CHAPTER: IV
CONCEPT OF CONSUMERISM GLOBALLY

4.1. Introduction:

In the word Consumerism, "Consumer" means the user or customer and "ism" means movement", and hence, consumer movement is popularly known as ‘Consumerism’. It is an organized and collective movement of consumers. This movement started in United State in the year 1920 to protect the interest of the consumers and to give them satisfaction in purchase. The main object of this movement is to educate and unite consumers and to fight for the protection of their rights. Consumer movement is similar to trade unions because it is a collective approach to solve the malpractices and injustice done by any organization. Thus, it is a movement of the consumers, for the consumers and by the consumers because it is a social movement of consumers and it has come into existence to educate and unite consumers to fight for their rights. In short the process of uniting consumers is nothing but Consumer Movement.178

Consumer protection laws and product liability both differ from country to country. But the basic reasoning behind this is to deal with the protection and safety of consumer, even if the damage is caused by consumer own negligence.

Consumer protection laws serve to protect individuals from fraudulent corporations or business practices. These laws may also support consumers in rebuilding credit or in recovering from bankruptcy. Some countries, such as the United Kingdom and Australia, have agencies that operate to protect consumers. The United States has several acts that have been passed by Congress to regulate fraudulent business practices and protect consumers.179

In the United Kingdom, consumers are protected by the Office of Fair Trading. The Consumer Protection act was passed by the Parliament in 1987 to delineate product liability, protect consumer safety and clarify pricing indications. Complaints may be brought before the Magistrates court or the Secretary of State.180

180 WWW. Consumer protection law in UK. en.wikipedia.org/wiki/consumerprotection_in_the_United_kingdom.
In Australia, consumer complaints are addressed by Australian Competition and Consumer Commission (ACCC). The ACCC enforces the 1974 Trade Practices Act and serves to protect consumers from fraudulent practices. Warranties of the Trade Practices Act are specifically aimed at regulating product safety and identifying unfair trade practices.\textsuperscript{181}

In the United States, consumer protection laws are enforced and set in place by the Federal Trade Commission (FTC) to protect consumers from misleading or unfair trade practices. Most states also have additional consumer protection laws that protect consumers from business-specific fraud, such as vehicle and home sales or club contracts. These state laws vary greatly between regions and are often enforced by the state attorney general. Some well-known examples of federal consumer protection laws enforced by the FTC are the Consumer Credit Protection Act and the Magnuson-Moss Warranty Act.

The Consumer Credit Protection Act was set in place to protect those who are borrowing money. This act requires lenders to disclose all terms and conditions of the financing agreement before completing the transaction. These laws also limit the garnishment of wages and regulate the use of charge accounts.

The Consumer Credit Protection Act also requires businesses to participate in fair credit reporting practices. Fair credit reporting requires that the consumer be fully informed of any accruing debt and debt collection attempts before acquiring higher interest rates or being reported to a collection agency. The Consumer Credit Protection Act is typically enforced by the FTC, but most states have laws that are similar to the act to prevent state-isolated incidents of fraud.

The Magnuson-Moss Warranty Act was passed by Congress in 1975. This Act protects the consumer by mandating that a product's warranty completely disclose any terms and conditions of the warranty. These laws aim to protect consumers by improving available product information and preventing deceptive warranty practices by businesses.

The federal cause of action is a title that allows consumers to file complaints if they experience problems with a company defaulting on a written warranty. If a

\textsuperscript{181} WWW. Consumer protection law in Australia. 
company fails to provide what was originally stipulated in the full or limited warranty, the buyer has the right under this act to seek legal action. If the seller is found to have defaulted on a warranty, then the seller is required to replace the cost of the product and pay any associated legal fees incurred by the buyer.\textsuperscript{182}

4.2. Definition of consumerism:

1. Consumerism reference to a moment by consumers to insure fair & honest (ethical) practice on the part of manufacturer, traders, dealers & service provider in relation to consumer.\textsuperscript{183}

2. According to Philip Kotler ‘consumerism is an organized movement of citizen and government to impose right & power of buyers in relation to sellers.’\textsuperscript{184}

3. The movement may be regarded & attempt by an individual consumer activists and consumer association for creating consumer awareness about the mall practices in the market and finding ways and means to protect their interest.\textsuperscript{185}

4. A consumer movement is also referred to as consumption.\textsuperscript{186}

4.3. Consumerism Globally:

Consumerism is a social and economic order that encourages the purchase of goods and services in ever-greater amounts. The term is often associated with criticisms of consumption starting with Thorstein Veblen. Veblen’s subject of examination, the newly emergent middle class arising at the turn of the twentieth century, comes to full fruition by the end of the twentieth century through the process of globalization.\textsuperscript{187}

Sometimes, the term "consumerism" is also used to refer to the consumerists movement, consumer protection or consumer activism, which seeks to protect and inform consumers by requiring such practices as honest packaging and advertising, product guarantees, and improved safety standards. In this sense it is a movement or a

\textsuperscript{182} WWW. Consumer protection law in United State. \\
\textsuperscript{183} Encyclopedia Britannica 15\textsuperscript{th} edition page 100. \\
\textsuperscript{185} Devid A Aker and Georges Day: introduction a guide to consumerism second ed. 1967 \\
\textsuperscript{186} P.G. Krishman- Consumer protection and the law in C.P. and Legal Control at pg. 121-122 \\
set of policies aimed at regulating the products, services, methods, and standards of manufacturers, sellers, and advertisers in the interests of the buyer.\(^{188}\)

In economics, consumerism refers to economic policies placing emphasis on consumption. In an abstract sense, it is the belief that the free choice of consumers should dictate the economic structure of a society (cf. Producerism, especially in the British sense of the term).\(^{189}\)

A great turn in consumerism arrived just before the Industrial Revolution. In the nineteenth century, capitalist development and the industrial revolution were primarily focused on the capital goods sector and industrial infrastructure (i.e., mining, steel, oil, transportation networks, communications networks, industrial cities, financial centers, etc.).\(^{190}\)

At that time, agricultural commodities, essential consumer goods, and commercial activities had developed to an extent, but not to the same extent as other sectors, the members of the working classes worked long hours for low wages as much as 16 hours per day. 6 days per week. Little time or money was left for consumer activities.\(^{191}\)

Further, capital goods and infrastructure were quite durable and took a long time to be used up. Henry Ford and other leaders of industry understood that mass production presupposed mass consumption. After observing the assembly lines in the meat packing industry, Frederick Winslow Taylor brought his theory of scientific management to the organization of the assembly line in other industries; this unleashed incredible productivity and reduced the costs of all commodities produced on assembly lines.\(^{192}\)

While previously the norm had been the scarcity of resources, the Industrial Revolution created an unusual economic situation. For the first time in history products were available in outstanding quantities, at outstandingly low prices, being thus available to virtually everyone. So began the era of mass consumption, the only era where the concept of consumerism is applicable.

\(^{188}\) Ibid.
\(^{189}\) "Consumerism”. Britannica Concise Encyclopedia Online. 2008.
\(^{190}\) Ryav in Ritzer 2007, p. 701
\(^{191}\) Ibid. 701 to 705
\(^{192}\) Ibid p. 702
Consumerism has long had intentional underpinnings, rather than just developing out of capitalism. As an example, Earnest Elmo Calkins noted to fellow advertising executives in 1932 that "consumer engineering must see to it that we use up the kind of goods we now merely use", while the domestic theorist Christine Frederick observed in 1929 that "the way to break the vicious deadlock of a low standard of living is to spend freely, and even waste creatively".193

The older term and concept of "conspicuous consumption" originated at the turn of the 20th century in the writings of sociologist and economist, Thorstein Veblen. The term describes an apparently irrational and confounding form of economic behaviour. Veblen's scathing proposal that this unnecessary consumption is a form of status display is made in darkly humorous observations like the following:

“It is true of dress in even a higher degree than of most other items of consumption, that people will undergo a very considerable degree of privation in the comforts or the necessaries of life in order to afford what is considered a decent amount of wasteful consumption; so that it is by no means an uncommon occurrence, in an inclement climate, for people to go ill clad in order to appear well dressed”.194

The term "conspicuous consumption" spread to describe consumerism in the United States in the 1960s, but was soon linked to debates about media theory, culture jamming, and its corollary productivism.

“By 1920 most people had experimented with occasional installment buying.”

4.3.1 Consumerism In modern Period

Beginning in the 1990s, the most frequent reason given for attending college had changed to making a lot of money, outranking reasons such as becoming an authority in a field or helping others in difficulty. This correlates with the rise of materialism, specifically the technological aspect: the increasing prevalence of compact disc players, digital media, personal computers, and cellular telephones. Madeline Levine criticized what she saw as a large change in American culture- “a

shift away from values of community, spirituality, and integrity, and toward competition, materialism and disconnection.\textsuperscript{195}

Businesses have realized that wealthy consumers are the most attractive targets of marketing. The upper class's tastes, lifestyles, and preferences trickle down to become the standard for all consumers. The not so wealthy consumers can “purchase something new that will speak of their place in the tradition of affluence”\textsuperscript{196} A consumer can have the instant gratification of purchasing an expensive item to improve social status.

Emulation is also a core component of 21\textsuperscript{st} century consumerism. As a general trend, regular consumers seek to emulate those who are above them in the social hierarchy. The poor strive to imitate the wealthy and the wealthy imitate celebrities and other icons. The celebrity endorsement of products can be seen as evidence of the desire of modern consumers to purchase products partly or solely to emulate people of higher social status. This purchasing behavior may co-exist in the mind of a consumer with an image of oneself as being an individualist.

Since consumerism began, various individuals and groups have consciously sought an alternative lifestyle. These movements range on a spectrum from moderate "simple living",\textsuperscript{197} "eco-conscious shopping",\textsuperscript{198} and "local food",\textsuperscript{199} to Foreignism on the extreme end. Building on these movements, ecological economics is a discipline which addresses the macro-economic, social and ecological implications of a primarily consumer-driven economy.

In many critical contexts, consumerism is used to describe the tendency of people to identify strongly with products or services they consume, especially those with commercial brand names and perceived status-symbolism appeal, e.g. a luxury car, designer clothing, or expensive jewelry. A culture that is permeated by consumerism can be referred to as a consumer culture or a market culture.\textsuperscript{200}

\begin{thebibliography}{9}
\bibitem{198} Janet Luhrs's "The Simple Living Guide" (NY: Broadway Books, 1997); Joe Dominez, Vicki Robin et al., "Your Money or Your Life" (NY: Penguin Group USA, 2008)
\bibitem{199} Alan Durning, "How Much is Enough: The Consumer Society and the Future of the Earth" (NY: W.W. Norton, 1992)
\bibitem{200} Paul Roberts, "The End of Food" (NY: Houghton Mifflin, 2008); Michael Shuman, "The Small-mart Revolution" (San Francisco: Berrett-Koehler Publishers, 2007)
\end{thebibliography}
Consumerism can take extreme forms such that consumers sacrifice significant time and income not only to purchase but also to actively support a certain firm or brand.\(^{201}\)

Opponents of consumerism argue that many luxuries and unnecessary consumer products may act as social mechanism allowing people to identify like-minded individuals through the display of similar products, again utilizing aspects of status-symbolism to judge socio-economic status and social stratification. Some people believe relationships with a product or brand name are substitutes for healthy human relationships lacking in societies, and along with consumerism, create a cultural hegemony, and are part of a general process of social control\(^{202}\) in modern society. Other researchers argue that the struggle for symbols of social distinction promoted by consumer culture creates narcissistic, hostile relations between individuals, which can be criminogenic in locations where consumer products are difficult to acquire, or where individuals simply see no limit to their acquisition.\(^{203}\)

Critics of consumerism often point out that consumerist societies are more prone to damage the environment, contribute to global warming and use up resources at a higher rate than other societies.\(^{204}\) Dr. Jorge Majfud says that "Trying to reduce environmental pollution without reducing consumerism is like combating drug trafficking without reducing the drug addiction."\(^{205}\)

In 1955, economist Victor Lebow stated:

Our enormously productive economy demands that we make consumption our way of life, that we convert the buying and use of goods into rituals, that we seek our


\(^{204}\) Global Climate Change and Energy CO\(_2\) Production—An International Perspective.

spiritual satisfaction and our ego satisfaction in consumption. We need things consumed, burned up, worn out, replaced and discarded at an ever-increasing rate.  

Critics of consumerism include Pope Benedict XVI, German historian Oswald Spengler (who said, "Life in America is exclusively economic in structure and lacks depth"); and French writer Georges Duhamel, who held "American materialism up as a beacon of mediocrity that threatened to eclipse French civilization."

In an opinion segment of New Scientist magazine published in August 2009, reporter Andy Coghlan cited William Rees of the University of British Columbia and epidemiologist Warren Hern of the University of Colorado at Boulder, saying that human beings, despite considering themselves civilized thinkers, are "subconsciously still driven by an impulse for survival, domination and expansion... an impulse which now finds expression in the idea that inexorable economic growth is the answer to everything, and, given time, will redress all the world's existing inequalities." According to figures presented by Rees at the annual meeting of the Ecological Society of America, human society is in a "global overshoot", consuming 30% more material than is sustainable from the world's resources. Rees went on to state that at present, 85 countries are exceeding their domestic "bio-capacities", and compensate for their lack of local material by depleting the stocks of other countries, which have a material surplus due to their lower consumption.

Not all anti-consumerists oppose consumption in itself, but they argue against increasing the consumption of resources beyond what is environmentally sustainable. Jonathan Porritt writes that “consumers are often unaware of the negative environmental impacts of producing many modern goods and services, and that the extensive advertising industry only serves to reinforce increasing consumption.” Likewise, other ecological economists such as Herman Daly recognize the inherent conflict between consumer-driven consumption and planet-wide ecological degradation.

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208 Stearns, Peter. Consumerism in World History. Routledge
4.4 Consumer Protection Laws Globally:

USA, UK, Australia, Canada, and New Zealand in all developed countries consumer protection law implemented, along with this other laws were also implemented for protection of consumers. After the implementation of consumer protection law in these countries, how fast the consumer can get justice or manufacturer or seller how they can be penalized this point was under consideration. Therefore the Consumer Protection Act in USA, U.K., Australia, Canada, New Zealand etc. discuss following:

4.4.1 Consumer protection law in Australia\textsuperscript{210}:-

The Australian Consumer Survey is the first national survey of consumer and business awareness and understanding of rights and obligations under consumer laws. It also covers the experiences of consumers and businesses in dealing with consumer issues. The Survey was commissioned jointly by the Australian, State and Territory governments. It shows that Australian consumers and businesses have a high level of awareness of the existence of consumer laws, but that there are opportunities to increase their knowledge of their rights and obligations.

Most consumers are confident that businesses do the right thing, but there are some vulnerable consumers in our society who are less confident and who encounter more difficulty in dealing with consumer issues. Consumers are also generally aware that there are ways in which to resolve disputes if needed and that there are consumer agencies that can assist them. However, some people are concerned about the effectiveness of these avenues for seeking redress.

Ultimately, markets work effectively because consumers are confident that they can buy what they need and want by making effective choices and because businesses are free to compete and innovate to serve consumer needs. The role of governments lies in working to ensure that these conditions exist.

The Australian Government, together with the States and Territories, has delivered the most significant overhaul of consumer law since 1974, the Australian Consumer Law (ACL). The ACL replaces a multitude of national, state and territory

consumer laws, updates and simplifies the law and introduces robust new investigation and enforcement powers.\textsuperscript{211}

The Australian Consumer Law (ACL) commenced on 1 January 2011 as a law of the Commonwealth and of each State and Territory. It applies in the same way to all Australian consumers and businesses. At the same time, the name of the Trade Practices Act 1974 changed to the Competition and Consumer Act 2010.\textsuperscript{212}

The \textit{Australian Consumer Law} is uniform legislation for consumer protection, applying as a law of the Commonwealth of Australia and of each of Australia's states and territories. The law commenced on 1 January 2011, replacing 20 different consumer laws across the Commonwealth and the states and territories.\textsuperscript{213} The text of the law is a schedule to the Commonwealth Competition and Consumer Act 2010 \textsuperscript{214} which is incorporated into the law of each state and territory by reference in separate fair trading acts.

The law was developed by agreement of the Council of Australian Governments.\textsuperscript{215}

The provisions of the Australian Consumer Law broadly reflects the provisions previously afforded by the Trade Practices Act 1974, although some additional protections have been added. The Australian Consumer Law also generally reflects most of the consumer protection provisions of the fair trading legislation in each state and territory.

Implementing identical consumer protection laws at Commonwealth and state/territory levels promotes consistency between jurisdictions. It will also make it easier for the Federal Parliament to amend the provisions which will then be reflected in the laws of the states and territories without the parliaments of each jurisdiction needing to debate and enact the amendments separately, although the states and territories reserve the right not to implement any amendments within their own jurisdiction.

By Brian O’Neill on September 14th 2011 Posted in Consumer Protection, Regulatory Compliance. Early this year, Australia introduced a new set of consumer protection laws that should be of significant interest to any consumer-facing company with operations in Australia, especially given the government’s diligent efforts to inform consumers of their rights and how to exercise them.

The Australian Consumer Law (CPL), which is in fact a schedule to the Competition and Consumer Act 2010, is a large consolidation of what was previously a disparate set of 20 or so acts and regulations dealing with consumer protection.

- Although the CPL has conveniently packaged various bits of consumer protection laws into one place, do not be fooled, it is not a mere consolidation. On the contrary, it incorporates new and expanded consumer protections such that compliance models developed under the old consumer protection regime will in many cases be insufficient. Failure to re-evaluate and adjust your compliance models could lead to scrutiny by the Australian Competition and Consumer Commission, increased consumer claims, and/or reputational harm.

- If you manufacture goods that are sold in Australia, certain parts of the CPL apply to you, even if you are not actually present in Australia or selling goods directly to consumers. The following example scenario highlights how this can create problems when determining when to approve or deny a warranty claim from a consumer:

Like many manufacturers, you offer consumers of your goods a limited warranty that is governed by certain terms and conditions. An Australian consumer calls you to initiate a claim under your limited warranty. Since this particular claim does not fall within the confines of your limited warranty, you deny the claim. Your risk exposure does not end there. The consumer may still have a statutory cause of action under the CPL to sue either you or the local seller for damages pursuant to one of the several “consumer guarantees” contained in the CPL. Interestingly, even if the consumer elects to sue the local seller, you are still not off the hook since the seller may in turn have rights under the CPL to seek indemnification from you.

216 WWW. new consumer protection legislation in Australia. Com.
Be aware that if you provide direct-to-consumer services in Australia (e.g. repair or warranty services), you will likely have additional responsibilities under the CPL.

- Any “affected person” can make claims under the CPL, which could be any person who acquires the goods or otherwise derives title to goods from an original purchaser.

- It may be important to remind consumers of their rights under the CPL in your standard terms and conditions. Failure to do so could result in hefty fines. Also, certain regulations will come into force on January 1, 2012, that will, in some cases, force you to insert prescribed language into your standard terms and conditions without modification.

The Australian Consumer Law and Your Safety\(^\text{217}\):

1) You are entitled to expect safe goods and services.
   - From 1 January 2011, every Australian consumer will be protected in the same way under the Australian Consumer Law from unsafe consumer products and product-related services.
   - By knowing your rights, you can make informed choices and demand safer products and services.

2) Safe products.
   You are entitled to expect that every retailer, manufacturer and importer in Australia complies with product safety laws.
   - Product safety laws apply to products bought in shops, at home, over the phone or online.
   - If you are injured in an accident involving a consumer product, report it to the place you bought it from.

3) Information on product safety.
   - You can find information, such as safety tips, the latest product safety news and the full set of national product safety standards and bans, and report any concerns about unsafe products.

\(^\text{217}\) www.productsafety.gov.au/content/index.phtml/itemId/970225
• Unsafe products can be recalled. 218

4) Quality products and services

• All products must be safe, durable, free from defects, fit for purpose, acceptable in appearance, match its description and match any sample or demonstration model.
• All services must be delivered with care, skill and within a reasonable time.
• Businesses must honour all guarantees, including express and extended warranties.

5) Honesty and fairness

• Businesses must not make false, misleading or deceptive claims about a product or service, including claims about the safety or quality of a product or service.

The Australian Consumer Law will benefit to the Australian community by:
• giving Australian consumers the same rights and protections wherever they are in Australia;
• simplifying the law and reducing business compliance burdens, by replacing provisions set out in 20 existing national, State and Territory laws with a single national consumer law; and
• creating a national enforcement regime, with consistent enforcement powers for Australia's consumer protection agencies to take effective action for consumers.

**Guidance for the consumer:** 219

The ACCC, ASIC and the State and Territory consumer protection agencies have prepared guides to help businesses and legal practitioners to understand key elements of the ACL.

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The guides are designed to explain the ACL in simple language, but are not a substitute for the legislation. They provide general information and examples and are not legal advice or a definitive list of situations where the law applies.

1) Avoiding unfair business practices

The Avoiding unfair business practices guide covers misleading or deceptive conduct, unconscionable conduct, false or misleading representations and related offences, information standards and country of origin representations.

2) Consumer guarantees

The Consumer guarantees guide covers what consumer guarantees apply to goods and services, who is responsible for these guarantees and when remedies, such as refund repair and replacement are available.

3) Product safety

The Product safety guide covers the new national product safety regime.

4) Sales practices

The Sales practices guide covers unsolicited supplies, unsolicited consumer agreements, pyramid schemes, multiple pricing, lay-by agreements, referral selling and harassment and coercion.

5) Unfair contract terms

The revised unfair contract terms guide explains the unfair contract terms provisions of the ACL. It is an updated version covering the law as it was at 1 January 2011 and replaces the previous version published on 1 July 2010. The unfair contract terms law has applied as a law of the Commonwealth, Victoria and New South Wales since 1 July 2010, and as a law of all other States and Territories since 1 January 2011.

6) Compliance and enforcement

The Compliance and enforcement guide sets out the principles that guide the compliance and enforcement approach of the ACCC, ASIC and the State and Territory consumer protection agencies in administering the ACL.
4.4.2 Consumer Protection Law in USA-

Today in the United States, high levels of federal and state protection exist for consumers, those who purchase and use goods and services. On the federal level, the Federal Trade Commission (FTC) deals with consumer protection; most states have their equivalents.

Consumer protection laws regulate advertising, sales practices, product branding, mail and internet business practices, banking, credit and lending, debt collection, investments and business opportunities, and matters relating to identity theft.

As just one example, if you purchase an item or a service (costing more than $25) that is sold by a door-to-door salesperson (you order a vacuum cleaner, for example) you have a “three-day cooling off period” during which you can cancel the sale in writing and receive a full refund. The salesperson is required to inform you about this right at the time of sale.

Consumer protection concepts reach into many areas of American life. The FTC and state agencies mandate the level of fire protection or sun protection in clothing. They lay down disclosure procedures when you sign a contract to arrange a wedding or funeral. They specify claims that made be made on the genuineness of Native American arts and crafts. They carefully regulate diet and weight-loss programs. They set rules regarding the small print in contracts, warranties, advertising and product performance.

The traditional common law concept of caveat emptor, legal Latin for “let the buyer beware,” is now a thing of the American past. The level of consumer protection is so high in the United States, at so many levels, that the provider of goods and services is the one who needs to be careful: caveat vendor. 220

Definition-

A consumer or “Buyer” is defined as “one who buys, uses, maintains and disposes of products and/or services” and although, many may still be familiar with the doctrine of “Let the Buyer Beware” this is no longer the case with the advent of Consumer Protection law. This legal area encompasses a large body of laws enacted

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by the government to protect consumers by regulating many of the following business transactions and practices: advertising, sales and business practices; product branding; mail fraud; sound banking and truth in lending; quality produce and meats; housing material and other product standards; and all manner of other types of consumer transactions. Some states also regulate door-to-door sales, abusive collection practices and referral and promotional sales.

These laws have been created on both the state and federal level. The Federal Trade Commission (FTC) was originally established to prevent unfair methods of competition in commerce, but after 1938 its scope grew to include consumer protection law oversight as well. Most states have established some type of consumer protection agency.

There are various Federal Acts that address different aspects of consumer protection. The Consumer Credit Protection Act (CCPA), also referred to as the federal Truth in Lending Act, regulates the credit industry with respect to consumer rights, which includes credit card companies and credit reporting agencies, as well as loan sharks and wage garnishment. The Fair Credit Reporting Act (FCRA) regulates credit reporting agencies and those who use them. The Fair Debt Collection Practices Act was added to the CCPA in 1978 to abolish abusive collection practices and give consumers a means to dispute inaccurate debt information. The Fair Credit Billing Act was added to the CCPA in 1975 to deal with billing practices in credit accounts. The Magnuson-Moss Act of 1973 deals with standards for product warranties both implied and express. And to address the growing crime of identity theft, Congress enacted the Identity Theft and Assumption Deterrence Act, which was signed into law in 1998. 221

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Protection Act of 1997". 222

221 Ibid.
Statement of Findings and Purposes

Sec. 2 (a) The Congress finds that the interest of consumers are inadequately represented and protected within the Federal Government and that vigorous representation and protection of the interest of consumers are essential to the fair and efficient functioning of a free market economy. Each year, as a result of this lack of effective representation before Federal agencies and courts, consumers suffer personal injury, economic harm, and other adverse consequences in the course of acquiring and using goods and services available in the marketplace.

(b) The Congress therefore declares that-

1. A non-regulatory governmental organization to represent the interest of consumers before Federal agencies and courts could help the agencies in the exercise of their statutory responsibilities in a manner consistent with the public interest and with effective and responsive government. It is the purpose of this Act to protect and promote the interest of the people of the United States as consumers of goods and services which are made available to them through commerce or which affect commerce by so establishing an independent Agency for Consumer Advocacy.

2. It is the purpose of the Agency for Consumer Advocacy to represent the interest of consumers before Federal agencies and courts, receive and transmit consumer complaints, develop and disseminate information of interest to consumers, and perform other functions to protect and promote the interest of consumers. The authority of the Agency to carry out this purpose shall not be construed to supersede, supplant, or replace the jurisdiction functions, or powers of any other agency to discharge its own statutory responsibilities according to law.

3. It is the purpose of this Act to promote protection of consumers with respect to the-

(A) Safety, quality, purity, potency, healthfulness, durability, performance, repair ability, effectiveness, truthfulness, dependability, availability, and cost of any real or personal property or tangible or intangible goods, services, or credit;

223 Consumer protection Act in U.S.A.en.m.wikipedia.org/wiki/consumer_protection.
(B) Preservation of consumer choice and a competitive market;
(C) Price and adequacy of supply of goods and services;
(D) Prevention of unfair or deceptive trade practices;
(E) Maintenance of truthfulness and fairness in the advertising, promotion and sale by a producer, distributor, lender, retailer or other supplier of such property goods, services, and credit;
(F) Furnishing of full, accurate, and clear instructions, warnings and other information by any such supplier concerning such property, goods, services, and credit;
(G) Protection of the legal rights and remedies of consumers; and
(H) providing of estimates of the cost and benefits of programs and activities established by Federal Government regulations and legislation.

(4) It is the purpose of section 24 of this Act to establish a means for estimating in advance the consumer cost and benefits of Federal legislation or rules that have substantial economic impact, and to prevent the adoption of Government programs whose costs to consumers outweigh their benefits.

(5) This Act should be so interpreted by the executive branch and the courts so as to implement the intent of Congress to protect and promote the interests of consumers, and to achieve the foregoing purposes.

Functions of the Agency

Sec. 5. (a) The agency shall, in the performance of its functions, advise the Congress and the President as to matters affecting the interests of consumers; and shall protect and promote the interest of the people of the United States as consumers of goods and services made available to them through the trade and commerce of the United States.

(b) The functions of the Administrator shall be to-

(1) represent the interests of consumers before Federal agencies and courts to the extent authorized by this Act;

(2) conduct and support research, studies, and testing to the extent authorized in section 9 of this Act;
(3) submit recommendations annually to the Congress and the President on measures to improve the operation of the Federal Government in the protection and promotion of the interest of consumers;

(4) obtain information and publish and distribute material developed in carrying out his responsibilities under this Act in order to inform consumers of matters of interests to them, to the extent authorized in this Act;

(5) receive, transmit to the appropriate agencies and persons and make publicly available consumer complaints to the extent authorized in section 7 of this Act.

(6) conduct conferences, surveys, and investigations, including economic surveys, concerning the needs, interests, and problems of consumers: Provided, That such conferences, surveys, or investigations are not duplicative in significant degree of similar activities conducted by other Federal agencies;

(7) cooperate with State and local governments and encourage private enterprise in the promotion and protection of the interests of consumers;

(8) keep the appropriate committees of Congress fully and currently informed of all the Agencies activities, when asked or on his own initiative;

(9) publish, in language readily understandable by consumers, a consumer register which shall set forth the time, place, and subject matters of actions by Congress, Federal agencies, and Federal courts, and other information useful to consumers;

(10) encourage the adoption and expansion of effective consumer education programs;

(11) encourage the application and use of new technology, including patents and inventions, for the promotion and protection of the interests of consumers;

(12) encourage the development of voluntary informal dispute settlement procedures involving consumers;

(13) encourage meaningful participation by consumers in the activities of the Agency;
(14) promote the consumer interest of farmers in obtaining a full supply of goods and services at a fair and equitable price;

(15) coordinate its activities with the activities of other executive departments and agencies with respect to consumers; and

(16) perform such other related activities as he deem necessary for the effective fulfillment of his duties and functions.

Consumer Complaints

Sec.7. (a) Whenever the Administrator receives from any person any complaint or other information which discloses-

(1) an apparent violation of law, agency rule or order, or a judgment, decree, or order of a State or Federal court relating to an interest of consumers or;

(2) a commercial, trade, or other practice which is detrimental to an interest of consumers; he shall, unless he determines that such complaint or information is frivolous, promptly transmit such complaint or information to any Federal, State or local agency which has the authority to enforce any relevant law or to take appropriate action. Federal agencies shall keep the Administrator informed to the greatest practicable extent of any action which they are taking on complaints transmitted by the Administrator pursuant to this section.

(b) The Administrator shall promptly notify producers, distributors, retailers, lenders, or suppliers of goods and service of all complaints of any significance concerning them received or developed under this section unless the Administrator determines that to do so is likely to prejudice or impede an action, investigation, or prosecution concerning an alleged violation of law.

(c) The Administrator shall maintain a public document room containing, for public inspection and copying without charge or at a reasonable charge, not to exceed cost), an up-to-date listing of all consumer complaints of any significance which the Agency has received, arranged in meaningful and useful categories, together with annotations of actions taken in response thereto. Unless the Administrator, for good cause, determines not to make any specific complaint available, complaints listed shall be made avail- able for public inspection and copying: provided, that-

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(1) the party complained against has had a reasonable time to comment on such complaint and such comment, when received, is displayed together with the complaint;

(2) the agency to which the complaint has been referred has had a reasonable time to notify the Administrator what action, if any, it intends to take with respect to the complaint;

(3) the complaints identity is to be protected when he has requested confidentiality. Whenever the complaint request that his identify be protected, the Administrator shall place an appropriate designation on the complaint before making it available to the public;

(4) no unsigned complaints shall be placed in the public document room.

**Consumer Information and Services**

**Sec. 8.** (a) In order to carry out the purposes of this Act the Administrator shall develop on his own imitative, and, subject to the other provisions of this Act, gather from other Federal agencies and non-Federal sources, and disseminate to the public in such manner, at such times, and in such form as he determines to be most effective, information, statistics, and other data including, but not limited to matter concerning-

(1) the functions and duties of the Agency;

(2) consumer products and services;

(3) problems encountered by consumers generally, including annual reports on interest rates and commercial and trade practices which may adversely affect consumers; and

(4) notices of Federal hearings, proposed and final rules and orders, and other pertinent activities of Federal agencies that affect consumer.

(b) All Federal agencies which, in the judgment of the Administrator, possess information which would be useful to consumers are authorized and directed to cooperate with the Administrator in making such information available to the public.
STUDIES

Sec. 9. The Administrator is authorized to conduct, support, and assist research, studies, plans, investigations, conferences, demonstration projects, and surveys concerning the interests of consumers.

NOTICE

Sec. 12. (a) Each Federal agency considering any action which may substantially affect an interest of consumers shall, upon request by the Administrator, notify him of any proceeding or activity at such time as public notice is given.

(b) Each Federal agency considering any action which may substantially affect an interest of consumers shall, upon specific request by the Administrator, promptly provide him with-

(1) A brief status report which shall contain a statement of the subject at issue and a summary of proposed measures concerning such subject; and

(2) such other relevant notice and information, the provision of which would not be unreasonably burdensome to the agency and which would facilitate the Administrator’s timely and effective intervention or participation under section 6 of this Act.

(c) Nothing in this section shall affect the authority or obligations of the Administrator or any Federal agency under section 10 (b) of this Act.

Definitions

SEC. 14. As used in this Act, unless the context otherwise requires-

(7) "consumer" means any person who uses, purchases, leases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services or credit for personal, family, agricultural, or household purposes;

(9) "Federal court" means any court of the United States, including the Supreme Court of the United States, any United States court of appeals, any United States District court established under chapter 5 of the title 28, United States Code, the District Court of Guam, the District Court of the United States Customs Court, the United States
Court of Customs and Patent Appeals, the United States Tax Court, and the United States Court of Claims;

**Other Consumer Protection Laws in USA.**

In America, consumers have rights that are protected by law. Consumer protection is extensive, but includes the following broad segments:

- Unfair and deceptive business practices
- Unfair lending practices
- Unfair debt collection practices
- Fraudulent telemarketers
- Dangerous products
- Incorrect point-of-sale equipment
- Airline safety
- Fair packaging and labeling
- Dangerous food
- Deceptive advertising
- Identity theft

**Consumer Protection and the Government**

Consumer protection includes the benefits of product recalls and alerts. The U.S. Consumer Product Safety Commission provides such information on the Internet, along with consumer fact sheets. In addition, the agency provides state and federal hotlines as well as online forms for consumers to register complaints about defective products.

The Federal Trade Commission is responsible for consumer protection in unfair and deceptive practices as well as Internet transactions (including risks of phishing and spyware), identity theft, and other risks. Fraudulent telemarketers increasingly fall into this category, making unauthorized charges or withdrawals from a consumer’s account. The FTC also governs the Identity Theft Assumption and Deterrence Act of 1998 and the College Scholarship Fraud Prevention Act of 2000.
The Fair Debt Collection Practices Act protects consumers from debt collectors calling and harassing them at work, being abusive, and making misleading statements.

The Truth in Lending Act (Title I of the Consumer Credit Protection Act) requires creditors to make written disclosures to consumers regarding finance charges and other related aspects of transactions for credit. The Equal Credit Opportunity Act provides consumer protection from discrimination and civil rights violations.

The Credit Repair Organizations Act protects consumers from making misleading statements and requires certain disclosures when companies offer “credit repair” services.

Tenant rights and responsibilities are governed by state laws. State laws also include “lemon laws” that protect consumers buying defective new automobiles.

The Fair Packaging and Labeling Act governs the contents of labels on food, medicines, medical devices, and cosmetics.

The Aviation Consumer Protection Division of the Federal Aviation Administration governs airline safety issues for consumers and operates a complaint-handling system with a toll-free number at the FAA.

1) **Consumer Protection Committee**

   The Consumer Protection Committee monitors and reports on developments in the law of false and deceptive advertising, unfair trade practices and illegal marketing. These developments often include cases brought by private litigants, the Federal Trade Commission (FTC) and state attorneys general, as well as consumer class actions, competitor suits under Section 43(a) of the Lanham Act, and decisions by the Better Business Bureau's National Advertising Division (NAD).

2) **Fair Credit Billing Act (FCBA)**

   The Fair Credit Billing Act (FCBA) is a United States federal law enacted as an amendment to the Truth in Lending Act (codified at 15 U.S.C. § 1601 et seq.). Its purpose is to protect consumers from unfair billing practices and to provide a

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224 [www.HGLegaldirectories.org](http://www.HGLegaldirectories.org).
mechanism for addressing billing errors in "open end" credit accounts, such as credit card or charge card accounts.

3) Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) is a United States federal law that regulates the collection, dissemination, and use of consumer information, including consumer credit information. Along with the Fair Debt Collection Practices Act (FDCPA), it forms the base of consumer credit rights in the United States. It was originally passed in 1970, and is enforced by the US Federal Trade Commission and private litigants.

4) Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (FDCPA), is a United States statute added in 1978 as Title VIII of the Consumer Credit Protection Act. Its purposes are to eliminate abusive practices in the collection of consumer debts, to promote fair debt collection and to provide consumers with an avenue for disputing and obtaining validation of debt information in order to ensure the information's accuracy. The Act creates guidelines under which debt collectors may conduct business, defines rights of consumers involved with debt collectors, and prescribes penalties and remedies for violations of the Act. It is sometimes used in conjunction with the Fair Credit Reporting Act.

- Federal Trade Commission - Consumer Complaints

The Federal Trade Commission, the nation's consumer protection agency, collects complaints about companies, business practices, identity theft, and episodes of violence in the media.

- Food Safety and Inspection Service (FSIS)

The Food Safety and Inspection Service (FSIS) is the public health agency in the U.S. Department of Agriculture responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged.

- FTC - Consumer Information

This section of the FTC website offers practical information on a variety of consumer topics. The information here can help you avoid rip-offs and
exercise your consumer rights. Education is the first line of defense against fraud and deception; it can help you make well-informed decisions before you spend your money.

**National Consumer Law Center (NCLC)**

NCLC is the nation’s consumer law expert, helping consumers, their advocates, and public policy makers use powerful and complex consumer laws on behalf of low-income and vulnerable Americans seeking economic justice.

**Consumer Reports** is an American magazine published monthly by Consumers Union since 1936. It publishes reviews and comparisons of consumer products and services based on reporting and results from its in-house testing laboratory. It also publishes cleaning and general buying guides. It has approximately 7.3 million subscribers225 and an annual testing budget of approximately US$21 million.226 The annual *Consumer Reports* new car issue, released every April, is typically the magazine's best-selling issue and is thought to influence millions of automobile purchases.

**Objectivity**

Consumer Reports does not print outside advertising, accept free product samples, or permit the commercial use of its reviews for selling products. Its publisher states that this policy allows the magazine to "maintain our independence and impartiality... [So that] CU has no agenda other than the interests of consumers.”227

Consumer Reports states that all tested products are purchased at retail prices by its staff, that no free samples are accepted from manufacturers, and that this avoids the possibility of bias from bribery or from being given "better than average" samples.

**Product changes after Consumer Reports tests**

In the July 1978 issue, Consumer Reports rated the Dodge Omni/Plymouth Horizon automobile "not acceptable", the first car it had judged such since the AMC Ambassador in 1968. In its testing they found the possibility of these models developing an oscillatory yaw as a result of a sudden violent input to the steering; the

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225 ibid.
227 ConsumerReports.org - Our mission.
manufacturer claimed that "Some do, some don't" show this behavior, but it has no "validity in the real world of driving". Nevertheless, the next year, these models included a lighter weight steering wheel rim and a steering damper; Consumer Reports reported that the previous instability was no longer present.

In a 2003 issue of CR, the magazine tested the Nissan Murano crossover utility vehicle. Consumer Reports did not recommend the vehicle because of a problem with its power steering, even though the vehicle had above-average reliability. The specific problem was that the steering would stiffen substantially on hard turning. Consumer Reports recommended the 2005 model, which addressed this problem.

BMW changed the software for the stability control in its X5 SUV after replicating a potential rollover problem discovered during a Consumer Reports test. 229

4.4.3 Consumer Protection Law in Canada:

It is important for any economy to promote markets, it is also just as important to protect the rights of consumers. Consumer protection laws are made to ensure that companies do not engage in fraudulent practices or spread wrong information in the markets to promote their products and have an unfair advantage over their competitors. Such laws also ensure that information about the products such as those concerning effects on health that are meant to be shared with the public are not hidden from the consumers. 230 Wikipedia defines consumer protection laws as “laws and organizations designed to ensure the rights of consumers as well as fair trade competition and the free flow of truthful information in the marketplace. The laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves. Consumer protection laws are a form of government regulation which aims to protect the rights of consumers. Consumer protection is linked to the idea of "consumer rights" (that consumers have various rights as consumers), and to the formation of consumer organizations, which

228 “Storm over the Omni Horizon”, Time, 26 June 1978.
229 “No Test Dummies” Fortune, 11 June 2007
help consumers make better choices in the marketplace and get help with consumer complaints.”

**Consumer Protection Laws in Canada**

In Canada, six consumer protection laws were legislated to protect companies from committing fraud. These included the Business Practices Act, the Loan Brokers Act, the Consumer Protection Bureau Act, the Motor Vehicle Repair Act, the Prepaid Services Act, and the Consumer Protection Act. These laws were formulated to protect consumers from advertisements that are misleading and also to regulate various business organizations and their conduct. Although these laws did help in protecting the interest of consumers, because of their largely non-uniform nature they proved to be a problem, particularly in light of recent boom in the retailing industry and non-traditional financing companies in Canada.

**What does the Government Do to Protect Consumer Welfare?**

The Canadian Government, through the Competition Bureau has been very active in pursuing legislation to protect the interests of Canadian consumers. As stated by a top official of the Bureau, “As stated in the new Department of Industry Act, protection of the consumer interest is an important part of the Minister of Industry's responsibilities. The solid endorsement that was given on World Consumer Rights Day, to the consumer rights movement and the United Nations Guidelines for Consumer Protection, demonstrates his commitment to consumer interests. Likewise, Industry Canada's commitment to the consumer remains strong. Departmental funding for consumer interest programs will be maintained at an annual level of $1 million through the 1997-98 fiscal years, at a time when most other similar programs are being eliminated or drastically reduced. The former Bureau of Consumer Policy, now the Consumer Affairs Office, will continue to perform a lead role in promoting the interests of Canadian consumers. It will also continue to ensure that consumer groups have efficient and effective access to information, and that consumer input is provided at early stages of the decision making processes of government and industry.”

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231 Wikipedia.org, www.ontaria.ca/laws/statute/02c30
232 competitionbureau.gc.ca/eic/site/cb-nsf/eng/home.
Richard Vs. Time: key Supreme Court ruling on Quebec’s Consumer Protection Act February 2012

Author: Vincent Rochette

The Supreme Court of Canada recently rendered judgment on the rules governing false and misleading representations under Quebec’s Consumer Protection Act (CPA). The country’s top court held that the test is not what a consumer of average intelligence, skepticism and curiosity would understand from the commercial representation but rather what a credulous and inexperienced consumer would comprehend.

The court held that where a prohibited business practice has been established, there is no need to prove actual damages since an irrefutable presumption of prejudice exists. The Supreme Court also held that punitive damages can be awarded under the CPA even where the circumstances do not justify compensatory damages. The net result is that the sole proof of a prohibited practice may, in certain circumstances, entitle consumers to punitive damages under the CPA.

Consumer Protection Act of 2002- 233

In order to overcome this problem, the government of Canada passed the Consumer Protection Act of 2002 integrates all six of the above mentioned Consumer protection laws with the aim of promoting a market that is not only safe and fair but also provides accurate and sufficient information to the consumers. This law uniformly regulates almost all transactions a consumer can be involved in leaving no room for misinterpretation. In case of violation of this act, complaints can be made and lawsuits can be filed. This will allow consumers to get effective compensation in case they win the lawsuit.

It affords consumers a right to cancel their orders if the goods they ordered for is not delivered within 30 days of the last date specified on the agreement between the seller and the buyer. This law also requires the charges for jobs such as home repairs, moving, etc. to be within ten percent of the estimate given by the respective company to the consumer. Another important feature of this law is that it regulates the way in which information is shared with consumers. This law specifies information that must

be shared with consumers and also requires the information, especially those provided online, to be in a form that can be easily understood and retained by the consumer.

Apart from the above mentioned features, this law also increased the jail times and fines in case proven guilty by prosecution under the Act. It has amendments pertaining to specific industries such as automobiles, tourism and real estate. These amendments in the Consumer Protection law has greatly reduced problems created by unfair trade practices in Canada and has helped in protecting the rights of Canadian citizens.

**Protection of the Consumer**

The initiatives of the Government of Canada to safeguard the interests and welfare of the consumer can be seen in the enactment and implementation of laws such as the Consumer Protection Act of 2002. This has led to the promotion of a free market that is fair and safe to all consumers.  

**4.4.4 New Zealand's Consumer Protection Law**

**The Fair Trading Act 1986**

The Fair Trading Act (FTA) prohibits certain conduct and practices in trade, provides for the disclosure of consumer information relating to the supply of goods and services and promotes product safety. The FTA is substantially based on Part V of the Australian Trade Practices Act 1974.

**Part 1 - Prohibitions**

Under Part 1 of the FTA, there are three main types of prohibitions:

- misleading and deceptive conduct;
- false representations; and
- unfair practices.

1) **Misleading and Deceptive Conduct**

Sections 9 to 12 of the Act cover all conduct that is misleading or deceptive or is likely to mislead or deceive. Section 9 covers misleading and deceptive conduct

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234 Ibid.
generally, Section 10 covers misleading conduct in relation to goods, section 11 covers misleading conduct in relation to services, and section 12 covers misleading conduct in relation to employment.

2) False Representations

Section 13 of the Act gives a list of specific areas in which representations must not be false or misleading. The distinction between section 9 (misleading and deceptive conduct generally) and section 13 (false or misleading representations) is deliberate. Contravention of section 13 can give rise to a criminal as well as civil liability whereas only a civil charge is possible under section 9.

Section 14 outlines prohibitions for false representations regarding the sale of land. A breach of this section is a criminal offence but a breach of subsection 2 (section 14(2)) is a civil offence only.

The Act also places prohibitions on certain conduct regarding trademarks. Civil and criminal sanctions apply.

3) Unfair Practices

The various unfair practices which are prohibited under the Act are:

- Offering gifts and prizes without the intention of providing them
- Bait advertising [5]
- Referral selling [6]
- Demanding or accepting payment without intending to supply as ordered
- Misleading representations about certain business activities
- Harassment and coercion
- Pyramid selling schemes.

Part 2 - Consumer Information

Sections 27 to 28 of the FTA provide for regulations creating consumer information standards for goods and services. These relate to the type of information which must be disclosed and the way that information is to be disclosed. Currently there are four consumer information standards, covering:

- country of origin clothing and footwear;
- fiber content labeling;
- care labeling; and
- supplier information notices (SINs) for used vehicles.
Part 3 - Product Safety

Section 29 provides for regulations prescribing certain product safety standards.

There are currently 6 product safety standards relating to:

- children's toys
- cigarette lighters
- children's nightwear and limited daywear having reduced fire hazard
- household cots
- pedal bicycles
- baby walkers.

These standards establish particular requirements that must be met, usually by referring to Australian/New Zealand Standards.

Under section 31, the Minister can declare goods to be unsafe if the good may cause an injury to any person. Such notices are effective for 18 months. If goods do not comply with product safety standards, or may cause injury to any person and the trader has not recalled the goods, the Minister may compulsorily require the goods to be recalled (section 32).

Part 4 - Safety of Services

Section 34 provides for regulations prescribing safety standards in respect of services. There is no safety of services standards currently in force.

Part 5 - Enforcement and Remedies

The FTA is enforced by the Commerce Commission. Individuals and corporations can also take action under the Act.

Civil proceedings and criminal prosecutions can be taken. However, in some cases only civil proceedings can be taken. This includes breaches of section 9, which prohibits misleading conduct in trade and which is the most frequently litigated section of the Act. As well, the Disputes Tribunal has no jurisdiction for breaches under this section. Civil remedies include injunctions, orders for corrective advertising (only available to the Commerce Commission), private actions and other compensatory orders, depending on the jurisdiction of the Court.
Under the FTA offences are generally strict liability, that is, a person is held responsible for damages resulting from their actions regardless of their level of fault.

Breaches of the FTA can lead to civil or criminal liability with a fine of up to $60,000 for individuals. If the trader is a body corporate they may be liable for a fine of up to $200,000. If there is more than one offence for the same breach, then total fines imposed cannot exceed the maximum.

The one exception to the maximum fine provision relates to pyramid selling. Pyramid selling is a criminal offence with a fine of up to a maximum of $200,000. If a person is convicted of pyramid selling, that person can be required to repay any commercial gain made from their dealings in addition to any fine.

The Court has other powers following a contravention of the Act. It may declare a contract void or vary its terms, order money or property be returned to the person who suffered loss, order goods be repaired or supplied, or order services be supplied.

The limitation period for prosecuting offences is 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

**The Consumer Guarantees Act 1993**

The Consumer Guarantees Act 1993 (CGA) generally has the purpose to provide certain degrees of protection to consumers regarding the supply of goods and services. It sets out a number of guarantees concerning the supply of goods and services and requires traders and manufacturers to provide remedies to consumers when these guarantees are not met. The CGA is based on the Saskatchewan consumer protection legislation (prior to 1997) and New Zealand case law prior to 1993.

**Redress in the Consumer Guarantees Act**

Under the CGA, consumers have the right of redress when:

- the goods do not meet a guarantee of acceptable quality (section 6);
- the good is not fit for the particular purpose that the trader represented it to be, or for the purpose for which the consumer makes clear they are buying the product (section 8);
• the goods do not correspond to the description by which they are supplied by (section 9);
• the goods do not correspond to the sample or demonstration model on which the sale was based (section 10);
• the consumer pays the trader more than a reasonable price for the goods (subject to other riders) (section 11);
• under Part III, the manufacturer fails to ensure that facilities for repair of the goods and supply of parts for the goods are available for a reasonable period after the goods were supplied (section 12); and
• Under Part III, the manufacturer does not stand by their express guarantee (which is binding) (section 13).

When goods fail to comply with any of the guarantees set out above, the consumer has the right of redress against the trader (given by section 16 and outlined below). There is one exception to this - when the manufacturer instead of the trader has breached the guarantee of acceptable quality. In this situation the consumer has no right of redress against the trader, but does against the manufacturer. In all other cases, there is a right of redress against the trader even if they are unaware of such a failure. In other words, the guarantee provisions impose strict liability. Traders are expected to disclose any defects in the goods to the consumer if known.

The right of redress against the trader applies not only to the original consumer, but anyone (as long as that person meets the definition of consumer) who acquires the goods from or through the consumer.

**Repair, Replace or Refund**

If a good is faulty (i.e. does not comply with the CGA guarantees provided under sections 5, 6, 7, 8, 9 or 10), the trader must remedy the failure. If the failure can be repaired, the trader must repair the goods. The consumer may require the trader to remedy the failure within a reasonable time.

If the failure cannot be repaired or is of substantial character, the trader must replace the goods with an identical or superior type, or refund the purchase price. The consumer can choose which of these remedies is most acceptable to them.
In the case of a failure that is of substantial character and can be remedied, the consumer has two choices:

- to require the failure to be remedied; or
- to reject the goods.

If a trader does not remedy the problem or takes an unreasonable time to remedy the problem, the consumer can have the failure remedied elsewhere and charge all reasonable costs to the trader. The consumer must give the trader an opportunity to remedy the defects before taking the goods to someone else to fix, otherwise the consumer loses the right to seek reimbursement of costs from the original trader. Alternatively, the consumer can choose to reject the goods and seek a refund or replacement goods.

**Right of Redress against the Manufacturer**

Part III sets out the rights of redress for a consumer against a manufacturer. These rights are not as extensive as those against the trader and are mainly restricted to claiming damages for any reduction in the value of the goods below the purchase price. The consumer has rights when the goods fail to comply with the CGA guarantees such as acceptable quality, access to repairs and spare parts, description of the goods, and express guarantee of the manufacturer. As with traders, the right of redress against the manufacturer applies not only to the original consumer, but anyone (as long as that person meets the definition of consumer) who acquires the goods from or through the consumer.

There are some exceptions to seeking redress from the manufacturer. The manufacturer cannot be liable for:

- a breach of guarantee of quality if that guarantee was not made by the manufacturer;
- a breach that is due to a cause independent of human control occurring after the goods have left the control of the manufacturer;
- a breach that arises only as a result of the price being charged by the trader that is higher than the recommended retail price (or average price).
Exercising Consumer Rights and Getting Redress under the Fair Trading Act and the Consumer Guarantees Act

New Zealand consumer protection legislation relies to a large extent on consumers taking action for them. No enforcement agency is responsible for enforcing the CGA and while the Commerce Commission has enforcement responsibilities with respect to the FTA, it is only able to investigate a small percentage of the complaints it receives. When the Commerce Commission takes action against a trader, its primary goal may be not to secure redress for the individual consumers detrimentally affected by the breach.

This means that when a consumer does not get what they expect from a transaction or when a transaction goes wrong, they are largely responsible for pursuing their own remedy. Consumers may decide that it is not worth their while trying to put a transaction right. This may occur, for example, when the price paid for a good is relatively low or when a consumer decides that their best course of action is to try and avoid a similar transaction occurring in the future and therefore "vote with their feet" (for example, they decide not to return to a restaurant where they were dissatisfied with a meal or service that they received). Where consumers decide to take action, they are required in the first instance to try and get redress from the trader concerned.

If consumers cannot resolve the matter with the trader there are a number of options that a consumer can pursue. The consumer may at this stage decide not to take any further action or may try and resolve the matter by, for example, contacting the head office, a trade association to which the trader belongs, a specific complaints body if there is one (for example, the Electricity and Gas Complaints Commissioner) or take the matter to the Disputes Tribunal. Consumers can take matters to the District Court but because of the costs involved it is unusual for consumers to do this. Court cases involving consumer protection legislation are usually instigated by businesses or the Commerce Commission.

[5] Bait advertising is advertising that a product or service is available when it actually cannot be supplied or where reasonable quantities cannot be supplied.
[6] Referral selling is where a business offers a potential customer a reward if they supply the names of other potential customers. If no sale is made to the referred customers, the original customer does not get their reward.

[7] The period of the notice can be extended for a specified period or indefinitely.

[8] The main characteristic of a pyramid selling scheme is that earning money and gaining promotion within the scheme depends primarily on recruiting new people to the scheme, and those new people recruiting more people into the scheme, and these new people recruiting more people, and so on …

Pyramid schemes are unfair trade practices because they are likely to be unfair to most participants in the scheme, the rewards for those at the top come from those below, and because eventually it will become impossible to recruit the number of people needed to produce reasonable financial rewards to participants.


4.4.5 Consumer Protection Law in United Kingdom:

Consumer protection in the United Kingdom is affected through a multiplicity of Acts of Parliament, statutory instruments, government agencies and departments and citizens' lobby groups and aims to ensure the market economy produces fairness and quality in goods and services people buy. The main areas of regulating consumer affairs include,

- fairer terms in contracts for goods and services, by declaring surprising and onerous terms as unfair
- product safety regulation, to ensure people cannot purchase goods that are potentially harmful
- financial regulation, to ensure access to credit is cheaper and people fully understand the obligations they have when taking loans
- stronger competition in the private sector, through breaking up cartels, dismantling monopolies and unwinding some mergers

[^236]: From Wikipedia, the free encyclopedia. en.wikipedia.org/wiki/consumerprotection_in_the_United_kingdom.
Because the United Kingdom, through its membership of the European Union is part of the internal market, it works with other European countries and EU institutions to produce and enforce consumer protection laws transnational.

Every day of our lives we consume, use or simply come into contact with countless different products, we should be able to assume that those products are safe. Not absolutely safe—that remains unattainable. Nor safe at unbearable cost to industry that would put innovation at risk, but as safe as is reasonable to expect. The aim of the consumer protection act is to help safeguard the consumer from products that do not reach a reasonable level of safety.

Clearly the consumer gains from this legislation. But forward looking firms will also recognize that it is in their interest to outlaw unfair competition from traders who cut corners on safety. The act is important to all those with an interest in the safety of products that are put on to the market.

Part I of the act, which implement into UK law the provision of the product liability directive came into force on 1 May 1988. Although part 1 applies in great Britain only, equivalent provision for northern Ireland was made by order, expected primary agricultural products and game from the scope of legislation. However, Directive 1993/34/EC amended the 1985 product liability directive by requiring the removal of this exception with effect from 4 December 2000. From this date food sold in its raw state is included in the legislation. This change was implemented in England, Scotland & Northern Ireland.

Part II of the consumer protection act, containing consumer safety provisions, came into force on 1 October 1987. These provisions apply throughout the UK.  

Product Liability: Section 2

What does it mean?

1] People injured by defective products may have the right to sue for damages; product liability is the term given to laws affecting those rights.

2] in the past those injured had to prove a manufacturer negligent before they could successfully sue for damages. The consumer protection act 1987 removes the need to prove negligence, under the sale of goods law. The act provides the same rights to any one injured by the defective products, whether or not the product was sold to them.

3] the act does not affect any existing civil laws governing product liability. No liability is imposed under the act in respect of products first supplied before 1 March 1988.

4] the act implements the European community directive on product liability, which provides a similar degree of protection for people throughout the European community.

Who is liable?

An injured person can take action against:

1. Producers:

   Usually the manufacturer or, in the case of raw materials, the person who mined or otherwise obtain them. Also included are processors (for examples pea canners), but those involved solely in packaging are not affected unless the packaging alters the essential characteristic of the products.

2. Importers:

   Meaning importers into the European community, not just into the United Kingdom, where goods are imported into another EC country and subsequently sold in the United Kingdom, liability rests with the first importer, not the United Kingdom importer.

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238 www.dti.gov.uk/caep/ca.
3. Own-branders:

Suppliers who put their own name on the product and give the impression that they are the producers. Other suppliers such as wholesalers and retailers are not liable unless they fail to identify the producer, importer or “own-brander” if ask to do so by a person suffering damage.

Liability under the act is joint and several, so the plaintiff may sue both or all, if more than two defendants. It is not possible to exclude liability under the Act by means of any contract term or other provision.

What products are covered?

1) Liability under this part of the act applies to all consumer goods and goods used at a place of work from 4 December 2000 all food is covered.

2) buildings are not covered although individual goods from which they are built are covered.

3) liability under the act extends to components and raw materials. If a finished product contains a defect in a particular component, both the manufacturer of the finished product and the component manufacturer may be liable.

4) the act is not intended to extend to pure information. Printed matter is not therefore covered except in the case of instructions or warning for a product (in which case the producer of the product-not the printer will be liable for errors or omissions in the instruction or warnings which make the product unsafe e) similarly, a design consultant will not be liable under the act for a mistake in a design which causes a product to be defective; the producer of the product itself will be liable. Similar considerations are relevant to software. Computer software is often supplied as an intrinsic part of a product and in some cases can cause personal injury (for example airline navigation systems or production line robots). Again, liability in such cases is imposed on the producer of the product.

Defective Product:

1) A defective product is defined as one where the safety of the product is not such as persons generally are entitled to expect. This definition provides an objective test of defectiveness and refers neither to the particular injured
person nor to the particular producer. A product will not be considered
defective simply because a safer version is subsequently put on the market.

2) When deciding whether a product is defective a court will take into account all
the relevant circumstances including:
   i) the manner in which a product is marketed;
   ii) any instructions or warnings that are given with it;
   iii) what might reasonably be expected to be done with it,
   iv) the time the producer supplied the product.

3) the criteria of what might reasonably be expected to be done with a product,
and consequently what instructions and warnings are given, are particularly
important for producers and importers whose products are often misused.

What sort of damage is covered?

1) a person can sue under the act for compensation for:
   • death
   • personal injury
   • private property

2) the act imposes no financial limit on a producer’s total liability.

3) the plaintiff must be able to show that, on the balance of probabilities, the
defect in the product caused the damage.

What defenses are there?

A producer or importer can avoid liability if he can prove any of six defenses:

1) he did not supply the product (e.g. it was stolen or is a counterfeit copy of his
   products);

2) the state of scientific and technical knowledge at the time he supplied the
   product was not such that a producer of products of the same description as the
   product in question might the expected to have discovered the defect if it had
   existed in his products while they were under his control.
3) the defect was caused by complying with the law. Compliance with a regulation will not necessarily discharge a producer from liability; in order to claim the defense he would have to show that the defect was the inevitable result of compliance;

4) the defect was not in the product at the time it was supplied (e.g. if a product becomes defective because a retailer handles it carelessly);

5) the product was not supplied in the course of a business, for example, the donation of homemade toys for sale at the occasional church bazaar or sales by private individuals of second-hand goods;

6) the producer of a component will not be liable if he is able to show that the defect was due either to the design of the finished product, or to defective specifications given to the component manufacturer by the producer of the finished product.

7) the extent of the defendant’s liability could be affected by any contributory negligence on the part of the plaintiff, e.g. if he contributed to his injuries by his own carelessness.

**When can injured people sue?**

1) a plaintiff must begin his court action within three years of the date he was injured by the defective product or, if later, the date when they knew they had a claim against the defendant. However, an injured person cannot sue under this part of the act if ten years have elapsed since the defective product was supplied by the producer.

2) anyone considering making a claim under this legislation should seek legal advice at an early stage.

**Consumers Safety:**

The general safety requirement under section 10 of the consumer protection act 1987 has been largely superseded by the general product safety regulations 1994 (the GPS regulation) which came into force on 3 October 1994. The GPS regulations—made under the European community’s act 1972 implement the general product safety directive which introduced a community-wide general safety duty.
Although section 10 of the Act remains in force, it will now apply only in very limited circumstances.

**Standards:**

The system of “approved standards” under section 10 of the act has been revoked by the general product safety regulations 1994. The approvals which had been made under the provision were cancelled by administrative act with effect from 2 August 1994. Those standards which previously had approved status will of course remain in being as standards of safety.

Standards will continue to have role to play in assessing safety. Under the GPS regulations safety is assessed taking into account a variety of factors, including any European or British standards for the goods in question.

**Safety regulations:**

Section 11 of the Act enables the secretary of state to make emergency regulations, without consultation, when it is necessary on grounds of public protection. Regulations made under this procedure lapse after 12 months.

However under normal circumstances, the act requires consultation with interested parties prior to the making of regulations. Regulations made under this procedure remain in force indefinitely unless specifically revoked.

Such regulations, which can cover both new and second-hand goods, can set out in detail how specific products must be constructed and what instructions and warnings must be given. Examples are regulations covering the safety of prams and pushchairs and flammability of upholstered furniture.

Failure to meet the requirements of safety regulations made under the Act can result in a fine not exceeding level 5 on the standard scale (currently $ 5000) or a prison term of up to six months, or both.

The Act also provides powers for the Secretary of state to make prohibition notices preventing named suppliers from supplying particular unsafe products.

**Enforcement:**

Enforcement of the safety provisions of the act is primarily the responsibility of trading standards officers of local authorities in England, Wales and Scotland and
in Northern Ireland environmental health officers of district councils. Complaints about unsafe products should be made to the relevant enforcement authority.

Enforcement officers have authority to make test purchases, seize goods, enter premises for the purpose of ascertaining whether there has been a breach of safety provisions of the Act and bring prosecutions.

They can also issue suspension notices prohibiting suppliers from selling goods which they believe contravene safety legislation. They can apply to a magistrate’s court for and order that such goods be forfeited and destroyed.

Suppliers can appeal to magistrates’ courts against suspension and forfeiture of goods.

In certain circumstances enforcement authorities are liable to pay compensation for losses to a supplier against whom enforcement action has been taken, if there has been no contravention of safety provision.

European councils regulations 339/93 relating to products imported from non-community countries empowers customs officers in all member states to detain goods at the external frontier, for up to three working days, to permit checks by enforcement authorities if products:

Have characteristic suggesting that they pose a serious and immediate risk to health and safety; and or,

Are not accompanied by a document required by, or are not marked in accordance with, the community or national rules on product safety applicable in the members state in which release for free circulation is sought.

In the United kingdom this regulation extends to three working days the power formerly exercised by customs officers under section 31 of the act to detain potentially unsafe imports for two working days.

UK customs officers can no longer use section 31 powers in respect of goods in free circulation in the community. However, customs officers continue to liaise with enforcement officers where either partly has intelligence indicating that any such imports may not meet safety requirements.
What Businesses Need To Do:

The vast majority of firms in this country already monitors and controls the safety of the product they supply. The consumer protection act provides and additional incentive for business to ensure that their product provides the safety that people using them or affected by them are reasonably entitle to expect use of the following checklist may help businesses to ensure that they meet their obligations under the legislation:

• review management producers to check that all stages of production (design, manufacture, presentation and marketing) help to ensure that only safe products reach the customer;

• Check whether they are any specific regulations setting mandatory requirements for the firms products: also check whether there are any published or proposed safety standards for its products and to what extent they meet or could be made to meet the standard.

• Consider introducing quality assurance at each stage of the production process.

• Assess whether the business’s insurance cover is adequate, including product liability insurance. The amount of insurance cover obtained is a matter for commercial judgment, but businesses should seek advice from their own insurance advisors;

• Review any contractual arrangements with supplies, customers or others with whom the business has relevant contracts (a business’s cannot contract out of any liability under the act, but might, for example, seek an indemnity from others in the event of liability under the act);

• Decide whether the records kept by the business are adequate, bearing in mind the working life of the product, the 10 year potential liability for product liability claims, and the possible need to identify suppliers of defective product to the business in defending a product liability action (particularly relevant for “own branders”).

Many of these preventive measures from part of quality systems such as those specified in BS EN ISO 9000 family of standards.
Regulatory enforcement:

Consumer Protection issues are dealt with when complaints are made to the Director-General of Fair Trade. The Office of Fair Trading will then investigate, impose an injunction or take the matter to litigation. However, consumers cannot directly complain to the OFT. Complaints need to be made to Consumer Direct who will provide legal advice to complainants, or re-direct the individual complaint to Trading Standards for investigation. Due to restrictions within the Enterprise Act 2002, individual complainants are unable to be told whether their case is being investigated or not. In very rare cases, Consumer Direct may direct a very large number of complaints to the OFT to be considered as a systemic complaint. The OFT can also be engaged by consumer groups e.g. The Consumers Association or the statutory consumer protection body - Consumer Focus - via a super complaint. The OFT rarely prosecute companies, however, preferring a light touch regulation approach. Consumer complaints against companies are not published, but investigation work, undertakings and enforcements are located at. Many of the consumer protection laws e.g. Distance Selling Regulations 2000 or Unfair Terms in Consumer Contracts Act 1997 are actually UK implementations of EU directives. The OFT is one of the bodies responsible for enforcing these rules. This leads to a problem in that these examples of legislation are clearly designed to deal with individual complaints but the OFT will only deal with systemic complaints and will ignore individual complainants redirecting them back to Consumer Direct. The Office of Fair Trading also acts as the UK's official consumer and competition watchdog, with a remit to make markets work well for consumers, and at a local, municipal level by Trading Standards departments. General consumer advice can be obtained from Consumer Direct or via a local branch of the Citizen's Advice Bureau.\textsuperscript{239}

4.6 Conclusion:

Thus Consumerism is a social and economic order that encourages purchase of goods and services in ever greater amount. In economics consumerism refers to economic policies placing emphasis on consumption.

\textsuperscript{239} Ibid
Consumerism means consumer movement. Consumerism first started in 1920 in the United States. Consumers should be aware of their rights and should get justice for this purpose consumer movement started internationally.

After this other countries also took initiatives and gave consideration to consumerism on national level, many improvements were made for consumer protection.

People came to know the importance of consumer protection and after they agreed upon the consumer protection law, the new law was implemented. Every one gave positive response to consumer protection law and it was enacted in various other countries under the guidance of the United States.

USA, U.K. Canada, Australia and India in all countries consumer protection law implemented, along with this other laws were also implemented for protection of consumers. After the implementation of consumer protection in these countries, how fast the consumer can get justice or manufacturer or seller how they can be penalized, this point was under consideration.

In developed countries the people are aware of their rights. In USA if the consumers are not satisfied with the product, the consumer can return the product to the seller and he can get the refund.

If any kind of defect or deficiency in service is found in the product the people can file the case against the seller and can get justice in less time.

The Australian Consumer Survey is the first national survey of consumer and business awareness and understanding of rights and obligations under consumer laws. It also covers the experiences of consumers and businesses in dealing with consumer issues. The Survey was commissioned jointly by the Australian, State and Territory governments. It shows that Australian consumers and businesses have a high level of awareness of the existence of consumer laws, but that there are opportunities to increase their knowledge of their rights and obligations.

Ultimately, markets work effectively because consumers are confident that they can buy what they need and want by making effective choices and because businesses are free to compete and innovate to serve consumer needs. The role of governments lies in working to ensure that these conditions exist.
In Canada Consumer protection laws are made to ensure that companies do not engage in fraudulent practices or spread wrong information in the markets to promote their products and have an unfair advantage over their competitors. Such laws also ensure that information about the products such as those concerning effects on health that are meant to be shared with the public are not hidden from the consumers.

The Supreme Court of Canada has passed a judgment in the Richard v. Time which is completely on accordance with Consumer protection. The Supreme Court has given judgment in clear way i.e. where a prohibited business practice has been established, there is no need to prove the actual damage. In that country judiciary also supports the consumer and this helps the consumer to get justice.

Under the product safety standards there are currently included the, children's toys, children's nightwear and limited daywear having reduced fire hazard, pedal bicycles, baby walkers it’s very important for the child’s safety.

In India also consumer protection law implemented like in other countries, but comparatively it is not useful to the consumer point of view, because majority of people in our country are illiterate and unaware about their rights. Therefore in our country consumers are still awaiting for justice.

In other countries like USA, UK, Canada, Australia the laws are properly implemented, likewise the laws should be implemented in our country also and the consumer should be made aware of their rights.