

A BILL

FOR

AN ACT TO AMEND THE TRADE MALPRACTICES ACT CAP T 12 LAWS OF  
THE FEDERATION OF NIGERIA 2011 AND FOR RELATED MATERS

*Sponsored by Hon. Evelyn Omavowan Oboro*

[ ] Commencement

BE IT ENACTED by the National Assembly of the Federal  
Republic of Nigeria as follows:

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1. The Trade Malpractices Act CAP T12 Laws of the Federation of  
Nigeria 2011 (in this Bill referred to as the “Principal Act”) is amended as set  
out in this Bill.

2. Section 1 of the Principal Act is amended:  
(a) by substituting the words “purchaser” and the words “persons”  
with the words “consumer” wherever they appear in the Act;  
(b) by inserting after paragraph (h) new paragraphs (i) – (k) to read:  
“(i) enter into a commercial agreement without the intention of  
being bound by the terms of agreement;”  
“(j) engages in any form of unfair commercial trading;” or  
“(k) promote any unfair commercial trading”.  
(c) by inserting a new subsection (2) as follows:  
(2) Offences Relating to Unfair Commercial Trading  
Trader is guilty of an offence if:  
(a) He Knowingly or recklessly engages in a commercial practice  
which contravenes the requirements of any profession diligence; or  
(b) The commercial practice materially distorts or likely to distort  
the economic behavior of the consumer with regards to the product or  
service;  
(c) For the purposes of section (1)(2)(a) a trader who engages-in a  
commercial practice without regard to whether the practice contravenes the
- Amendment of  
the Trade  
Malpractices Act  
CAP T12 LFN  
2011

Amendment of  
Section 1

1 requirements of professional diligence shall be deemed recklessly to engage in  
2 the practice, whether or not the trader has reason for believing that the practice  
3 might contravene those requirements;

4 (d) If he engages in a commercial practice which is a misleading  
5 action under this Bill;

6 (e) If he engages in a commercial practice which is a misleading  
7 omission under this Bill;

8 (f) If he engages in a commercial practice which is aggressive under  
9 this Bill

10 (d) by renumbering the existing subsection (2) as the new subsection  
11 (3).

Amendment of  
Section 2

12 3. section 2 of the principal Act is amended by inserting a new Section  
13 2A and renumbering the existing to read as follows:

14 2A. PENALTIES FOR OFFENCES

15 A person guilty of an offence under this Bill shall be liable upon conviction:

16 (a) To pay all agreed fees including the legal fee of complainant; and

17 (b) On summary conviction, to a fine not exceeding the statutory  
18 maximum; or

19 (c) To a fine or imprisonment for a term not exceeding two years or  
20 both.

Amendment

21 4. The Principal Act is amended by inserting an interpretation clause  
22 as section 7 and renumbering the existing section 7 as section 8;

23 "7. Interpretation";

24 In this Bill unless the context otherwise requires:

25 "Trade" means any business, craft, or profession;

26 "Commercial Practice" means any act, omission, code of conduct,  
27 representation or commercial communication (including advertising and

28 marketing) by a trader, which is directly connected with the promotion, sale or  
29 supply of a product to or from consumers, whether occurring before, during or

30 after a commercial transaction (if any) in relation to a product or service;

- 1       “Consumer” means any individual who in relation to a commercial practice  
2       is acting for purposes which are outside his business;
- 3       “unfair commercial practice” means any commercial practices that:
- 4               (a) Contravenes the requirements of professional diligence;
- 5               (b) Materially distorts or is likely to materially distort the  
6       economic behavior of a consumer with regards to a product;
- 7               (c) It is a misleading action;
- 8               (d) It is a misleading omission;
- 9               (e) It is aggressive.
- 10       “materially distort the economic behavior” means in relation to a consumer,  
11       appreciably to impair the consumer’s ability to make an informed decision  
12       thereby causing him to take a transactional decision that he would not have  
13       otherwise taken;
- 14       “misleading omission” means omitting, hiding, or providing material  
15       information in a manner that it is not clear and causes or is likely to cause the  
16       average consumer to take a transactional decision he would not have  
17       otherwise taken;
- 18       “misleading action” means any action that contains false information which  
19       causes or is likely to cause the consumer to take a transactional decision’ he  
20       would not have otherwise taken;
- 21       “aggressive unfair commercial practice” means any commercial practice  
22       that concerns any marketing of a product or service (including comparative  
23       advertising) which creates confusion with any products, trademarks, trade  
24       names or other distinguishing marks of a competitor;
- 25       It concerns any failure by a trader to comply with a commitment contained  
26       in a contractual term which the trader has undertaken to comply with, if the  
27       trader indicates in a commercial practice that he is bound by that contractual  
28       term; or
- 29       the commitment is firm and capable of being verified and is not aspirational;  
30       and it causes or is likely to cause the consumer to take a transactional

1 decision he would not have otherwise take if taking account of its actual  
2 context and of all its features and circumstances;

3 “Product” means any goods or service and includes immovable property, rights  
4 and obligations;

5 “Professional diligence” means the standard of special skill and care which a  
6 trader may reasonably be expected to exercise towards consumers which is  
7 commensurate with either:

8 (a) Honest market practice in the trader's field of activity; or

9 (b) The general principle of good faith in the trader's field activity.

10 “trader” means any person who in relation to a commercial practice is acting  
11 for purposes relating to his business, and anyone acting in the name of or on  
12 behalf of a trader;

13 “transactional decision” means any decision taken by a consumer, whether it is  
14 to act or to refrain from acting, concerning:

15 (a) Whether, how and on what terms to purchase payment in whole or  
16 in part for, retain or dispose of a product; or

17 (b) Whether, how and on what terms to exercise a contractual right in  
18 relation to a product.

19 (c) “due diligence” means reasonable skill and care expected of a  
20 reasonable man.

Short Title

21 5. This Act may be cited as the Trade Malpractice (Miscellaneous  
22 Offences) Act (Amendment) Bill, 2016.

#### EXPLANATORY MEMORANDUM

This Bill seeks to amend the Trade Malpractices Act CAP T12 LFN 2011 to provide for proper regulation to Trade malpractices and protect consumers in relation to the supply of goods and services in Nigeria.