

THE CONSUMER'S ALTERNATIVE: A STUDY ON CONSUMER GRIEVANCE MECHANISM

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Consumers, by definition, includes us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who are not effectively organized, where views are often not heard...

If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interest suffers.¹

The marketplace today resembles less an honest exchange of goods and services than it does a trap for the unwary, the poor and the uninformed. Now more than ever, the public is constantly confronted with deceptive advertising, dishonest selling practices and substandard products. The consumer feels cheated over his hard-earned peso. But nobody listens to him. The traditional judicial venue lies beyond his grasp. Lawyers cost money, the manufacturers are a powerful lot, the time and effort needed to see the case through will drain his meager resources. What can be done for him? With the judicial machinery outpaced by trade and clogged with unresolved cases, it now becomes necessary that consumers be shielded from the unscrupulous predators in the product chain without need to resort to regular courts, but have their grievances remedied through the administrative processes efficiently and effectively.

Commercialism is much like pollution. It is a by-product of progress resulting from the continuous grind of mass production as catalyzed by technological progress and fueled by the increase of the purchasing power and the concomitant expansion of world markets. Though recent, this phenomenon has repercussions strong enough to affect each and every individual of this age and expectedly in the next. While these developments have brought benefit to the consumer, he has, in the process, been confronted by a vastly greater range of goods, more complex and designed to meet a great variety of specific uses; produced in anticipation of demand rather than in response to it; promoted by more vigorous and sophisticated selling techniques; bringing into play a more elaborate range of services.²

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¹ 108 Cong. Rec. 4167, 4263 (1962) (message from Pres. Kennedy to Congress concerning strength of programs to protect consumer interests.)

² ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, CONSUMER POLICY IN OECD MEMBER COUNTRIES 30,799 (1972).

Commercialism pervades both types of economy: in the advanced and in the backward. Industrialized countries have equipped themselves well to counter the potential danger posed by the onslaught. The United States for example has braced herself for this wave of culture shock. She has in addition to an efficient socio-economic administrative machinery on hand to serve a vigilant populace, adequate laws to protect her consumers from the advocates of unbridled *laissez-faire*.

While advanced countries have moved ahead in protecting their consumers, a third-world country like the Philippines has hardly any program in consumer protection. Still a young republic, the nation has just awakened to find in her midst another form of invasion. Goods from foreign countries have elbowed out her domestic products. Some locally-produced goods have gone down in quality. Merchandise of all kinds compete with each other, enticing the Filipino consumer to buy, not for need but for want. Very few locally-produced goods have survived the great flood of imports and the number is decreasing. While it is true that such interchange has brought the Philippines to the level of world markets, this swift change in business trends has exposed the Filipino consumer to such range and complexity of goods and services so suddenly, far beyond his simple relation with the neighborhood *sari-sari* store, making him vulnerable to the wiles of the advertising man and the producer.

Inherent in a third-world state of the capitalistic persuasion is the division of social classes. To the rich, a mere one percent sprinkling of the population, consumer protection through judicial redress of grievances is not a problem. With lawyers to champion his cause, this paying Filipino is not in the least threatened with the encroachment of a right. The problem that this exercise endeavors to solve lies with the rest of the ninety-nine percent of that population, from the level of the middle class to the poor, to whom extrajudicial redress maybe the only venue to justice that these suggestions would be of the utmost relevance.

REFORM EFFORTS

This study is based mainly on American experience and observations. The rationale for this is obvious. Philippine administrative law having stemmed mostly from Anglo-American concepts, it could be reasonably expected that such valuable lessons learned can be modified to apply to Philippine situations, discounting the handicaps of a third-world nation in the next decade or so.

The American Experience

For all its sophistication and advancement, the United States has not totally solved this problem of consumer protection. Encouraged by the concern and militancy of its citizens and an inexhaustible fund to boot, the Americans have gone a long way toward striking the proper balance

between the producers-manufacturers and the consuming public. Steele³ in his article outlines two modes of answering the problem: through the legal approach, a retrospective dealing with concrete disputes and through the regulatory approach which is prospective in character as it seeks to prevent conflicts. The former functions in the field of criminal law enforcement and in the area of dispute settlement, while the latter functions in public regulation. While the field of law enforcement crusades at exacting punishment, retribution, aiming as it does the deterring and socializing and reinforcing of norms to assure compliance, dispute settlement rests on compensation and vindication.

Regulatory or preventive law utilizes rule-making and administrative supervision, law enforcement in the prosecution of criminal and the enforcement of civil laws against fraud, deceptive advertising and unfair business practices. Dispute settlements advocate improvements in the delivery of lawyers' services, paralegal personnel, community advocates, advisers, the creation of forums for arbitration and mediation and the installation of small claims courts. Of the regulatory approach, much has been done to protect the consumers. Agencies like the National Product Safety Commission and the Truth-In-Lending Act and other regulations have served the consumers well.⁴

The legalistic approach uses legal sanctions to exact compliance. In the enforcement of laws, a number of statutes impose civil penalties for misconduct in consumer transactions. The Federal Consumer Credit Protection Act,⁵ the Uniform Consumer Sales Practices Act,⁶ and the Uniform Consumer Credit Code⁷ all make provisions for increasing the consumer's recovery beyond his actual damages by establishing a minimum civil liability of \$100.⁸ The proposed National Consumer Act provides for minimum penalties of \$100, \$200, or \$300, depending upon the violation.⁹ The Uniform Consumer Credit Code also authorizes a limited form of treble damages by allowing collection of a penalty not in excess of three times the amount of the credit service charge or loan finance charge.¹⁰

Two major federal and state agencies have been constituted to aid the consumer in lieu of the traditional legal machinery to fight fraud and deception in the marketplace: the Federal Trade Commission (FTC) and State Consumer Fraud Bureaus.¹¹ The Commission has been delegated powers

³ Steele, *Two Approaches to Contemporary Dispute Behavior and Consumer Problems*, 11 LAW & SOC. REV. 667,669 (1977).

⁴ *Ibid.*

⁵ Consumer Credit Protection Act Sec. 130 (a) (1), USC Sec. 1640 (a) (1) (Supp. 1970).

⁶ Uniform Consumer Sales Practices Act Sec. 11 (a) (1) (1970).

⁷ Uniform Consumer Credit Code Sec. 5.203 (1) (a) (1970).

⁸ Eovaldi & Gestrin, *Justice for Consumers: The Mechanisms of Redress*, 66 N.W.U.L. REV. 281,290 (1971).

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Id.* at 298.

with which to move against unfair or deceptive practices and unfair methods of competition. The Commission's ultimate weapon, however, is a cease-and-desist order which provides no restitution to persons damaged by an unfair or deceptive practice.¹² In view of the manner in which the FTC has operated, it cannot be relied upon as a very efficient mechanism for obtaining restitution even in those cases which involve public as well as private injury.¹³ The State Consumer Bureaus, on the other hand, is the venue through which statutes providing the formal sanction in an injunction proceeding brought by the Attorney General against a merchant's engaging in a specific fraudulent practice is filed.¹⁴ Because the agency is undermanned, complaints have not been well taken. Even as then, bureaus differ in their assessment of when the circumstances warrant an effort to obtain a refund. An important screening power resides in the discretion of the agency which may operate to bar redress of meritorious claims involving novel legal theories or difficult factual proof. Criticisms arise as to both the propriety and ultimate value to consumers of informal refund activities. Some small merchants, under bureau pressure, comply with refund requests even when they do not believe they have engaged in any deceptive practice.¹⁵ Even more serious than the occasional injustice which the honest merchant may suffer is the diversion from broader enforcement action which results from concentration of the bureau's resources and energies on informal mediation. A fraudulent operator will not mind paying out an occasional small refund, while he is free to continue to cheat others by means of the same deceptive practices. The statutes are designed to protect consumers as a class by empowering the attorney general to seek injunctions against deceptive practices. Yet the state bureaus have instituted relatively few injunction proceedings. Having abandoned their statutory function, the bureaus are not doing much to improve the general level of fair dealing in consumer transactions by preventing frauds upon consumers.¹⁶

In response to this, the recent years have seen the availability of free legal services greatly expanded through programs sponsored by the federal government. In the past, ignorance and general apathy have prevented the poorer consumer from harnessing this venue to the full but with the present mass communications and facility of information dissemination, informed Americans have made for a better government by a firmer assertion of rights.

Another innovation for the settlement of disputes is the small claims court.¹⁷ These courts of limited monetary jurisdiction feature simplified pleadings, prohibition and discouraging of the use of lawyers, controlling role for the judge, absence of a jury, non-observance of technical rules of

¹² *Id.* at 299.

¹³ *Ibid.*

¹⁴ *Id.* at 300.

¹⁵ *Id.* at 301.

¹⁶ *Ibid.*

¹⁷ *Id.* at 293.

evidence, availability of conciliation procedures, limited appealability and the holding of evening sessions. Recently, American mass media has fielded a more vocal protestor — the newspaper watchdog,¹⁸ the bullhorn of a disgruntled public. Through the sanctions of publicity, a news agency could force the producer to submit to compulsory arbitration with the aggrieved consumer.

The Philippine Scene

The 1973 Constitution in keeping with the influx of change has provided in its preamble that it is the policy of the State to promote the general welfare, conserve and develop the patrimony of the nation.

Article II, section 7 provides explicitly:

The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living.¹⁹

However, local legislators have still to fulfill the promise. Basic principles on warranty,²⁰ tort,²¹ laws²² and jurisprudence²³ on products liability²⁴

¹⁸ Hannigan, *infra*, note 46.

¹⁹ CONST., art. II, sec. 7.

²⁰ Art. 1546 of the Civil Code provides: Any affirmation of fact or any promise by the seller relating to the thing is an express warranty if, the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon. No affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer.

Art. 1547 of the Civil Code provides: In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

(2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer.

²¹ Art. 2176 of the Civil Code provides: Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Art. 2187 of the Civil Code provides: Manufacturers and processors of foodstuffs, drinks, toilet articles and similar goods shall be liable for death or injuries caused by any noxious or harmful substances used, although no contractual relation exists between them and the consumers.

²² Some of them are:

Act No. 3740 (1930) which was enacted to prevent misrepresentations through advertising or misbranding of certain goods.

Republic Act No. 623 (1951) is the law on the use of marked containers. This was enacted to identify the containers used in manufacturing, packing or selling one's products, to protect the public from confusion or deception.

Republic Act No. 1556 (1956) seeks to give protection to the consumer by requiring the registration of any person, partnership, firm or corporation, or associations engaged in the manufacture, importation, sale or distribution, of feeds or feeding stuffs.

²³ Cases on warranty include: *Songco v. Sellner*, 37 Phil. 599 (1928); *McCullough v. Aenlle*, 3 Phil. 285 (1904); *Pacific Commercial Co. v. Ermita Market*

have proved to be of little value to consumers. Most people would rather let go on a raw deal than engage in expensive court battles against a powerful adversary — the manufacturer. Whereas provisions on warranty and quasi-delict provide a vindicating arm against the capitalist establishment, very few actual cases find this transformed into reality. The usual judicial forum for redress of grievances suggested in these statutes finds no meaning in the common man. In fact, he does not even know the existence of these rights. What is needed is not judicial remedy provided for in the present laws but a more down-to-earth, speedy, practical and inexpensive mode whereby each and every consumer can rest assure that his rights are acknowledged.

In the Philippines, two Ministries are directly involved in consumer protection. These are the Ministry of Trade and Industry and the Ministry of Health.²⁵

1. Ministry of Trade and Industry

In pursuance of the Marcos administration's program to update the agencies under its control and supervision, Executive Order No. 709,²⁶ creating a Ministry of Trade and Industry was promulgated July 27, 1981 with the aim of uniting the efforts of the government in developing a more balanced and integrated program of industry and commerce to enable the economy to respond more effectively to the industrial requirements of the domestic market as well as the increasing number of export outlets for Philippine products. By this order the Ministry of Trade and the Ministry of Industry were expressly abolished together with their services, bureaus, and similar agencies. In its stead, the government makes a bid in integrating and channeling trade activities in the responsibility of one Ministry of Trade and Industry.²⁷

In the same Executive Order, agencies directly responsible for consumer welfare are created: the Bureau of Domestic Trade, which assumes the functions of the abolished Bureau of Domestic Trade Promotion and the abolished Bureau of Consumer Affairs, and the Product Standards Agency, which assumes the functions of the abolished Philippine Bureau of Products Standards and the Metric System Board. Expressly abolished without replacements are the Accreditation Boards for Service and Repair Enterprises, the Foreign Trade Service Board, the Philippine Export Advisory Council.

and Cold Stores, 56 Phil. 617 (1932); Yap Kim Cuan v. Tiaoqui, 31 Phil. 433 (1915); United State Lines Co. v. San Miguel Brewery, Inc., 10 SCRA 805 (1964).

Cases on tort include: People v. Siy Cong Bieng, 30 Phil. 577 (1915); Smith v. Cadwallader Gibson Lumber Co., 55 Phil. 517 (1930); Bataclan v. Medina, G.R. No. 10126, October 22, 1957, 54 O.G. 1805 (March 1958); Rakes v. Atlantic Gulf and Pacilco Co., 7 Phil. 359 (1907).

²⁴ See Cueva, *Philippine Law on Products Liability*, 55 PHIL. L. J. (1947).

²⁵ Castillejos, *Consumer Protection Legislation in the Philippines*, ASEAN Consumer Protection Seminar, 4 (1980).

²⁶ Exec. Order No. 709 (1981).

²⁷ Exec. Order No. 709, sec. 1 (1981).

Under the former set-up the defunct Bureau of Consumer Affairs,²⁸ which is now under the Bureau of Domestic Trade, had the duty of advising and assisting the Minister in all matters relative to the enforcement of all laws, rules and regulations concerning domestic trade, including measures intended to protect consumers and to prevent the establishment of combinations in restraint of trade as well as the use of misleading, deceptive or fraudulent schemes and devices regarding the sale and distribution of commodities. In addition, it attends to consumer complaints and the proper dissemination of consumer information and education. It was formerly the Bureau of Commerce and Industry before it was made the Bureau of Consumer Affairs, but now absorbed under the Bureau of Domestic Trade, the agency has metamorphosed from the duty of promoting, stimulating and regulating trade and commerce to the service it now renders. Although a step in the proper direction, the agency still badly needs the mechanics for the redress of grievances and to operationalize the objectives it has marked for itself. The law gave the agency the task of acquiring, collecting, compiling, publishing, distributing and furnishing statistical data and information relative to commerce and industry. Further, it was also given the power to conduct investigations concerning the nature, organization and resources of those engaged in commerce, industry, mining and transportation. Does not the law unnecessarily enlarge the functions of this body to cover functions already being performed by other entities? Should not this Bureau be limited instead to an all-important duty of receiving consumer complaints and determining those complaints which it can handle administratively for the purpose of a speedy resolution of the complaint through money restitution, repair, replacement or release from contractual obligations, and those which should be criminally prosecuted to be referred to the fiscal's office for prosecution?

Originally known as the Philippine Bureau of Products Standard,²⁹ the Product Standards Agency is charged with the duty of establishing standards of all agricultural, forest, mineral, fish, industrial and other such products of the Philippines applied to human use and consumption. Products imported or locally derived have to be certified for quality and specification for domestic consumption. This way the Bureau can monitor the intake of the consuming public. A provision on consumer protection is seen in section 4 (g):

(g) To initiate and undertake official investigation to determine the nature of organization and business methods of any entrepreneur, person, corporation, association, partnership or firm engaged in the manufacture, marketing, and distribution of the products within the purview of Section three of this Act: Provided, however, That this power shall be exercised only in connection with any known or reported violation of any provision of this Act, or non-compliance with any rule or regulation promulgated in accordance therewith.³⁰

²⁸ Exec. Order No. 574 (1980).

²⁹ Rep. Act. No. 4109 (1940).

³⁰ *Ibid.*

For culpable violations of this Act, the law imposes the penalty of fine and imprisonment, with an additional penalty of cancellation of the certificate of naturalization if the violator is a naturalized citizen and deletion of his name in the civil registry after which he shall be immediately deported. If the violation is committed by or in the interest of a foreign juridical person duly licensed to engage in business in the Philippines, such license to engage in business in the Philippines shall immediately be revoked. Or if the offender is a public officer or employee, he shall in addition to the penalty be dismissed from office and perpetually disqualified from holding public office.³¹ The sanctions are undoubtedly stringent but if this is the only way by which the Bureau will have control of the products both domestic and foreign, then perhaps this could be the only way by which the welfare of the consumers would be adequately safeguarded.

The Order also provides that the Ministry shall exercise administrative supervision over the Price Stabilization Council.³² This Body is charged with the duty of guaranteeing a predictable consistency in the price of basic commodities and that the products reaching the consumers are quality fit. Here, a commendable effort to decentralize government agencies to involve the local sectors is observed. In an attempt to implement its program, it deputized Provincial, City and Municipal Councils, and Barangay Captains and their subordinates to monitor, conciliate and report on the compliance with the price stabilization law and the order of the Commission. The so-called Barangay Price Brigades are designated to conduct price information and education in their area and to survey retail establishments. They also see to it that the price ceilings set by the Council are followed.

2. Ministry of Health

The other Ministry to which the welfare of the consumer is entrusted is the Ministry of Health. There are two specific agencies which were created to ensure the buying public that consummables are not substandard.

Republic Act No. 3720³³ creating the Food and Drug Administration presents the policy of the Government in establishing standards and quality measures for food, drug and cosmetics and in adopting measures to ensure pure and safe supply of food, drug and cosmetics in the country. In pursuance to this, the statute provides regulations fixing and establishing for any food under its common or usual name so far as practicable reasonable definition and standard of identity. Violators of this law are punished with either fine or imprisonment or both. In addition, the Secretary of Health is authorized to suspend immediately upon notice any permit issued under his authority after a finding of violation. The manner of redress available however is slow and tedious. Consider an instance wherein it appears to the

³¹ Rep. Act No. 4109, sec. 7 (1940).

³² Pres. Decree No. 1674 (1980).

³³ Rep. Act No. 3720 (1963).

Food and Drug Administrator that based on its laboratory report an article is adulterated or misbranded. He shall cause notice of this finding to be given to the persons responsible, giving them a reasonable opportunity to be heard before the Board of Food and Drug Inspection. The respondents will then have to submit evidence necessary to impeach the veracity of the findings or charges in question. The Board after hearing submits its recommendation to the Food and Drug Administrator. This instance is premised upon the theory that the laboratory on its own initiative has gathered the sample for its finding of fact. What is overlooked is the situation of the consumer. What does the complainant get out of the trouble of reporting this? Damages are not awarded for his vigilance save in cases where he files a formal suit against the producer based on warranty or quasi-delict. Is reward for this militancy predicated on an injury in fact before liability against the manufacturer attaches? The law provides that when a violation of this kind comes to the knowledge of the Food and Drug Administrator, he shall have first to certify to the Secretary (Minister) of Justice through the Secretary (Minister) of Health that such facts are true. Further, he shall also have to submit the chemist's report, the findings of the Board, together with the other documentary evidence on which such charge is based. The issue of relevancy to the consumer surfaces again. Would not administrative remedies like arbitration be considered more effective than criminal prosecution in attaining a more speedy settlement of complaints without undergoing protracted court litigations? On the effect of deterrence on the manufacturer, aside from the fine and imprisonment imposable by law, the court which found him guilty should also order that the full purchase price of the goods be refunded to the consumer or that the goods advertized as such should be supplied to the purchaser.

Another agency of vital importance is the Dangerous Drugs Board. Created under Republic Act No. 6425³⁴ also known as the Dangerous Drugs Act of 1972, this Body was constituted in response to the need to monitor against the proliferation and abusive use of prohibited and regulated drugs in the country. With almost unlimited power given to it to carry out its objectives, the Board is effectively putting a stop to what could have been a most vicious social disease.

ALTERNATIVE METHODS OF REDRESS AND DISPUTE SETTLEMENTS

The means of redress open to consumers following the scheme of Steele³⁵ could be viewed in the regulatory approach as well as the legal approach. In the legalistic approach would fit the usual means of redress by judicial action via the general law on sales and quasi-delict. Within this category would be the legal rights of action based on the implied guarantee against hidden defects, on the purchaser's being entitled to receive

³⁴ Rep. Act No. 6425 (1972).

³⁵ Steele, *op. cit. supra*, note 3 at 669.

goods of "merchantable quality". The consumer's contractual obligation is thus strengthened by an inescapable obligation on the part of the producer-seller. This guarantee not only assures the consumer of an above-board transaction but it can be his primary weapon against the commission of fraud.

The legal approach manifests in situations wherein a claim for redress may be coupled with proceedings with respect to offenses against laws intended to protect consumers against certain forms of conduct. Thus, in the enforcement of law against such offenses as negligence, the law on quasi-delict is foremost in mind. Accordingly, a consumer may recover damages against a manufacturer of food irrespective of any contractual relations between the parties.³⁶ In one case, a manufacturer was held liable for negligently bottling beer with a piece of broken glass in the bottle.³⁷ And a car manufacturer was liable for the injuries suffered when an automobile bought collapsed as a result of a defective wheel even if the consumer plaintiff bought the car from a retail dealer.³⁸ Time and again, it has been held that the final consumer of foods, medicines or beverages may bring an action against the manufacturer for injuries caused by the negligent preparation of such articles. This is certainly true where the articles are sold in sealed packages and are not subject to inspection.³⁹

When a dispute affecting consumers involves the application of a law or regulation of this kind, the complainant usually has to apply to the responsible authority to obtain its enforcement. And since the possibilities of redress are not only expensive, time consuming and tedious, chances for recovery via the usual legal means are almost nil. Too often a situation occurs wherein the damage done to the consumer amounts to less than the trouble needed to have it vindicated and the consumer would be faced with the risk of losing more in the effort to assert his claim than the claim itself was worth. In which case the buyer merely shrugs it off as plain bad luck and comforts himself by charging the incident to experience. Once again the producer escapes the law with impunity. If this general attitude were to prevail, how many thousands of pesos would be cheated from the public before the attention of the authorities would be called to remedy the wrong, if at all? The situation in the government is far from idyllic. A weak administration harbors corruption and tolerance in the violation of the law. One of the most rampant crimes today is fraud through misleading advertisements and the peddling of imitation goods. Advertising gimmicks present products to possess qualities which they do not have. They tend to confuse the besieged buyer. An example is the variety of orange juice that floods the market today. Many of the artificially flavored water are hardly the

³⁶ HARPER, TORTS, 248 (1905).

³⁷ *Watson v. Augustus Brewery Co.*, 124 Ga. 121, 52 SE 152 (1905).

³⁸ *MacPherson v. Buick Motors Co.*, 217 Wp 382, 111 NE 1050 (1916).

³⁹ *Boyd v. Coca Cola Bottling Works*, 132 Tenn. 23, 177 S.W. 80 (1914).

100% orange extract they claim to be.⁴⁰ In the latter case, facsimile commodities sold at prices way below their registered counterparts have found much encouragement. Status-seeking and colonially raised Filipinos abet the trade in proportions way beyond bounds such that, ironically, it is now the licensed producers who cry for justice and seek the protection of the law.

Clearly, if redress be left to the courts, redress would lose its relevance. Certain members of the Organization for Economic Co-operation and Development (OECD) have imposed in addition to the legal redress available to their consumers facilities for complaints whereby they may state their complaints about certain product or services, or about the behavior of traders, without incurring liability for court costs or becoming involved in tiresome procedures. The countries in which facilities for claims and complaints exist are Canada, Japan, the Nordic countries, Austria, Netherlands and the United Kingdom.⁴¹ In most of the cases, the proceedings are similar. Consumers' complaints are sent to a special office usually under a department of consumer affairs. Complaints are discussed between the complaint office and the producer concerned, the complaints office consisting entirely or partly of consumers' representatives. In most cases the decision of the board is not binding. If the party involved does not voluntarily comply with the decision, the consumer is advised in connection with court proceedings. Complaints in some cases are transmitted to the authorities of the Province if the matter comes within their jurisdiction. In certain countries like Norway, consumers may apply to the Consumer Council which will consider their claim on deposit of a sum of money which is usually refunded when the affair is settled. Although the findings of the body are not binding upon the producer or retailer, and its decisions are not sanctioned by penalties, it has been revealed that this system works better to achieve the aim of consumer protection.⁴²

A good agency to set up in this country is one akin to those established among OECD member countries. The consumers' complaints could be sent to a special section in the Bureau of Consumer Affairs which functions as the consumers' ombudsman, in much the same way as the Office of the *Tanodbayan* was created to check erring public officials. Instead of making violations penal in character, efforts should be geared towards decriminalization and compartmentalizing the system to fall strictly within the administrative ambit, thereby unclogging the courts and turning out less criminals. Like the *Tanodbayan*,^{42a} a mere letter or complaint shall be deemed sufficient to cause the consumers' ombudsman to espouse his cause and set the machinery for investigation in motion. This is vital to keep the markets

⁴⁰ Diyco, *Consumer's Corner*, "Under Fire: labelling laws for orange fruit drinks." *Bulletin Today*, April 29, 1981, p. 21, col. 3.

⁴¹ OECD, *op. cit. supra*, note 2 at 14-15.

⁴² *Ibid.*

^{42a} *Tanodbayan* Adm. O. No. 1 (1979).

clean against unscrupulous businessmen. The whole proceedings shall be without cost to the complainant. Should his claim prove true, he shall also be entitled to damages. On the other side of the coin, of what benefit would this be to the producer? For one thing, he shall help eliminate unauthorized, unfair competitors to his legitimate business. For another, he would be advised of any defect in his product or services to enable him to improve upon them, and consequently aid his business prospects. Perhaps in order to thresh out the real complaints from those filed intended merely to harass producers, a bond of good faith may be posted subject to refund after the settlement of the case. This bond may range from P50-P100 depending on the gravity of the charge which shall be surrendered to the investigating office. While honest mistake or good faith excuses the complainant should the allegations later prove false, the bond would be forfeited as a penalty to the producer should the complaint prove to be utterly groundless and malicious. Another way by which good faith may be ensured is to require the complainant to secure a guarantor. This guarantor in the person of his barangay captain, barangay counsellor, or any prominent member of the community need not himself post the bond but be required only to appear with the complainant before the local investigating officer and there together with the complainant sign an affidavit of good faith. Or it is suggested in the alternative to forego altogether with the posting of the bond and instead arm the Bureau of Domestic Trade with enough power and authority to settle all cases of consumer complaints with options to resort to administrative remedies such as restitution, repair, replacement or refund. Or when court action is proper, refer the matter for prosecution to the fiscal after a thorough study by the Bureau. It is stressed that the protection of consumers by means of regulations is wholly successful only when there is an adequate number of officials to supervise the implementation of the regulations, and if these officials have the concern and cooperation of the consumers themselves.

Another method by which consumers can seek redress of grievances is through the class action. While most consumer claims do not involve large enough sums of money to make feasible the retention of a private attorney to take formal legal steps, the class action provides a mechanism for the employment of private counsel through combined efforts.⁴³ The class action, however, generally works when injunctive relief, rather than damages is sought. This remedy is advisable for the middle-income bracket rather than those of the low-income level. Here, a certain degree of sophistication and determination is required to know what steps are necessary to take, a skill not generally available to the poor. Thus, in a class action, consumers commonly aggrieved pool their resources together and hire an able counsel to champion their cause in the judicial forum. Damages shall

⁴³ Dole, *Consumer Class Actions Under the Uniform Deceptive Trade Practices Act*, 1968 DUKE L.J. 1101, 1103, as cited in Eovaldi & Gestrin, *op. cit. supra*, note 8 at 89-90.

be awarded to them proportionately, with an allowance for the attorney's fees separate from the compensation given to the parties.

A third suggestion is a futuristic approach as to how the government may relieve distress signals from its consumers. The Consumers Affairs Committee of the Young Lawyers' Section of the American Bar Association, proposed the establishment of a network of neighborhood consumers centers throughout the nation.⁴⁴ Unlike existing governmental and private consumer agencies which concentrate their limited resources on large-scale frauds, the concept behind the Neighborhood Consumers Centers (NCC) is to provide aid to consumers on a local level, where meaningful legal redress has traditionally been lacking. As the pilot program for this project, the Center would operate as a grass-roots organization, addressing itself to the more immediate but less financially substantial everyday complaints of the average consumer. The center will undertake a consumer education program which will be designed to communicate information in basic terms. A consumer education class will be conducted within the local communities through existing community organizations. Information will be provided that will relate to everyday experiences of household management. Warning concerning prevailing deceptive practices and frauds will help the potential victim recognize the common danger signals before the fraud is committed. Broadly stated, the education division will undertake to help consumers obtain the know-how of surviving and competing in the marketplace.

The key to a successful dispute settlements is through investigation of the consumer complaint. It is suggested in this experiment that law students who have sufficient knowledge in procedural law could provide the necessary manpower to assist the Director in the investigations. This will not only provide a good training ground for law students toward a public-service oriented career but will also acquaint the complainant in the processes and procedures of consumer remedy. In cases where a formal legal action is appropriate, a counsel *de officio* may be employed. The lawyer will be assisted by the law students within the limitations imposed by the local legal internship rules. The center can employ a director who will serve on a full-time basis as the operating head of the center. The Director will be a lawyer, a member of the local Bar and will have to have substantive experience in consumer protection law. Under his supervision and with the cooperation of local lawyers, the center's program will be powered primarily by law students.

A fourth alternative is characteristically and typically Filipino. Presidential Decree No. 1508⁴⁵ established a system of amicably settling disputes at the barangay level. A body known as the *Lupong Tagapayapa* composed of about twenty members headed by the Barangay captain as chairman

⁴⁴ Mussehl, *The Neighborhood Consumer Center: Relief for the Consumer at the Grass-Roots Level*, 47 NOTRE DAME LAW. 1093, 1133-1134 (1972).

⁴⁵ Establishing a System of Amicably Settling Disputes at the Barangay Level.

exercises administrative supervision over a conciliation panel known as *Pangkat ng Tagapagkasundo*. The Lupon meets regularly to provide a forum for the exchange of ideas on matters relevant to the amicable settlement of disputes. Disputes between or among persons actually residing in the same barangay are brought for amicable settlements before the Lupon. Any individual who has a cause of action against another on any matter may complain orally or in writing to the Barangay captain, who shall effect mediation. If he fails to do so, he shall constitute the Pangkat to hear the parties, simplify the issues and explore all possibilities of amicable settlement. This compulsory mediation is a prerequisite to the filing of any action in court. Exceptions to its jurisdiction are matters where one party is the government or any of its subdivision or instrumentality; where one party is a public officer or employee, and the dispute relates to the performance of his official functions; for offenses punishable by imprisonment exceeding 30 days, or a fine exceeding ₱200; for offenses where there is no private offended party; and for such other classes of disputes as may be determined by the Prime Minister upon recommendation by the Minister of Justice and the Minister of Local Government. A specific class of action that should be handled by the Lupon is consumer complaints. The Lupon on its own or in conjunction with the Bureau of Domestic Trade should act as arbitrators in effecting remedy to consumers. Both the consumer and the manufacturer may be summoned by the body to require them to settle their differences. The Lupon should also forward their findings of fact to the Bureau of Domestic Trade who may then require the manufacturer to withdraw all such defective products or face the risk of criminal and administrative prosecution. But one important limitation to this is the restriction on the jurisdiction of the Lupon to disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangays adjoin each other.

A fifth alternative by which the aggrieved consumer can seek remedy other than the legal forum is through a media ombudsman. A nonpublic, nonformal, noncoercive, nonadjudicatory, nonrule-oriented institution totally removed from the official courts.⁴⁶ A third-party resource or remedy agent standing outside the dyadic relationships in which the dispute arises, the newspaper ombudsman is designed to assist the complainant who has not been able to obtain a response from the other party, a communication line where the response of the producer is evasive or hostile. Being a mere arbiter, the newspaper ombudsman can effectively facilitate communication between the parties but cannot mediate nor adjudicate and impose solutions coercively. In the Philippines, a publication called "Ang Mamimili" functions as the organ of the Kilusan ng Mamimili ng Pilipinas, Ink. (KMPI) or the Philippine Consumers Movement, Inc. Serving as the media ombudsman, the corporation is a private, non-stock, non-profit, non-political

⁴⁶ Hannigan, *The Newspaper Ombudsman and Consumer Complaints: An Empirical Assessment*, 11 LAW & SOC. REV. 679 (1977).

civic movement designed to improve the quality of Filipino life by informing, guiding and protecting the consuming public. A member of the International Organization of Consumers Unions (IOCU), the KMPI is the conscience the developing nations need in an economy dictated by industrialized countries. The weapon the media ombudsman wields is publicity. It cannot adjudicate nor penalize, it merely serves as a public forum to ventilate the grievances of the complainant and on the position of the manufacturer. But in an age where the media control the minds of the people, publicity may be a most powerful deterrence against an unheeding manufacturer.

A sixth method widely used as an alternative to litigation is popularly known as arbitration.⁴⁷ To be effective, it requires that the parties be willing to participate in the forum, and that they reach an acceptable settlement and abide by its terms. Arbitration is an extra-judicial dispute-settlement device utilizing an impartial third party. It requires only that the parties submit themselves to the forum upon which the arbitrator makes the independent determination of the issues and enters a binding award whose enforceability is not dependent on the parties' acquiescence. Unlike a judge, who in reaching a decision must give consideration to such factors as consistency in the application of legal principles or certainty for the sake of guiding future conduct, the arbitrator is not bound by rules of law and considers only the personal equities of the parties before him. Businessmen often prefer to submit their disputes to an arbitrator familiar with the customs of their trade rather than go through prolonged proceedings in the overburdened courts before a randomly assigned judge. In this light, an administrative officer or officers in the Bureau of Domestic Trade may sit as arbitrators to settle disputes arising from such transactions. Being acquainted with the practices of commerce, the arbitrator can strike a happy balance between the promotion of business and the protection of consumers.

Legislators have not been totally apathetic to the cause of the consumer. Early American Congressional warranty bills proposed that manufacturers of automobiles and home appliances make arbitration available to consumers for the settlement of warranty disputes.⁴⁸ The bills prescribed a detailed procedure whereby a manufacturer is required to provide the consumer with an arbitration demand forum with a certain number of days from receipt of the notice of a warranty claim. Thus, where a customer chooses to submit his grievance to arbitration, the manufacturer would have to arrange within days from receipt of the demand, proceedings to take place according to rules prescribed by the head of the department. All expenses for the arbitration would be borne by the manufacturer unless it appeared that the claim was wholly without merit and asserted in bad faith. If the manufacturer failed to comply with an award within the prescribed time, an action could be instituted in a court of general jurisdiction, not only

⁴⁷ Eovaldi & Gestrin, *op. cit. supra*, note 8 at 306-307.

⁴⁸ *Ibid.*

to enforce the award, but to recover the entire retail purchase price of the product as well as attorney's fees. A manufacturer who failed to comply with any of the obligations imposed by the arbitration law would be subject to additional liability in the form of an indemnity of an amount determined by the court. While the remedies by the bills for resolution of warranty disputes would not be exclusive, the customer would have to choose the remedy because once having made a demand for arbitration, he would be barred from asserting his legal warranty rights. To effectuate an equilibrium, the manufacturer has the power to shift the economic burden back to the consumers by including arbitration expenses in the price of the product. The present warranty legislations in the United States have modified this cost-spreading feature in that costs are not anymore totally absorbed in the prices paid by the consumer.

The Filipino lawmakers could take up this suggestion in requiring manufacturers of cars and home appliances to make arbitration available to consumers for the settlement of warranty claims. Costs for the arbitration should be borne by the manufacturer as he warrants everything that he sells to be free from hidden faults or defects and that they are what they purport to be. Expenses should not be shifted to the public by including them in the price as this would give the manufacturer reason to charge exorbitant prices besides rendering the deterrence ineffective and useless.

REALIZATION OF OBJECTIVES

The primary concern of this paper is to raise the status of consumers to the same level of advantage as producers, and the only way that this can be done is through an informed basis. The paramount necessity of informing and educating the consumers cannot be exaggerated. While consumer education and information have heretofore been limited to knowledge learned at home, changes in the socio-economic order have imposed increasingly complex requirements on the individual and the public authorities as to require expertise which basic common sense cannot suffice. The problem of the consumer stems from his increasing difficulty in identifying among the innumerable products offered to him the ones most appropriate to his needs. Perhaps a substantial slice of consumer problems could be avoided if the consumer is properly informed on the products and services offered to allow him to make the soundest possible choice in the best possible conditions, ensuring the optimum use of the society's resources. In the Philippines, consumer education has taken a backseat in the educational program. Elementary and secondary schools have only given it cursory attention. Institutions of higher learning have neglected it altogether save in those courses where home management is part of the curriculum. To help combat against unscrupulous scheming producers, it is advocated that consumer education be considered as part of the curriculum of every thinking Filipino. A private group called the Consumers Federated Groups of the Philippines, Inc. (CFGP) has been involved in consumer information and

education activities. In a recent move, the CFGP has launched comprehensive seminars on consumer information and consumer rights under existing laws.⁴⁹ For this purpose it has trained seventy-five (75) trainers of rural consumers. These trainers have been conducting echo seminars in their respective municipalities and cities. Although the CFGP is still a small group, this organization could be the answer to the problem of consumer education with the proper support given it by other consumer groups and the Establishment.

In a recent seminar held in Quezon City, the participants of the First ASEAN Consumer Protection seminar drew up the ASEAN Consumer Protection Declaration and Programme of Action.⁵⁰ Among the recommended policies were the right to information against dishonest, deceitful or grossly misleading information, the right to education which will enable the consumer to acquire knowledge and skills necessary to become an informed consumer.⁵¹ In line with this policy, it was suggested that the Ministry of Education and other appropriate authorities in each ASEAN country, acting with the cooperation of the relevant government agency involved in consumer protection as well as consumer organizations should adopt a curriculum on Consumer Education to be used at all levels of education. This curriculum should take into account the following elements: critical awareness, active involvement, social responsibility, ecological responsibility, and solidarity.

The need to include questions affecting consumers in vocational training programs should also be considered. It is pointed out that even good consumer education in schools is not enough. The welfare of consumers living in a rapidly evolving society with technological changes and developments, and changes in legislations, are apt to be taken for granted. In many countries, general educational courses for adults are given in evening schools, correspondence schools, and similar others.⁵² These are organized by the national education services and by consumers' and other private organizations and in some other countries by the trade unions. In addition to the academe, consumer education campaign should include outlets like the radio, television, cinema and other forms of mass media. These communication centers could present special educational programmes or informational line-ups which would be of interest to consumers. This way the public would be suffused with information enough to put him on guard against the glitter of glossy advertisements.

⁴⁹ The Consumers Federated Groups Of The Philippines, *Consumerism in 1981*, Industrial Philippines, Nov.-Dec. 1980, p. 9.

⁵⁰ International Organization of Consumers Union, & the University of the Philippines Law Center, *The ASEAN Consumers Protection Declaration and Programme of Action*, (1980).

⁵¹ *Id.* at 2.

⁵² *Id.* at 13-14.

CONCLUSIONS.

The consumer's challenge need not be met in the judicial arena. While the court is the conventional forum for the enforcement of a right and the redress of grievances, in the area of consumer protection where violations are rampant and individual monetary injury is slight, the cost of suits necessary to press claims have become impractical. At this stage of the development of our Judicial system, it is imperative that an alternative solution be found. Administrative agencies are the most likely choice for they are within the structural framework of the government. Admittedly, agencies like the Food and Drug Administration and the Bureau of Domestic Trade have taken a hand on the matter but they have neither been completely effective in dealing with the problem, nor expedient in the relief sought by the consumer. Hence, functions like negotiation, mediation, conciliation, arbitration should be incorporated in them, as well as the establishment of additional agencies like the Ombudsman and consumer centers, and the venue for the institution of class actions. Existing bodies could have a larger role as in allowing the Lupong Tagapayapa to settle consumer complaints. On the other hand, the law should not be so strict as to stifle entirely the free flow of trade and commerce. For this reason, administrative agencies should be programmed to handle the delicate balance between the interests of the consumer and the producer, helping both maintain the equilibrium and make for the healthy run of the economy. If this can be done then consumerism would have broken ground.