

Full Length Research Paper

Legal implications of manufacturers' negligence and its effects on consumers: A study of South West Nigeria

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The research study examined manufacturers' negligence and its effects on consumer behaviour (cb) in South West Nigeria. The objectives of this study is to create a platform to explore the recklessness of manufacturers which is due to their negligence and its effects on cb with reference to South West Nigeria, to establish the effects of total quality management on manufacturers' negligence, to determine the effects of consumption of sub-standard products on cb, to evaluate the impact of manufacturers' marketing activities, to determine the effects of defective products on consumer exit, to show the effects of consumer service on cb, and to determine the effects of manufacturers' negligence on cb. The study used survey research method with structured questionnaire and four hypotheses. Regression statistics was used to test the hypotheses and the result and findings show that $f = 51.62$, $df = 1$, and p value < 0.05 , thus manufacturers' negligence has significant effect on cb.

Keywords: Defective products, Liability, Negligence, Product Safety, and Consumer Rights.

INTRODUCTION

In recent years, manufacturers have been making great impact in the standard of living of consumers; however, products harms caused to the customers via defective product have also increased manufactures' liability in both developed and developing nations of the world. While thousands of product liability cases are filed annually in developed countries, in many developing countries, consumers are experiencing a different scenario. Cases of product liability have received noteworthy consideration from the media, especially when they concern widely sold products that harm many consumers. The legality for product liability suits are extensive, comprising: liability for manufactures' defect, design defect, and failure to warn.

The development of the law of negligence has been built on the fact; that is, identification of situation which give rise to a duty of care (Kelley, 2001). At first, the existence of a duty was determined by reference to the nature of the activity being undertaken for example keeping dangerous goods, driving on the highway, being in a shop upon an implied invitation, and so on. Many years ago not only were the situations which gave rise to a duty of care carefully categorized, but also, the damage recoverable

was restricted to injury to persons and property (Cao et al., 2009). Additionally, it has been postulated that negligence can still happen on a company wide scale (Ekanem, 2011). There are various ways this can happen, and each of the ways end up with that company being ultimately responsible or liable for any injury that occurred because of the product's faults (LawGuru Staff, 2011).

Negligence used to be a much broader term that referred to any sort of breach of the peace, but has evolved over time to become a separate entity from intentional torts as well as strict liability torts. The concept first appeared in regards to professional community members, such as doctors or blacksmiths, who possessed a certain duty to the community to provide honest service. If this duty was breached, the individual was guilty of negligence (LawGuru Staff, 2011)

It is on this note that this study was embarked upon to shows what is manufacturer negligence and how such negligence can affect the behaviour of the consumers. It is also to show how well the consumers are aware of their rights under consumerism- consumer protection rights and the remedies provided by law for the breach of such rights. Furthermore, this study will be of immense benefit to organizations as well as the society as it will expose them to the whole concept of manufacturers' negligence and its effects on consumer behaviour (cb) in South West Nigeria. Finally, this study will help companies to

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reposition their names in the minds of consumers and help their product department in stressing the role of Total Quality Management (TQM) and how it can influence and satisfy consumer needs. Likewise, it will allow the government agencies, public, and private corporation to formulate policies and make management have proper understanding of how effective manufacturers' negligence can be to consumers.

Literature Review

Manufacturers produced goods and services for consumer consumption. According to Ekanem (2011), Nigeria consumers are faced, with incidence of 'fake', substandard, defective, and adulterated products, due to the quality of goods and services provided to consumers. Consumers are left in an unsafe position, having to pay for substandard goods and services, thereby exposed to numerous problems including poor safety and quality of product and service. Some framework has been institutionalized to address these consumer problems. These take the form of administrative interventions that regulate the activities of manufacturers and suppliers of goods and providers of services. Furthermore, the courts are there to enforce consumer legislation and award appropriate remedies to aggrieved consumers (Ekanem, 2011).

Every activity in our daily lives involves the use of products and services, which are developed and marketed, by individuals and variety of organizations for public consumption. The Nigerian consumers clearly lives at the mercy of dishonest or irresponsible business interests and they have become exposed to poor quality products and services provided by some manufacturers in the country (Igbadi, 2011). Often, customers use products and services without serious concern about some in-built "hidden-killers", which could be threatening to health, safety, and life. The manufacturers in Nigeria have made many consumers to regularly buy cheaper products that are not up to standard and without warranty. Also most consumers have little or no knowledge of labels or how to access information on safety, quality and in some cases, quantity of products. Umenyi (2007) posits that imperfections in the market not only lead to misleading information through deceptive advertisements, but also encourages proliferation of fake and sub-standard goods. These realities are detrimental to consumers and put the seller in the vantage position of exploiting the buying party in the exchange process (Monye, 2005).

Product-harm crisis is a reality that organizations must confront. Any poorly managed marketing crisis can easily annihilate the affected brand's equity, which might have been nurtured over many years (Zhao et al., 2011). Product defects can have devastating (negative) effects on the affected brand's image, market share, other brands from the same company, and future sales. It may also affect competing brands differently, in that the sales of some competing brands may increase during and after the crisis (Roehm and Tybout, 2006). Companies such as

Pfizer, Sony, Bausch & Lomb, and Intel have had their reputations tarnished because of poorly managed product harm crises in recent years. Companies have therefore, use an array of pointers to communicate quality, including instruments such as warranties, price, advertising, and brand names (Byzalov and Shachar, 2004; Wernerfelt, 1988).

The fundamental reason of production of goods and services is consumption. The course of action of production will be of no value if the products produced are not consumed. No country in the world is free of product defects; however, in developed nations consumers are protected under the law and can have recourse against producers of defective products.

What is a defective product?

Product liability is the area of law in which manufacturers, distributors, suppliers and retailers are held responsible for any injuries products cause (Adams and Browning, 1991). Among the Legal theorists and practice of manufactures, it has been widely accepted that a product is considered "defective" when it fails to provide the safety which the consumer expects, while taking all circumstances into account, to include: (a) the presentation of the product; (b) the use to which it could reasonably be expected that the product would be put; (c) the time when the product was put into circulation (Goicovici, 2011).

Regardless of any contractual limitations of liability, if a product or any of its component parts are defective its manufacturer may be liable for damage under the Consumer Protection Act (CPA) or the common law of negligence (Anonymous, 2011). A product is dangerous when it increases the risk of harm to persons and their property. There are three types of product defects - manufacturing defects, design defects, and warning/labeling defects. A manufacturing defect arises when the manufactured product does not match to its design and a problem occurred in the making of the product causing it to be unsafe to use. When a component of or raw material incorporated into a finished product is defective both the manufacturer of the component and the manufacturer of the finished product are potentially liable. Therefore, in assessing the safety of the product the court will take into account all of the circumstances, specifically including:

- i. All aspects of the marketing of the product;
- ii. The use of any mark in relation to the product;
- iii. Instructions and warnings;
- iv. What might reasonably be expected to be done with the product at the time the product was supplied

This last factor allows the court to take account of the state of the art' at the time of supply.

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Industry Wrongdoing-Producers of Defective Products:

Current organizational researchers suggest that firms associated with industries whose members engage in wrongdoing can suffer from negative spillovers (Barnett and Hoffman, 2008; Kostova and Zaheer, 1999); as firms from the same industry as a wrongdoer could be perceived as being "guilty by association" (Lange et al., 2011). According to Pfarrer et al. (2008) *wrongdoing* is defined as a firm's behaviors that place such a firm's stakeholders at risk and violate stakeholders' hope of societal norms and general standards of conduct. Using substandard materials, neglect of TQM during production, and even false advertisement could be considered as wrongdoings among others.

Firm Actions following Wrongdoing:

It has been discovered that when organizations are going through crisis, steps are taken to avert the crisis. Research in crisis and impression management suggests that when a firm's name is tarnished by its own or competitors' wrongdoing, attempts are made to influence negative media coverage of that firm by providing a public response (Desai, 2011; Westphal and Deephouse, 2011); by issuing verbal accounts about their activities through the media. Another major remedy by companies is product recall. For example in October 2009, Toyota Motors Corporation announced the recalls of vehicles in the United States; citing a possible problem in which poorly placed or incorrect floor mats under the driver's seat could lead to uncontrolled acceleration in some models. Toyota announced that it was recalling 3.8 million U.S. vehicles. The recall was triggered by the report of a fiery crash in California, where the accelerator of a Lexus sedan got stuck, resulting in the driver's death (Cole, 2011); thus the image of Toyota suffered among consumers.

According to Cole (2011), Ford Motor Company experienced noteworthy negative fallout from rollover incidents involving the Explorer/Firestone tyre failures in 2000 and 2001, and the company's alleged subsequent cover-up, and received vast media attention. Ford was able to fix the problem quickly by changing tire suppliers and redesigning the model; nevertheless, the damage to its market position was affected as Ford went from being the market leader, selling about 100,000 units more than rival GM, to being about 500,000 units behind. Negative quality perceptions can linger long after the objective quality problems have been corrected in the mind of consumers. Thus we hypothesized that:

H₁: There is a significant effect of consumption of sub-standard product on the behaviour of consumers.

Nigeria Consumers:

Nigeria consumers have been exposed to myriad of problems including problem of safety and quality of

product and service. Reports of fake and substandard products gaining ground in Nigeria market is no longer news as these substandard goods are brought in from outside Nigeria and local operators are relentless depending on the product with thousands of porous and unmanned routes and ineffective restrictions. The criminal enterprise, most times involve wide-scale conspiracy and corruption. The seriousness of the situation is underscored by the level of high value or fast selling goods targeted; food and beverages, drugs and other pharmaceutical products, electrical items and electronics, vehicle spare parts, batteries, and almost every facet of the economic lives and the quantum of these goods available on the shelves. As the incidence of fake, substandard, defective, and adulterated product assumes an alarming dimension, the quality of services rendered by service providers leaves a much bitter tastes in the mouth of consumers, as they are left in a precarious position, having to pay for shoddy services, sometimes no services, and for goods that are below the regulated standards. We therefore, hypothesized that:

H₂: There is no significant effect of TQM on manufacturer's negligence.

H₃: There is no significant effect of consumption of sub-standard product on cb.

H₄: There is no significant effect of consumer service on cb.

As one observer puts it, "We have infiltration of inferior and substandard products coming into the country and government didn't do anything about it. We have all sorts of products coming into the country from different parts of the world, Europe, Asia, even from other West African countries; they are dominating our economy. Most of these products are substandard and dangerous to the health of Nigerians. Such products that they can't even sell in their countries, are smuggled in without paying taxes, levies and they are competing with our brands here" (Anonymous, 2013).

Consumers are faced with about 80 per cent chances of purchasing fake products in the market, where second hand goods are preferred as original. These products pose grievous threats to both survival of local industries and the health of consumers. In addition multiple taxation and challenges in the area of infrastructures drive cost of production too high, as the local manufacturers are groaning under low demand for their products as these substandard products offer consumers, most of who have low disposable income. Cheaper alternatives, irrespective of their grievous health implications such as: high rate of food poisoning, spate of deaths associated with fake drugs, collapsed buildings, frequent break down of vehicles, high rate of incidents of fire are among the many negative consequences of counterfeit and substandard goods. It is estimated that Nigeria spends billions of Naira annually to import these goods, a staggering amount, which impact seem to have overwhelmed the economy and the regulatory agencies (Anonymous, 2013).

Legal Remedies

In Nigeria, product liability claims may be brought in torts, contracts and criminal law. Under tort, an aggrieved consumer may elect to seek legal remedy under the tort of negligence. Negligence is the most common tort-based remedy because of its lack of the requirement to show privity of contract with the seller as required under the law of contract. It actually refers to the failure of a person to exercise legal due care which results to undesired damage to another (Winifield and Jolowig, 1989). It therefore follows that a manufacturer can be liable for negligence if he fails to exercise due care in the manufacturing of his product which causes harm to the ultimate user.

To be able to establish a claim under negligence, the plaintiff must establish three elements. (1) That there was a duty of care owed him by the defendant (2) that there was a breach of that duty of care by the defendant, and (3) that he suffered some consequential damage as a result of that breach by the defendant.

The first element, which is the duty of care is said to be established if it is proved that the action of the defendant which in this case is the manufacturer is likely foreseen to cause harm to the plaintiff by a reasonable person (Lord Atkin in *Donoghue v. Stevenson*, (1932) AC 562). To show whether a duty of care exists between the parties, some factors such as "Reasonable Foreseeability which has to do with the plaintiff being harmed if the defendant does not exercise due care will be taken into consideration by the court. Also the issue of "proximity" which is the close relationship between the act carried out by the defendant and the harm or injury suffered by the plaintiff in addition to what is considered to be in the interest of the public will all be considered by the court before a duty of care can be said to be owed the plaintiff by the defendant (Adams, 2003).

Proof of the second, which is a breach of the duty of care, is discharged when the plaintiff establishes that the defendant failed to take reasonable care in preventing the injury he the plaintiff suffered. In considering this fact, the court takes into consideration factors such as the seriousness of the risk. Asikhia and Oni-Ojo, (2011) posit that the greater the possibility of the injury occurring, the higher the standard of care the law requires of the defendant.

Lastly, the third element is for the plaintiff to prove that he suffered some damages as a result of the defendant's failure to exercise due care. It is worthy of note that the defendant is not liable for all the damages suffered by the plaintiff as a result of breach of duty of care, but only for reasonable foreseeable damage.

Another legal remedy available to a consumer for defective product is under the law of contract as laid down in the Sales of Goods Act. The contract of sale of goods in Nigeria is governed by the Sales of Goods Act 1893 which is a Statute of general application, essentially provides for consumer's remedy in terms of defective product in terms of implied conditions and warranty. In the absence of

clearly stated express terms, these implied terms are relied upon by the law courts.

Being a contract, the element of contracts equally applies, including privity of contract which holds that a person who is not a party to a contract cannot suffer the liability or enjoy the benefit arising from such contract as stated by Lord Haldane in *Dunlop Pneumatic Tyre Co. Ltd v. Selfridge Ltd* (1915) AC 847. Breach of these terms simply implies that the seller fails to comply with stated or implied promises made concerning the qualities of the goods and as such the Acts makes provision either for the buyer to repudiate the contract or sue for damages only if it is a breach of a condition, or sue for damages if it is a breach of warranty (Section 11 (1) of the Sale of Goods Act, 1893).

These implied conditions and warranties are found in Section 12-15 of the Act and they bother on obligations to title; description; fitness for purpose; merchantable quality; and sale by sample. And they impose strict liability on the seller irrespective of whether the seller is aware of the defect in the goods or not (Kanyip, 2005). According to Asikhia, and Oni-Ojo (2011), the essence of these implied terms in the contract of sale of goods is to protect buyers and sellers under the contract ensure the satisfaction of buyers who are to receive adequate value for their money. Lastly, there is also remedy for manufacturer's liability for defective product provided in both the Criminal and The Penal Code Act of Nigeria. Specifically, Section 243 of Chapter XXIII of the Criminal Code, Cap 77, Laws of the Federation of Nigeria (LFN)

1990 titled "Offences against public health" which makes it an offence punishable with imprisonment against anybody who exposes for sale things unfit for consumption; likewise Section 184 of the Penal Code Cap P3 of the LFN.

There are also statutory offences in relation to the manufacture and distribution of certain products within the country. These statutes provide safety standards and procedures to be followed in the manufacturing and distributing of these products and also laid down punishment 2004 for such violation. Some of the statutes containing the offences are: the Food and Drugs Act 1974 (Cap F32 Laws of the Federation (LFN), 2004); Weight Act 1974 (Cap W3 LFN 2004); Trade Practices (Miscellaneous Offences Provision) Act No. 67, 1992 (Cap T12 LFN 2004) and Counterfeit Fake Drugs and Unwholesome Processed Food (Miscellaneous Provision) Act (Cap C3 LFN 2004). These statutes as previously explained, are to enhance the prevention of the production of adulterated and sub-standard products that would be harmful to the final consumer.

Furthermore, the Nigerian government has set up quite a number of regulatory agencies charged with specific duties poised towards monitoring commercial activities and ensuring consumer protection in the country. Some of the agencies are; the Standard Organisation of Nigeria (SON); National Agencies for Food and Drug Administration and Control (NAFDAC); Consumer

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Protection Council (CPC); and National Insurance Commission (NIC).

Table 1: General breakdown of respondent's demography.

Gender	No	Percentage
Male	182	72.8%
Female	68	27.2%
Total:	250	100.0%
<i>Age</i>		
18 – 21 years	48	19.2%
22 – 30 years	54	21.6%
31 – 40 years	118	47.2%
41 and above	30	12.0%
Total:	250	100.0%
<i>Education</i>		
OND/NCE	2	.8%
HND/BSc	109	43.6%
MSc/MBA	138	55.2%
Ph.D	1	.4%
Total:	250	100.0%
<i>Marital Status</i>		
Single	101	40.4%
Married	139	55.6%
Divorced	10	6.0%
Total:	250	100.0%
<i>Nationality</i>		
Nigerian	241	96.4%
Non-Nigerian	9	3.6%
Total:	250	100.0%

Table 2: Summary of data analysis.

Hypothesis	df	F	Σ^2	p
1	1	16.790	27.418	≤0.001
2	1	10.736	32592.37	≤0.000
3	1	5.531	22969.351	≤0.001
4	1	17.628	23983.37	≤0.001

METHODOLOGY

A total of 300 shoppers (who are able to read and write English Language and have indicated to the research assistants that they have bought defective products within

two months of the survey) were surveyed from three strategic cities across South-western Nigeria; to respond to the instrument of survey (questionnaire) that was tested and deemed to be reliable. Three state capital: Lagos, Ibadan, and Abeokuta were identified for the research areas.–The three locations were strategically selected because they represent the geography, culture, and economy of the region; they represent high level of commercial activities and multinational organizations are established and operating in these cities.

Data were collected with the use of self-report questionnaires distributed among the trained research assistants. The research instrument was to measure respondents' reactions to defective products purchased and, their reactions to the firms' response after they have complained to the firm.

Marketing Research students were required to complete one survey themselves. Specifically, each student was instructed to acquire two completed surveys from nonstudent consumers that frequent a popular local shopping mall, who are between 20–35 years old; two completed surveys from nonstudent consumers aged 36–45, and two surveys from individuals 46 and older. Other restrictions placed on the quota sample were (a) students were instructed to strive for an approximately equal distribution of gender, (b) respondents could not be students or employees of the university, and (c) each questionnaire had to have a valid phone number and first name for the respondent. Random verification of approximately 15% of the questionnaires was conducted by telephoning the respondents. No illegitimate questionnaires were detected in the verification process. Out of the 300 questionnaires administered only 250 copies were filled and returned.

Data Analysis:

H₁ was tested to determine whether TQM will have effect on manufacturer's negligence, Simple Regression Analysis was used. The result shows that the sum of squares of 27.418, degree of freedom (df) = 1, F-value = 22.40 and p ≤ 0.000. Therefore, there is a significant effect of TQM on manufacturer's negligence.

H₂ result shows the sum of squares of 32592.37, degree of freedom (df) = 1, F-value = 48.44 and p ≤ 0.000. Therefore, there is a significant effect of consumption of sub-standard product on cb.

H₃: result shows the sum of squares of 22969.351, degree of freedom (df) = 1, F-value = 51.62 and p ≤ 0.000. Therefore, there is a significant effect of consumer service on cb.

DISCUSSION

In reaction to the various complaints by consumers and consumer groups in Nigeria about various defective products and possibly product harm sustained, it is

imperative that Nigeria law makers deemed it fit to enact legislation in the field of consumer rights, particularly those related to product safety and warranties in the frame of the Nigeria law.

Nevertheless, it is the duty of manufacturers to produce products that are free of defects and safe for consumers' use. To be defect free means that the design is not defective, that no manufacturing defect exists and that consumer is provided with adequate warnings when needed. In Nigeria today, it is difficult to hold 'anybody' responsible for both product defect/harm. When a consumer experienced either product defect (harm), the agent/distributor will not accept responsibility and the manufacturer in most cases are foreign, thus the consumer is left unprotected. It is fair to hold manufacturers responsible for compensating injured consumers in preventable defect cases, knowing who might be regarded as a manufacturer in any product injury situation is not always clear; some business owners might not consider themselves 'manufacturers,' they might learn they have assumed some of the duties and accompanying liabilities of one if they:

1. Sell products directly imported from a foreign country
2. Rebuild, retrofit or recondition used products that were originally manufactured by others in order to resell them
3. Assemble various parts and components produced by others into a unit with their brand name or company name on it;
4. Sell a product under their company name, brand name or label, although functions such as actual design, manufacture, assembly and fabrication are performed by someone as a subcontractor or by the firm from which the product is purchased;
5. Are a retailer or wholesaler that assembles products made by others, such as bikes and barbecues; and
6. Modify or repackage new products originally manufactured by others, and sell them.

It is important to note that the list is not exhaustive, nevertheless; we intend to point out that even if a company did not originally design and manufacture a product, it may assume the duties and liabilities of the manufacturer without being fully aware of it.

Conclusion:

In as much as mitigating product liability loss potential requires genuine commitment by management and the active involvement of all segments of an organization; the product liability law forces manufacturers, distributors, importers, and businesses hiring others to manufacture to be held liable together for damage caused by their unsafe products. It is now certain that manufacturers, wholesalers, and retailers all have duties and may be liable if a defective or unreasonably dangerous product causes harm when it is being used as intended or even during reasonably foreseeable misuse. In addition, consumer must also be aware that they are protected

under the law.

Nigeria Government should back up all various Institutions, among these are: Standard Organization of Nigeria (SON), National Food and Drugs Administration and Control (NAFDAC), Nigeria Custom and Excise, Pharmacist Council of Nigeria (PCN), various Local Government Councils, and other private sector operators in controlling, apprehending and prosecuting the proliferation and distribution of defective/harmful products. Finally, the court system should begin to award monetary compensation to victims; to send messages to those that are still engage in producing and marketing defective (harmful) products.

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