of public concern, and as a result, the defendant was not held responsible. In order to effectively utilise the public interest defense, it is necessary to demonstrate that the remark is genuinely of significant public concern and was made without any deliberate intention to damage the subject's reputation.

3. Challenges Faced by Consumers in Exercising Their Right to Complain in Nigeria

When it comes to exercising their right to complain, Nigerian consumers confront various hurdles. These hurdles arise from a multitude of circumstances, encompassing legal, social, economic, and cultural obstacles. These are some of the primary challenges encountered by consumers in Nigeria:

i. **Fear of Retaliation:** Numerous consumers in Nigeria refrain from lodging complaints about products or services owing to the apprehension of retaliatory actions from businesses or service providers. They may have concerns about being placed on a blacklist, facing harassment, or experiencing additional mistreatment if they voice their opposition to apparent misconduct. When consumers are afraid of facing consequences, they may be less likely to stand up for their rights and seek resolution for valid complaints.

ii. **Lack of Awareness of Rights:** Consumers in Nigeria have a notable obstacle in the form of little knowledge of their rights and the options they have for resolving complaints. A significant number of consumers lack awareness regarding consumer protection legislation, regulatory authorities, and alternative dispute resolution processes that might assist them in resolving issues related to products or services. Consumers' lack of information exposes them to potential exploitation and mistreatment by unethical undertakings.

iii. **Limited Access to Information:** Nigerian consumers frequently encounter obstacles when attempting to obtain precise and dependable information regarding products, services, and consumer rights. Consumers may be disadvantaged while making purchasing decisions or lodging complaints due to information asymmetry between them and businesses. Insufficient availability of information regarding the quality of products, safety regulations, or warranty conditions might impede consumers' capacity to make well-informed decisions and seek compensation for unsatisfactory goods or services.

iv. **Inadequate Consumer Protection Mechanisms:** Despite the presence of consumer protection legislation and regulatory authorities in Nigeria, the

⁶² [1989] 1 NWLR (Pt 100) 678.

efficacy of these mechanisms is frequently hindered by issues such as insufficient funds, inadequate staffing, and a lack of enforcement capability. Consumers may face bureaucratic obstacles, delays, or inefficiencies while attempting to file complaints with consumer protection organisations or seek compensation through legal means.

v. Financial constraints: This refers to economic conditions, such as poverty, unemployment, and limited disposable income, that can create substantial obstacles for consumers in Nigeria who are trying to address their grievances. Consumers may be financially unable to initiate legal proceedings, engage legal counsel, or utilise alternative methods of resolving disputes. Consumers may be discouraged from pursuing complaints, especially for minor or low-value conflicts, due to the expensive nature of litigation and the unpredictable results it might yield.

vi. Cultural and societal standards: This can affect consumers' inclination to voice their grievances in Nigeria. Consumers may have concerns about being seen as troublemakers or causing embarrassment to themselves or their families by making public complaints. The cultural aversion to expressing dissatisfaction can lead to a lower number of reported consumer complaints and sustain a culture of silence and acceptance.

Legal Implications: a trending case study and example of defamation claims brought against consumers in Nigeria for online reviews, social media posts, or other forms of consumer feedback is the case between Mrs Chioma Okoli and Erisco Foods Limited. On 17 September 2023, Chioma made a post on her Facebook profile stating that she bought a can of Nagiko Tomato paste and found that the product had an excessive amount of sugar. In her response to a message on Facebook, she subtly pointed out that the product was causing harm to consumers because of its high sugar content. Erisco Foods issued a statement refuting the veracity of her accusations, and she was subsequently apprehended, a course of action denounced by Nigerians, who characterised it as an act of intimidation. The Federal Competition and Consumer Protection Commission (FCCPC) intervened in the case and issued a summons to Erisco after the arrest. After a few days, Okoli was apprehended by members of the Nigeria Police Force in Lagos and then transported to Abuja in response to a complaint filed by the CEO of Erisco Foods Limited, Eric Umeofia. Both sides have been engaged in litigation since that time.⁶³

Since this case is in court, this paper will not be analyzing it, however, it is clear that there is an urgent need for a proper balance between the consumer's right to complain and freedom of expression, and the right of businesses to protect their

⁶³ Thisday, 'Chioma/Erisco Saga: When the Customer is "Not Always Right"' (*THISDAY*, 19 March 2023) <<https://www.thisdaylive.com/index.php/2024/03/19/chioma-erisco-saga-when-the-customer-is-not-always-right>> accessed 29 April 2024.

reputation through defamation laws especially when it comes to posting online reviews.

4. Defamation Laws and Freedom of Expression in Nigeria

The concept of 'freedom of speech and expression' encompasses the actions of actively seeking, receiving, and sharing information or ideas, regardless of the medium employed. Freedom of speech encompasses various aspects, such as the right to express and share information and ideas, as well as the right to seek, receive, and communicate information and ideas. The significance of freedom of speech and expression resides in the realm of social interactions. The 2011 Report of the UN Special Rapporteur on Freedom of Opinion and Expression emphasises the significance of freedom of expression on the Internet. The Rapporteur underscores the necessity of unambiguous regulations, as opposed to the current state of arbitrariness, which permits the escalating surveillance and monitoring of communications.⁶⁴ Also, according to Section 39 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), every individual has the right to freedom of expression, which includes the right to hold opinions and to receive and share information without any interference. Hence, Nigeria's constitutional framework aligns with international standards. More so, the implementation of the Freedom of Information Act (2011) in Nigeria has significantly improved the ability of individuals to access information, consequently reinforcing their rights to freedom of expression and opinion.

Consumers have the fundamental right to freely share their thoughts and experiences about organisations, products, or services, using various means of communication such as word of mouth, social media, reviews, and more. Nevertheless, the right to freedom of speech and expression does not grant them the privilege to say or publish without being accountable. A person's reputation and good name are legally protected, and they are entitled to compensation when they are damaged without cause or explanation. The legislature has the authority to pass laws that put limitations on the right to speech and expression based on various justifications. Social media is susceptible to misuse, as it provides an easy platform for committing many cybercrimes.⁶⁵ Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) provides limitations 'for respect of the rights of reputations of others and protection of national security, or public order, or public health or morals'. Also, sections 39(3) and 45 of the 1999 Constitution (as amended) allow for the restriction of the right to freedom of expression *inter alia*, 'in the interest of security, public safety, public order, public morality, and public health and to protect the rights and freedom of other people'.

Hence, although businesses have a right to protect their reputation, good name, and estimation in which they stand in society, they are also obligated to uphold

⁶⁴ Ibid.

⁶⁵ Ibid.

consumers' rights to freely express views and share their experiences. Businesses should make a conscious effort to actively interact with consumer input and resolve valid complaints or issues clearly and ethically. They should also refrain from misusing defamation laws as a means to stifle criticism or suppress true unfavourable reviews that are made in good faith. Regulatory bodies like the Federal Competition and Consumer Protection Commission (FCCPC) also have a part to play in balancing consumers' freedom of expression and businesses' reputation rights. In addition, when businesses and consumers have disagreements about online statements or reviews, alternative dispute resolution methods like mediation or arbitration can provide a friendlier and efficient way to resolve concerns without going to court.

Regarding consumer views on public concern or consumer interest, the defences to defamation uphold the rights to free expression and accountability. As long as the expressions are made in good faith, without malice, and in the public interest, consumers are given important safeguards that allow them to freely express their opinions, share their experiences, and participate in public discussions without the risk of being held legally responsible for defamation.

5. Balancing Consumer's Right to Complain and Reputation Protection in Select Jurisdiction: Lessons for Nigeria towards National Development

Here, this paper compares defamation laws and consumer protection frameworks in Nigeria with those of another jurisdiction to identify areas of convergence and divergence and draw lessons for legal reform and policy development so as to help foster consumer trust, promote business accountability, and advance national development goals in Nigeria's dynamic marketplace. The United States of America will be used because it has one of the best laws that protect the right to freedom of expression and free speech.

The United States of America is widely recognised for its defamation laws that strongly support the freedom of expression and speech. Freedom of expression is a fundamental right protected by the First Amendment of the Constitution, which holds significant constitutional priority. Courts consistently show reluctance to enforce decisions that violate the First Amendment Rights. The case of *New York Times Co v Sullivan*⁶⁶ is a locus classicus decision of the US Federal Supreme Court which established the supremacy of freedom of speech above the right to reputation (right to protect one's image) in the United States.

Defamation in the United States is governed by tort law, which is mostly state law, hence it varies to some extent throughout the fifty states and the District of Columbia.⁶⁷ American defamation law is primarily pro-defendant. In a wide spectrum of public interest cases, the United States has determined that free

⁶⁶ 1964 376 US 254 (USSC).

⁶⁷ Vincent R Johnson, 'Comparative Defamation Law: England and the United States' (2016) 24(1) *U Miami Int'l and Comp L Rev* 17.

expression and spirited public debate are frequently more important than compensating plaintiffs for harm caused by defamatory falsehood. It is not an overstatement to describe the United States as remarkable in its devotion to free speech as a right.⁶⁸ In the United States, the plaintiff bears the burden of establishing the truth or falsity of the defamatory remark; thus, there is no presumption that a defamatory statement is false. Rather, the plaintiff must prove that the claim is false; this makes it difficult for a libel or slander suit to prevail under American law.⁶⁹

Defamation cases in the US are broken down into three categories.⁷⁰ Within the first category, which involves public officials or public personalities filing lawsuits regarding areas of public concern, such as their behaviour, suitability, or qualifications, the plaintiff is required to demonstrate 'actual malice'. Under American law, actual malice is a specific legal phrase that requires the plaintiff to demonstrate that the defendant acted with awareness of the falsehood of the defamatory statement or with a reckless disregard for its truthfulness.⁷¹ In the second category of American cases—actions by private persons suing with regard to subjects of public concern—the federal Constitution demands proof that the defendant was at least negligent as to the falsity of the defamatory utterance.⁷² States have the freedom to establish a more stringent standard for fault as to falsity, although courts rarely exercise this option.⁷³ Finally, in the third category of cases—actions involving any individual suing with regard to a subject of entirely private concern—the United States Supreme Court has yet to rule on what level of fault in terms of falsity is constitutionally necessary.⁷⁴ Without specific guidance from the Supreme Court, many states mandate the presentation of proof demonstrating the defendant's negligence regarding the falsity of the defamatory statement.⁷⁵ The constitutional requirement that a

⁶⁸ Kyu Ho Youm, 'Liberalizing British Defamation Law: A Case of Importing the First Amendment?' (2008) 13 *Comm L & Pol'y* 415.

⁶⁹ Johnson (n 67) 24.

⁷⁰ Vincent R Johnson, *Advanced Tort Law: A problem Approach* (2d ed. Carolina Academic Press 2014) 163.

⁷¹ *New York Times Co v Sullivan* 84 S. Ct. 710, 726 (1964) (dealing with public officials); *Curtis Pub. Co v. Butts* 87 S. Ct. 1975, 1991 (1967) (dealing with public figures).

⁷² *Gertz v Robert Welch, Inc.*, 94 S. Ct. 2997, 3010 (1974) ('[S]o long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual'.)

⁷³ *Poyser v Peerless* 775 N.E.2d 1101 (Ind. Ct. App. 2002) (requiring actual malice).

⁷⁴ The leading case on defamation involving matters of purely private concern is *Dun & Bradstreet, Inc v Greenmoss Builders, Inc.*, 105 S. Ct.

⁷⁵ See, e.g., *WFAA-TV, Inc v McLemore*, 978 S.W.2d 568, 571 (Tex. 1998) (holding a private individual suing a media defendant must prove that the defendant was negligent regarding the truth of the statement).

plaintiff in a defamation case must prove either actual malice or negligence as to falsity 'has, as a practical matter, made it necessary for the plaintiff to allege and prove the falsity of the communication, and from a realistic standpoint, has placed the burden of proving falsity on the plaintiff'.⁷⁶

A case that serves as a message of caution for individuals who post internet reviews, emphasising the importance of ensuring the truth of their reviews while reminding businesses that pursuing legal action can be a lengthy process and does not guarantee success is the New Jersey appellate case of *Okeke v Anekwe*. On 12 July 2022, the Appellate Division considered online review defamation in *Okeke v Anekwe*.⁷⁷ For five years, plaintiff Joe Obi Okeke prepared defendant Chinedu Sani Anekwe's tax returns as his accountant. After the defendant discovered he owed the government money from a previous year's tax returns due to undeclared income, the relationship soured. Unreported income that year was not disputed, but who was responsible was. The defendant planned a meeting with the plaintiff who is an accountant to discuss possible solutions. The meeting never happened, and each party blamed the other. After a heated text exchange, the defendant took his file from the plaintiff. The defendant then posted on Facebook and left a one-star Yelp review. The Facebook and Yelp reviews accused the plaintiff of 'mess[ing] up [defendant's] tax returns'. The defendant also claimed plaintiff sent him profane texts. The plaintiff asserted that the defendant was 'only leaving [as plaintiff's client] to commit Fraud'. The defendant attributed many statements to the plaintiff in his reviews. The plaintiff sued the defendant for defamation. It went to trial. At the end of the plaintiff's case, the defendant moved for judgement under Rule 4:40-1. The trial judge upheld the motion, ruling that the defendant's speech was protected as being either truthful or opinion. The trial court also found that the plaintiff had failed to establish 'actual malice', i.e., that defendant deliberately published lies or behaved with reckless disregard, even though the statements were not defamatory as a matter of law. The Appellate Division upheld the dismissal of the defamation claim for the defendant's statement that his taxes were 'mess[ed] up', but reversed and remanded for further consideration whether the defendant's incorrectly attributed quotations and false allegation that the plaintiff cursed in the texts were defamatory. The court explained defamation law, starting with whether the speech is fact or opinion. If opinion, no defamation claim may lie, but if fact, the next question is whether the statement is true (meaning essentially true) or false, including false attribution of a quote. The court upheld the comment that the plaintiff had 'messed up' the defendant's tax records, ruling that it was an expression of opinion. Nevertheless, as per the appellate court, the defendant falsely attributed quotes to the plaintiff and made false allegations that the plaintiff cursed him in text messages. These statements have the potential to be considered defamatory.

⁷⁶ Restatement (Second) Of Torts § 613 cmt. J (Am. Law Inst. 1977).

⁷⁷ A-3391-20 (NJ App. Div. July 12, 2022).

The appellate court determined that in the event that fault is taken into account, the lower negligence standard, which applies to matters of private concern, should be utilised instead of the actual malice standard, which applies to matters of public concern. This decision was made even though the plaintiff is a licenced accountant.⁷⁸

The determination of the legal standard is a question that requires careful consideration of the facts. In the above case of *Okeke*, the court concluded that the matter was of private concern, leading to the application of a less burdensome negligence standard. This decision could potentially discourage negative reviews, as businesses find it easier to prove negligence rather than actual malice. However, well-known companies may argue that their claims are of public concern, which would subject them to the more challenging actual malice standard. This is especially true if they have previously been involved in public controversies related to the products or services being criticised. Similarly, businesses that engage in activities that impact public health or safety may also be considered matters of public concern.⁷⁹ A recent ruling by a New York appellate court in the case of *Aristocrat Plastic Surgery v Silva*⁸⁰ determined that an online review of a medical provider was a matter of public interest under New York law.

Furthermore, the US enacted the Consumer Review Fairness Act 2016 to protect the credibility and value of consumer reviews. The Act protects the consumer's right to leave critical reviews and makes it more difficult for businesses to bring lawsuits over negative reviews. It was crafted in response to the growing prevalence of 'gag clauses', or 'non-disparagement clauses', which prevent consumers from sharing their honest views about a seller's actions, products, or services. The advantages of crowdsourced reviews are hampered by these non-disparagement clauses, which limit the public's access to accurate and helpful information about businesses and goods.⁸¹ Hence, by establishing that without the need for drawn-out legal proceedings non-disparagement clauses are unlawful and unenforceable, as well as giving users of online review platforms more comprehensive information to enable them to make well-informed decisions regarding goods and services, the right of consumers to complain is protected.

⁷⁸ Ibid.

⁷⁹ Carolyn Conway Duff, 'How Defamation Law Impacts Online Reviews' (New Jersey Law Journal, 18 August 2022) <<https://www.law.com/njlawjournal/2022/08/18/how-defamation-law-impacts-online-reviews/>> accessed 29 April 2024.

⁸⁰ 169 N.Y.S.3d 272 (App. Div. 2022).

⁸¹ Jim Rosenfeld and Diana Palacios, 'Protecting the Right to Complain: The Consumer Review Fairness Act of 2016'

(Davis Wright Tremaine LLP, 20 December 2016)

<<https://www.dwt.com/insights/2016/12/protecting-the-right-to-complain-the-consumer-revi>> accessed 29 April 2024.

In response to allegations that certain companies attempt to restrict consumers from providing honest evaluations of goods or services they have received, the Consumer Review Fairness Act was enacted. Certain corporations included clauses in contracts, such as their online terms and conditions, that gave them the right to penalise or sue consumers who left unfavourable evaluations. People who rely on reviews to help them make purchasing decisions are harmed by contracts that forbid honest reviews or threaten legal action over them. However, companies that put a lot of effort into obtaining positive evaluations also suffer when others attempt to suppress truthful negative reviews.⁸²

Unlike American law, Nigerian law which is modelled after English law is pro-plaintiff. Thus although the consumer in Nigeria is protected under the defences to defamation, it is the duty of the consumer(defendant) to prove that the statement/review/comment was honestly made, is genuinely of significant public concern, and was not motivated by malice. More so, the Nigerian consumer protection legislation does not have specific provisions protecting consumers when they provide honest reviews and complaints. Nevertheless, both the American and Nigerian laws protect honest comments, hence, malicious, inaccurate, and dishonest comments will not be protected under both jurisdictions.

6. Way forward

Ensuring a balance between the freedom of expression of consumers and the rights of businesses to safeguard their reputations necessitates a meticulous examination of legal concepts, ethical norms, and regulatory frameworks as stipulated by Nigerian law. It is thus essential to adopt a balanced approach to tackle defamation risks in consumer feedback in Nigeria. Achieving the appropriate equilibrium entails maintaining the values of unrestricted expression while simultaneously offering legal remedies for businesses affected by dishonest or malicious comments, all while fostering transparency, impartiality, and responsibility in consumer-business engagements. Consumers should feel confident in sharing honest and critical reviews online, but they should also exercise caution to avoid making false claims about their interactions with a business. Businesses should exercise caution as winning an action for defamation can be challenging, and mere emotional distress is insufficient grounds for success. Both parties may find it more convenient to resolve their disagreements outside of court and away from online platforms.

The following is therefore recommended:

⁸² Federal Trade Commission, 'Consumer Review Fairness Act: What Businesses Need to Know' (February 2017) <<https://www.ftc.gov/business-guidance/resources/consumer-review-fairness-act-what-businesses-need-know>> accessed 29 April 2024.

i. **Legal Protections for Consumers:** There is a need for Nigeria to enact a law to protect consumers who give their honest review or exercise their right to complain. On the other hand, the Federal Competition and Consumer Protection Act 2018 could be amended to contain specific provision(s) that protects the consumer's right to complain including protection for online reviews especially as we are in the digital era. Nigeria should also enact anti-SLAPP (Strategic Lawsuit Against Public Participation) legislation. This is a vital tool to help consumers fight against lawsuits based on speech. As of September 2023, 33 states and the District of Columbia in the US, have enacted these laws that are particularly intended to safeguard freedom of expression. The most comprehensive of these laws enables defendants in lawsuits related to speech to promptly have their cases dismissed and recover the costs of their legal representation. It is also vital to promote alternative dispute resolution mechanisms and enhance consumer education and awareness.

ii. **Business Practices and Ethical Standards:** Businesses should develop strategies to respond to consumer complaints in a transparent, accountable, and responsible manner, including engaging in constructive dialogue, addressing grievances promptly, and refraining from retaliatory legal action.

iii. There is a need for collaborative efforts among policymakers, businesses, consumer advocates, and legal experts to ensure that consumers can exercise their right to complain without fear of defamation liability while promoting fairness, transparency, and accountability in consumer-business interactions.