

A BILL

FOR

AN ACT TO AMEND THE TRADE MALPRACTICES ACT CAP T12 LAWS OF THE
FEDERATION OF NIGERIA 2011 AND FOR OTHER MATTERS CONNECTED
THERE TO

Sponsored by Senator Jibril Barau

[] Commencement

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

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

4 **2.** Section 1 of the Principal Act is amended: Amendment of
Section 1

5 (a) by substituting the words “purchaser” and the words “persons”
6 with the words “consumer” wherever they appear in the Act;

7 (b) by inserting after paragraph (h) new paragraphs (i) -(k) to read:

8 “(i) enter into a commercial agreement without the intention of
9 being bound by the terms of the agreement;”

10 “(j) engages in any form of unfair commercial trading;” or

11 “(k) promote any unfair commercial trading”.

12 (c) by inserting a new subsection (2) as follows:

13 (2) OFFENCES RELATING TO UNFAIR COMMERCIAL TRADING

14 Trader is guilty of an offence if:

15 (a) He knowingly or recklessly engages in a commercial practice
16 which contravenes the requirements of any profession diligence;

17 (b) The commercial practice materially distorts or is likely to
18 distort the economic behavior of the consumer with regards to the product or
19 service;

20 (c) For the purposes of section (1)(2)(a) a trader who engages-in a

1 commercial practice without regard to whether the practice contravenes the
2 requirements of professional diligence shall be deemed recklessly to engage in
3 the practice, whether or not the trader has reason for believing that the practice
4 might contravene those requirements;

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

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

9 (f) if he engages in a commercial practice which is aggressive under
10 this Bill.

11 (d) by renumbering the existing subsection (2) as the new subsection
12 (3).

Amendment of
Section 2

13 3. Section 2 of the principal Act is amended by inserting a new Section
14 2A and renumbering the existing to read as follows:

15 2A. PENALTIES FOR OFFENCES

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

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

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

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

Amendment

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

24 "7. Interpretation";

25 In this Bill unless the context otherwise requires:

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

27 "commercial practice" means any act, omission, course of conduct,
28 representation or commercial communication (including advertising and
29 marketing) by a trader, which is directly connected with the promotion, sale or
30 supply of a product to or from consumers, whether occurring before, during or

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

2 “Consumer” means any individual who in relation to a commercial practice
3 is acting for purposes which are outside his business;

4 “unfair commercial practice” means any commercial practices that:

5 (a) contravenes the requirements of professional diligence;

6 (b) Materially distorts or is likely to materially distort the
7 economic behavior of a consumer with regard to a product;

8 (c) it is a misleading action;

9 (d) it is a misleading omission;

10 (e) it is aggressive.

11 “materially distort the economic behavior” means in relation to a consumer,
12 appreciably to impair the consumer's ability to make an informed decision
13 thereby causing him to take a transactional decision that he would not have
14 otherwise taken;

15 “misleading omission” means omitting, hiding, or providing material
16 information in a manner that it is not clear and causes or is likely to cause the
17 average consumer to take a transactional decision he would not have
18 otherwise taken;

19 “misleading action” means any action that contains false information which
20 causes or is likely to cause the consumer to take a transactional decision' he
21 would not have otherwise taken;

22 “aggressive unfair commercial practice” means any commercial practice
23 that concerns any marketing of a product or service (including comparative
24 advertising) which creates confusion with any products, trademarks, trade
25 names or other distinguishing marks of a competitor; or

26 it concerns any failure by a trader to comply with a commitment contained in
27 a contractual term which the trader has undertaken to comply with, if the
28 trader indicates in a commercial practice that he is bound by that contractual
29 term; or

1 the commitment is firm and capable of being verified and is not aspirational;
2 and
3 it causes or is likely to cause the consumer to take a transactional decision he
4 would not have otherwise taken if taking account of its factual context and of
5 all its features and circumstances;
6 "Product" means any goods or service and includes immovable property, rights
7 and obligations;
8 "Professional diligence" means the standard of special skill and care which a
9 trader may reasonably be expected to exercise towards consumers which is
10 commensurate with either:
11 (a) honest market practice in the trader's field of activity; or
12 (b) the general principle of good faith in the trader's field of activity.
13 "Trader" means any person who in relation to a commercial practice is acting
14 for purposes relating to his business, and anyone acting in the name of or on
15 behalf of a trader;
16 "transactional decision" means any decision taken by a consumer, whether it is
17 to act or to refrain from acting, concerning:
18 (a) whether, how and on what terms to purchase, make payment in
19 whole, or in part for, retain or dispose of a product; or
20 (b) Whether, how and on what terms to exercise a contractual right in
21 relation to a product.
22 "due diligence" means reasonable skill and care expected of a reasonable man.
23 5. This Act may be cited as the Trade Malpractice (Miscellaneous
24 Offences) Act (Amendment) Bill, 2015.

Short Title

EXPLANATORY MEMORANDUM

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