

Protecting consumer from fraud and counterfeiting of goods and services in Algerian law

حماية المستهلك من الغش وتزوير السلع والخدمات في القانون الجزائري

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المخلص:

أدى التطور السريع الذي يشهده حجم الإنتاج في ظل مناخ العولمة إلى غزو الأسواق العالمية بمنتجات وخدمات مغشوشة وحتى مقلدة يجهل طبيعتها ومصدرها وبأسعار رخيصة وزهيدة، والتي تمس بأمن وسلامة المستهلك. ولم تكن الجزائر بمنأى عن ذلك أيضا وخاصة بعد الإصلاحات الاجتماعية والاقتصادية والسياسية التي عرفتها سنة 1989 م وتبنيها لنظام اقتصاد السوق، مما دفع بالمشروع الجزائري إلى التفكير بوضع حد وردع للتجاوزات الخطيرة التي يتعرض لها المستهلك والتي تخالف الأعراف التجارية وقواعد الإنصاف والعدالة. وذلك من خلال إصداره لمجموعة من القوانين والمراسيم التنظيمية أهمها القانون رقم 89-02 والمتعلق بالقواعد العامة المطبقة لحماية المستهلك، وكانت إرادة المشرع واضحة وصريحة من خلال هذا القانون والذي حدد فيه الخطوط العريضة واطر حماية المستهلك. ثم أصدر القانون رقم 09-03 والمتعلق بحماية المستهلك وقمع الغش، والذي ألغى القانون رقم 89-02 السابق الذكر، بالإضافة إلى هذا فقد أصدر نصوص قانونية خاصة كان لها الأثر الواضح والكبير في حماية المستهلك والتي منها قانون رقم 04-02 والمحدد للقواعد المطبقة على الممارسات التجارية والمعدل والمتمم بالقانون رقم 10-06، وكذا قانون المنافسة 03-03 والمعدل والمتمم بالقانون رقم 08-12.

Abstract:

The rapid development of the volume of production in the climate of globalization has led to the invasion of world markets with fake and fake products and services that are ignorant of their nature and origin at cheap and cheap prices that affect the security and safety of the consumer. Algeria was not immune to this either, especially after the social, economic and political reforms of 1989 and its adoption of a market economy. This prompted the Algerian legislator to consider putting an end to the serious violations against the consumer, which violate commercial norms and rules of fairness and justice. Through the issuance of a number of laws and regulatory ordinances, most notably Law No. 89-02 on general rules applicable to consumer protection, and the will of the legislator clear and explicit through this law, this outlined the lines and consumer protection frameworks. Law No. 09/03 on Consumer Protection and the Suppression of Fraud was repealed, and the aforementioned Law No. 89-02 was repealed. In addition, special legal texts were issued which had a clear and significant effect on consumer protection, including Law No. 04-02, Trade Practices, Modified and Supplemented by Law 10-06, as well as Competition Law 03-03, amended and supplemented by Law No. 08-12.

Introduction:

It has been nearly fifty year since president John Kennedy delivered the first presidential special message to congress on protecting consumer interests¹. Since then, the consumer protection field has continued to receive great amount of attention among scholars due to the changing nature of roots for consumer protection. In 1960 the economist Margret hall wrote that the consumer sector during the 1950 was marked by several features including “growth in consumers” real income and the emergence of mass “middle class” purchasing power a rapid growth in demand for consumer durable goods, such as motorcars, radios and televisions sets the development of hire purchase had field hawse and trebilcock however have attributed in cross border transaction, have attributed the need to protect consumers to the increase in cross-border², they further assert that the technological changes in production and distribution precipitated an explosion in the variety and scope of products services and commercial transactional forms and that growth in products advertised through the new medium of television changed the nature of the traditional consumer market place³.

Apparently, all these situations created an unbalance in the market place ,because of unequal bargaining power between parties,(the seller) knows everything about the production or services that she or he is going to sell ,while the other party(the consumer) does not know much or anything about the product or services that he or she is going to buy. This weak position of consumers in the market place imposes pressure on government, nongovernmental consumer bodies and concerned institution to intervene to restore the balance between the traders and the consumers.

Furthermore, the massive development in production technology and distribution methods introduced other type of difficulties such as contract prior information, misleading advertising unfair term and practices and monopolies. All of these facts have encouraged governments to protect consumer at national level, consumer protection issues are considered an old dilemma in developed countries. Because since 1962 new legislative systems or amendments to prior regulatory shames have been enacted in most developed countries the aim of these national or regional policies was often to protect weaker the consumer⁴.

Consumer protection policy seeks to safe guard consumer's legal, economic and safety concerns moreover consumer policy establishes a legal frame work that encourages consumer participation in market⁵.

Consumer protection is new field in Arab world as there was no initiative to introduce specific legislation concerning consumer protection and the term consumer did appear in Algeria since 1989 .In Algeria consumer protection law⁶was enacted in 1989 it was repealed by the law number 09/03 relating protection of consumer and the repression of fraud which was considered a milestone that introduce several provision to protect consumer rights and create a form of supervisory system in Algeria market to deter rogue traders⁷during the fundamental social and economic and politics reformed its take place in Algeria since 1989 ,Algeria transition from a planned economic system to liberal economic system market, necessitated the legislator thinking of finding legal texts fit with this period of reforms perhaps the most important legal text of the laws that protect consumer number 89/02 relating the general rules of consumer dated in 1989 was abolished by the law number 09/03 relating the protection of consumer and the suppression of fraud the legislator define the consumer in the article number 03 from the previous law states that the consumer is natural person or moral person acquires paid or free good or services oriented endues in order to meet the needs of personal or meet the needs of another's person or animal take care of it .Also in this article the legislator define services and goods he says that goods or items are material in exchange waived paid or free, Algeria

movement came after huge external and internal pressures on the government to take serious steps to deal with the increased amount of commercial fraud and dramatic rise in commodities prices⁸.

The legal issue is **what's the mechanism legal to protect consumer against fraud and counterfeiting goods and services?** For answer to this question we suggested a plan.

Section one: The definition of consumer and intervener through law and jurisprudence.

The Algerian legislator define the consumer in article number 03 from law 09-03 he says that the consumer every natural or moral person acquires paid or free good or services oriented end use in order to meet the personal needs or meet the needs of other or taking care animal ,understood from the text of the article that the Algerian legislator adopted a narrow standard criticise that what jurisprudence let to and approved and agree in the definition of consumer and excluded the intervener from the protection ,is for only reason the differences in knowledge the intervener know every little details and fundamental and technical information about the good and service unlike the weaker consumer he or she does not know anything about the goods and services.

The intervener is all natural or moral person intervenes in the process of display products for consumption according the article number three⁹, in other hand consumer protection is one of the main areas of contemporary legislation that has gained much attention in developed countries¹⁰ this protection is based on defending consumers against unscrupulous practices of sellers in all stages of production, supplying and distribution¹¹ therefore bourogoignie has described consumer law as not impartial ,as its function is to reinstate the balance between powerful businesses and vulnerable consumer¹²because of it is partiality, it is highly imperative to identify the consumer who is subject to this protection the importance of providing a clear definition of consumer is to remove all ambiguity in identifying the boundaries of the protected persons that may lead to misuse of these legal advantages, in which case the actual implementation of the law will be delayed case often tend to be more concerned with identifying whether the claimant is under such protection or not when such cases should be more concerned with actual protection of consumer rights which has led to the need for enacting appropriate legislation to preserve the interests of consumer due to the requirement of this study the researcher will examine and cover three models Algerian model, sharia law and uk model and will explore the definition of consumer in each¹³.

In Islamic countries the term consumer has been defined by jurists in accordance with sharia law has defined a consumer as any person who acquires any item through purchasing for the purpose of consumption or using¹⁴this definition has been approved by many Muslim jurist and considered as a fundamental structure for creation of any definition of the term consumer¹⁵.

The British legislator provided various definitions for the consumer so article 2 of consumer protection from unfair trading regulation 2008 defines consumer as any individual who in relation to a commercial practice is acting for purpose which are outside his business¹⁶whereas article 20/6 of consumer protection act 1987 has defined consumer as follows:

- A: in relation to any goods any person who might wish to be supplied with the goods for his own private use or consumption.
- B: in relation to any services or facilities any person who might wish to be provided with the services or facilities otherwise than for the purposes of any business of his.
- C: in relation to any accommodation any person who might wish occupies the accommodation otherwise than for the purpose of any business of his.

According to these definitions it seems that the main characteristics of consumer protection laws are the consumer private individual acting in private capacity and the other party-trader- must act in the course of trade or business.

These definitions however have raised some controversy over who must be covered under the category of consumer views on this controversy are divided into three main parties¹⁷.

The first party has merged consumers and citizens in regard to benefits where the benefit may obtain by the consumer in his relation and dealing with other citizens or government agencies hospitals...ext. In society although this definition is very simple and comprehensive it has criticised strongly by many legislation as it has allowed many categories example producers ,Traders, Professionals to access such protection which was supposed to be restricted to the citizen who purchase those products or services for the purpose of consumption or to satisfy their needs¹⁸.

The second party has defined the consumer as person who attains unprofessional consumed goods for personal use only, although this definition has avoided the previous mistake by preventing professionals and traders from making use of this benefit .It also has been criticised because it concentrates on products without mentioning services and utilities.

Moreover this definition covers personal consumption and neglects family consumption¹⁹ .

The third party has defined the consumer as anyone who attains any goods or services with or without a return in order to satisfy his personal or other's needs²⁰ this definition has been applied in Algeria and was mentioned under the consumer act 2009 ,also has been criticised by many legislators and researchers for being very broad and not providing an exact definition of consumer by using the term anyone and others it gives individual and legal persons of all categories example traders-producers-professionals –government bodies the capacity to access such protection .

It can be concluded from the debate that there are some similarities amongst the definition of consumer protection under these three models which concentrate on that there are three elements to identify the protected person they are follows:

- 1-Any person who receives uses and purchases goods and services.
- 2-The subject of consumption good and services.
- 3-The main purpose of purchasing goods and services is satisfy personal or others needs and not for commercial purposes.

The importance of the consumer protection according to Norman Silber said²¹”modern methods of marketing during the early part of the twentieth out made all traditional consumer skills for evaluating quality and economising on price wholly inadequate”.

In the term of Islamic teaching sharia law has played an essential role in all daily activities including politics contracts business and social issues, sharia law has encourage people to fair business and this encouraged people to do fair business and this encouragement relies on one of the most important principles in sharia law according to which the basic rule of Islam is that everything is permitted except those things that expressly forbidden ²² most Muslims considers sharia law as a main source of guidance for many complicated issues that appear in Islamic societies, among which are problematic issues related to commercial and business section.

Hence through its supervisory and regulatory role, sharia law has provided guidelines based on divine principles established by God or mentioned by prophet Mohamed peace is up on him, which must be obeyed and exercised by adherents to achieve aims of those guidelines consumer protection was one of those issues that has been dealt with by sharia law since1400 year ago²³ sharia law has clarified most issues related to consumer protection starting with a clear

definition of the term consumer and followed by an indication of the legitimate evidence that proves the importance of such section in sharia law.

In the term of global trend the serious international move towards providing consumer with sufficient protection dates back to the middle of the last century as mentioned in the introduction in 1962 president Kennedy emphasised the fundamental rights of consumers namely the right to safety, the right to information, the right to choose and the right to be heard therefore the existence of new policies on consumer protection must ensure and involve the protection and assurance of these four elements for adequate protection of consumer²⁴. A number of factors may be regarded as reasons for such movement in favour of consumers the development in production and distribution techniques and different types of contracts in goods and services may result in general lack of information on consumers to make prudent shopping decisions.

Hence there is a need to look more closely at the consideration which, justify the pursuit of a policy designed to promote relationship between producers and consumers, the next section will indicate the perspectives of both parties' consumers and business on consumer protection.

There are different rationales behind offering adequate consumer protection meglena kuneva²⁵ has emphasised consumers weak position in commercial transaction by stating that consumers should be empowered to make informed choices about the goods and services that they purchase, their interests should be promoted and defended ,particularly in view of increasing complexity of the markets in which they operate²⁶ therefore due to the complexity of the markets and production methods, the consumer being less informed his weak position in bargaining power, and his inability to seek adequate redress ,deserves such protection.

In term of right to be informed previously the responsibility was on the consumer and the retailers in the traditional market where both parties were considered to be equal as none of them had an advantage over the other due to the simplicity of production methods therefore consumers bore the burden of ensuring that they were happy with their purchase, this was described under the rules of caveat emptor which in Latin means let the buyer beware under such a principle buyers talk all responsibility on any goods and products they purchases and the seller is not held responsible for any defects in the products, However only exception is if the seller actively conceals latent defects or otherwise makes material misrepresentation²⁷ accordingly the caveat emptor principle restricts the government and incapacitates a law from providing the consumer with protection.

Consequently, the imbalance between buyers and sellers or suppliers in terms of available information related to a specific product plays an important role in justifying the claim for empowering consumers position in the market place Edward Rubin has pointed out that such an imbalance in the available information could demolish the efficiency of the deal between the parties²⁸ he supported his argument by describing a trader who possess off imitation shoes as better quality ones, in full knowledge that they will deteriorate quickly on the other hand the buyer without such information or knowledge will end up paying more money for a poor quality products this limited availability of information strengthens the position of one party against the other.

However this rule has been reformed recently with massive development technology the new trend is towards a strong desire to protect consumers and trading technology. The new trend is towards a strong desire to protect consumers and encouraging governments to introduce new laws to protected consumer rights and strengthen their position in the market, this new trend was due to the fact that consumer have been placed in position that can be described as being under the mercy of traders who are powerful, very well organised and more knowledge about the products or goods they sell.

Abu-Amro has pointed out that the issue around consumer protection revolves around one feature namely the nature of the purchases he described the position of consumer, while purchasing as that of one who makes purchases in the dark he based his view on the fact that the consumer during his purchase is unaware of whom he is dealing with example whether the seller is reputable or disreputable trusted or fraudulent which may lead consumer to receive low quality goods or services²⁹.

Therefore regulating this field establish a balance between the notion of caveat emptor and the seller's obligation to inform the buyer with sufficient and adequate information on the products, goods or services whether or not the consumer knows anything about the items purchased bearing in mind that the trader while participating in the commercial transaction is acting as a professional regarding the goods or services.

The freedom³⁰ to decide to enter a contract is a vital issue how factories may affect the consumer's decision which renders the notion of caveat emptor invalid as an excuse for traders to hold consumers responsible for their choices example of these factors are distance selling and contracting ,misleading advertising and unfair business practise ,in distance selling for instance the traders conduct their business premises which could the quality of goods and legality of the terms included another factor that may affect consumer decisions

is misleading advertising which could harm consumers ability to distinguish between true and false adverts the following section will explain some factors that affect consumers and indicate how these factors might affect consumers desire and reduce their confidence in the market.

Section two: Factors might affect consumer desire.

Misleading Advertising: misleading advertising is an element of risk that would affect consumer's decision while purchasing a product and potentially lead to lower confidence in the market it was defined according the article number 28 from Algerian consumer Act number 09/03 publicity is illegal and banned all publicity misleading particularly if:

- 1-Includes comments data or configuration that can lead to misleading definition products or services or quantities or provided or features.
- 2-contained elements that could lead to confusion with another buyer or its products or services or activities.
- 3-respect of particular bid for goods or services while the economic help is not available on a sufficient supply of those goods or he cannot guarantee to be provided is usually compared with the magnitude of publicity.

Unlike the British legislator according the control of misleading advertisements regulation 1988 see if in any way, including its presentation it deceives or it likely to deceive the persons to whom it is addressed reasons of it deceptive nature it is likely to affect their economic behaviour or for those reasons injures or is likely to injure a competitor of the person whose interests the advertisement seek to promote³¹.

Unfortunately there is no similar definition or specific law in the legislation of most Arab world increased last year to 4.6 billion dollar US in 2009 according to report introduce by Dubai press club³² advertising plays an essential role in consumers decisions when services they want advertising is often a method of introducing products and services to consumers there are various means TV, newspapers, brochures magazines messages sent via mobile phone and internet.

Unfair terms and practices: The development of large scale enterprise with its mass production and distribution made a new type of contract inevitable the standardized contract, a standardized contract once its contents have been formulated by a business firm is used in every bargain dealing with same product or service the primary rational behind imposing legal controls over unfair terms and practise is that they cause a significant imbalance in the parties right and obligations under the contract to detriment of consumers this shift was due to the fact that some traders were used to running their business on a –take it or leave it- basis with individual consumers and consumers need to protect

themselves against this power the Algerian legislator in the article number 28 from law number 04/02 dated in 23 June 2004 setting the general rules applicable to commercial practices, he gives us pictures of items considered arbitrary clauses in contracts between the consumers and the seller especially the terms and conditions granted to the latter:

- 1-The right and privileges are not matched by similar rights and privileges recognized by the consumer.
- 2-to impose immediate and final obligations on the consumer in the contracts while contracting on terms.
- 3-The right to amend the basic contract elements or features or product giving or services provided without the consumers consent.
- 4-exclusivity the right to interpret one or several conditions out the contract or acclivity in the decision to decide on the conformity of the business process of the contractual terms.
- 5-To oblige consumers to carry out obligation without committing themselves.
- 6-Rejection of the right of the consumer in the dissolution of the contract if the violation is the obligation or several obligations in the charge.
- 7-Threatening the consumer to serve a contractual relationship simple because the consumer refuses to submit to new unequal commercial terms.

All in all consumer protection means safeguarding the interest and right of consumers. In other words it refers to the measures adopted for the protection of consumers from unsouplous and unethical practices by the business and to provide them speed redressed of their grievance the most common business malpractice leading to consumer exploitation are:

- 1-Sale of adulterated goods example adding something inferior to the product being sold.
- 2-Sale of spurious good example selling something of little value instead of the real product.
- 3-sale of sub-standard good example sale of good which do not confirm to person bed quality standards.
- 4-sale of duplicate goods.
- 5-use of false weights and measures leading to underweight.
- 6-hoarding and black marketing leading to scarcity and rise in price.
- 7-charging more than maximum retail price fixed for the product.
- 8-supply of defective goods.
- 9-misleading advertisement example advertisement falsely claiming a product or service to be superior quality grade or standard.

Conclusion

Through our review of the topic of consumer protection, we have shown that the legislator's desire to devote Protecting the consumer who is often in the centre of weakness, pushed him to seek the legal mechanisms of Which will address the imbalance that hangs over the relationship that the consumer gathers with the intruder, which is often Resulting in the latter's exploitation of this weakness in order to achieve its objectives.

To that end, the legislature has supported such protection so as to expand the scope of persons who can Giving them the status of the meddler and making this attribute associated with each natural person or moral intervening in the process Display products for consumption, not to disclaim responsibility and make the product is solely responsible to And by using the term "intermediary" to avoid confusion , But we find a contradiction in defining its concept with what exists for the concept of "product" that I meant Article 140 bis of the Civil Code, as well as with applied drawings that protect the consumer.

When defining the Consumer Protection Act and the suppression of fraud for the term "consumer", it came with a guarantee Represented by the addition of the moral persons to the consumer community, but the legislator is accused of being a palace.

The definition of the consumer who acquires and does not consider the user of the product to be consumed only by the user of the product Through this latter, it is also noted that this definition is contrary to the definition contained in Executive Decree No. 90-39 on Quality Control and Fraud Suppression.

The latter is not an applied text of Law No. 09-03 on consumer protection and suppression of fraud Applicable text of Act No. 89-02 on general rules on consumer protection (repealed) As for the arbitrary conditions contained in the contracts of consumption that the legislator limited to one type Of these contracts are contracts of acquiescence, while there are many contracts of consumption that do not prevail Which are subject to arbitrary conditions, as well as a list of arbitrary conditions which do not.

The judge has no discretionary power over them, the latter being organized under Act N° 04-02 To determine the rules applicable to business practices, but this organization is flawed because the legislator is negligible to indicate how to assess the arbitrary nature of the requirement and did not provide for the required civil part Arbitrary, and blacklisting to determine arbitrary conditions is not consistent with any definition Of the arbitrary clause in article 30, paragraph (05), of Act No. 04-02 Depreciation contracts for products, whether movable, fixed, and even services, are extended This is explained by the legislator's definition of the commodity as "all material", which is contrary to The definition of the product contained in Article 140 bis of the Civil Code, which did not consider the services to be productive However, although the Consumer Protection Law and the suppression of fraud extended the

definition of the product to the service but most Its provisions are not in line with the nature of the latter, especially in the area of security and control exercised on Products and precautionary measures that often cannot be applied to services.

It is also the type of law that imposes obligations on the applicant to pursue safety Hygiene of foodstuffs and security of products by placing products that do not cause damage With the consumer defined safety standards expected by the consumer, and in order to support them Protection the obligor is obliged to inform the consumer of all information related to the product without confirming The nature of this information is mainly information about prices of products, but does not provide for the intervention With the consumer's warning and this is what is corrected by Executive Decree No. 13-378 concerning the determination of conditions Related information, and did not provide for the intervention required by consumer advice Possession of knowledge and country.

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