



INVESTIGATION INTO MISLEADING BRANDING AND LABELLING PRACTICES AND ALLEGATIONS OF ANTI-COMPETITIVE CONDUCT BY COCA-COLA NIGERIA LIMITED AND THE NIGERIAN BOTTLING COMPANY LIMITED

**TO: COCA-COLA NIGERIA LIMITED
16 GERRARD ROAD,
IKOYI, LAGOS.**

**NIGERIAN BOTTLING COMPANY LIMITED
A. G. LEVENTIS BUILDING,
IDDO HOUSE 1,
IDDO, LAGOS.**

(TOGETHER DEFINED AS "COMPANIES")

ORDER AND NOTICE OF THE COMMISSION

WHEREAS:

1. In June 2019, the Federal Competition and Consumer Protection Commission (Commission), by routine market surveillance became aware that the Companies had introduced Coca-Cola Original Taste- Less Sugar (Coke Less Sugar) to the market as a new variant of its Coca-Cola (Coke) drink.
2. There was no record of any new product, or variant announcement, or material to demonstrate any effort to differentiate this new product or variant from existing and or similar Stock Keeping Units (SKUs) or brands.
3. The new variant is bottled and packaged as well as marketed and advertised in similar manner to the Companies' Coke Original Taste brand. The only addition on the label of Coke Original Taste was to add "Less Sugar" after "Original Taste". Nutritional information on both variants however show that the two products were different formulations as they had different ingredients and nutritional values.

4. In addition, the Companies also introduced this variant in a smaller PET bottle as part of its market introduction. It was reasonable and foreseeable that, where, any limited difference or recognition were to occur (if any) consumers will perceive and attribute the "Less Sugar" characterization to reduced quantity of the Coke Original Taste variant.
5. The Commission received several consumer complaints about the quality of Coke Original Taste drink, specifically, noting that it tasted markedly different from what they were familiar with and had become accustomed to consuming.
6. Preliminary investigations and sampling by the Commission unequivocally demonstrated that consumers assumed and believed they purchased and consumed the Coke Original drink. In reality, they had unknowingly purchased and consumed the Coke Less Sugar drink; a different variant and formulation from their intended Coke Original.
7. Following a complaint from a consumer in September 2019, the Commission conducted a market survey and discovered that the Limca lemon-lime flavoured drink appeared to have two variants which are also not distinguished. Both SKUs taste different and have different ingredients and nutritional values, but were packaged in identical bottles, with identical brand designs and the same National Agency for Food and Drug Administration and Control (NAFDAC) registration numbers.
8. Both Coke and Limca are produced, marketed and distributed by the Companies.
9. There is no record that the Companies conducted any consumer education, advertorials, sensitization or brand differentiation to ensure that consumers could discern and or distinguish between these variants.
10. The Commission was therefore concerned that such product branding and marketing practices could mislead consumers and the totality of the circumstances appeared to be an unfair tactic, in violation of the Federal Competition and Consumer Protection Act, 2018 (FCCPA), particularly Sections 17(g), 116, 123 and 124.

11. The initial facts received/gathered and assessed presented sufficient basis to proceed with a broader and more tailored investigation. The Commission commenced the subject investigation into the labelling, branding, marketing and advertisement practices of the Companies in June 2019.
12. While this investigation was ongoing, the Commission received another complaint in January 2021 alleging that the Companies offered their products (particularly Coke) at significantly different prices in different locations across the country and that the product quality varied or was inconsistent at different locations. This complaint prompted a further investigation into the question of whether the Companies' pricing model is indicative of any anti-competitive conduct, such as the abuse of a dominant market position in violation of Section 72 of the FCCPA.
13. The Commission requested for and received information and documents from the Companies in the course of the investigation. The Commission also had several meetings with the Companies and their respective counsels in furtherance of the investigation and evidence gathering.
14. Upon consideration of the entire record, especially evidence procured and violations sufficiently established by the evidence and record, the Commission finds that:
 - a. **The Companies** knowingly and intentionally applied a trade description to the Coca-Cola Less Sugar variant that could reasonably mislead consumers as to the nature and feel of the drink, in such a manner that consumers would assume that the product was the Coca-Cola Original Taste variant, in violation of Section 116 (1) and (2) of the FCCPA. The Commission received multiple complaints associated with this, and as such also concludes based on the evidence, that consumers were indeed, and as a matter of fact misled by the false and inaccurate portrayal of Coke Original Taste Less Sugar as Coke Original Taste. This portrayal, enterprise and infringement commenced in October 2018, and continues to date.
 - b. **The Companies** could reasonably determine, and did in fact become aware that branding the Coca-Cola Less Sugar variant in a manner so identical to the Coca

Cola Original Taste variant is likely to mislead consumers as to the actual content and feel of the product, yet, the Companies knowingly supplied, displayed, advertised and distributed these products with the misleading labels to consumers, in violation of Section 116(3)(a) of the FCCPA. This violation which commenced in October 2018, persists till date.

- c. **The Companies** adopted unfair tactics in marketing the Coke brand, by intentionally distributing and marketing Coca-Cola Less Sugar in packaging that is similar and mostly indistinguishable from that of Coca-Cola Original, thereby deliberately misleading consumers into purchasing the Coca-Cola Less Sugar variant when their intention, and understanding of what they are purchasing is the Coca-Cola Original variant in violation of Section 124 (1) (a) of the FCCPA. This violation commenced in October 2018, persists till date.
- d. **Coca-Cola Nigeria** in pursuance of trade and for the purpose of promoting and marketing Coca-Cola Less Sugar made advertorial (including video and poster) presentations of the 1 litre bottle, in manners that are misleading, and which falsely represent that the product is the same as the Coca-Cola Original Taste variant in a new larger bottle. This false representation is deceptive and reasonably misleading with respect to the product's nature, content and taste, in violation of Section 123 (1) (a), (b) and (c) of the FCCPA.
- e. When the deliberate, extensive and carefully orchestrated efforts made by the Companies to clearly distinguish Coke Zero from Coke Original, and additional efforts to adequately sensitize consumers on how to distinguish them, are compared with the misrepresentation of Coke Less-Sugar as Coke Original, it becomes clear that the latter is a deliberate business strategy and a demonstration of bad faith.
- f. Upon regulatory action, intervention, engagement and accommodation, the Companies became acutely aware of these infringements, and the regulatory view based on evidence, but instead of concluding appropriate steps to modify this behaviour and ongoing infringement, the Companies declined the opportunity, and instead chose to modify its business in a manner that allows them to continue the misleading enterprise in further demonstration of a

disinclination to transparently inform consumers about the differences between their products and further demonstration of bad faith. The Companies having agreed with the Commission, sought approval for more differentiated and sufficiently descriptive labels, proceeded to inform the Commission of a start date for the differentiation, and sought a moratorium of 90 days to exhaust existing stock and inventory, but thereafter abandoned this effort.

- g. **NBC** having consistently produced and distributed the zero-sugar variant of Limca Lime-Lemon flavoured drink for at least a period of 10 months, in its usual packaging, could reasonably determine that using the same packaging for, and applying an identical label to the 50:50 sugar variant was misleading. The Commission finds that NBC deliberately engaged in this deceit in an effort to surreptitiously re-introduce the 50% sugar variant to the market, after experimentation with the zero-sugar variant. The application of such deceptive trade description violates the provisions of Sections 17(g), 116 (1) and (2) of the FCCPA.
- h. **NBC**, having applied the deceptive trade descriptions to the two variants of Limca Lime-Lemon flavoured drink, then proceeded to supply these products to consumers, knowing that such deceptive labelling is likely to mislead consumers as to the contents of the bottle. This conduct violates the provision of Section 116(3) of the FCCPA.
- i. **NBC**, by producing and distributing the two variants of Limca Lime-Lemon flavoured drink in the same packaging and brand design, and using the same NAFDAC registration number for both products, impliedly and falsely communicated to the consumer that both products are the same and thus misled and deceived consumers, in violation of Section 123 (1) (a), (b) and (c) of the FCCPA and Regulation 2 (a) of the National Agency For Food And Drug Administration and Control Act (2004), Pre-packaged Food (Labelling) Regulations.
- j. **NBC** produced and distributed two variants of Limca Lime-Lemon flavoured drink – zero sugar variant and the 50:50 sugar variant, in identical packaging and label design. The producing and supplying these two different products in

such a deceptive manner is an unfair marketing tactic in violation of Section 124 (1) (a) of the FCCPA.

- k. The available pieces of information regarding the pricing patterns of Coca-Cola Nigeria's products are, by themselves, insufficient to demonstrate any abuse of market dominance, but they however raise some concerns around the pricing pattern in Ebonyi State in 2019. Though concerning, the astronomical price increases observed in Ebonyi State cannot (by itself) support a finding of excessive pricing, as several factors must be considered in determining whether there was excessive pricing. Therefore, the Commission may conduct further investigations into this issue of whether Coca-Cola Nigeria has been involved in conducts that may amount to an abuse of market dominance.

15. On May 30, 2023, the Commission Issued an Order and Notice to Show Cause to the Companies, requiring them to show cause why the Commission should not proceed to enter the Orders therein contained, as Final and enforceable in accordance with its powers under the FCCPA, particularly Sections 17, 18, 155, 159. On May 31, 2023, the Commission also sent its Interim Investigation Report to the Companies. The Companies thereafter responded to the Commission via letters dated July 3, 2023, and made further submissions/representations to the Commission via letters dated October 23, 2023 and December 8, 2023.

16. The Commission, having considered the totality of their submissions, proceeds to enter its Final Orders in the manner and extent herein described.

THE COMMISSION PURSUANT TO ITS POWERS UNDER THE FCCPA, IN PARTICULAR BUT NOT LIMITED TO SECTIONS 17 (a), (e), (g), (l), (s); 155; 157; 158 AND 159(1) (a) NOW HEREBY ORDERS AS FOLLOWS:

- a. **The Companies** shall ensure sufficient and acceptable packaging/labels and differentiation between Coke Original Taste; and Coke Original Taste Less Sugar which packaging/label shall be satisfactory to and approved by the Commission. The Companies are at liberty to consider and re-present to the Commission alternatives previously and mutually agreed between the Commission and the Companies.

- b. **Coca-Cola Nigeria** shall **immediately** cease and desist from making, displaying, publishing, airing and or projecting any advertorial material (in all forms, including but not limited to video, billboards and posters) which portray any of its products in a manner that is, or could be misleading or deceptive with respect to the product's nature, content, taste or any other applicable properties of such products. Particularly, all video and poster advertorials that portray the 1Litre Coke Less Sugar as being a bigger packaging option for the Coke Original Taste is hereby prohibited, and Coca-Cola Nigeria shall forthwith cease to cause same to be displayed, published, aired or projected on any medium and platform across the country.
- c. **Coca-Cola Nigeria** shall **immediately** conduct a robust advertorial campaign of all its product variants in a manner that provides consumers with clear and adequate identification factors that aid them in clearly distinguishing one variant from the other, without ambiguity, deception or confusion.
- d. **The Companies** shall be subject to supervision and monitoring for a period of **24 months** under the Commission's Appointed Monitor-ship Framework by separate monitors for each company, which monitors may be selected by the Companies, but subject to the Commission's acceptance and approval. Where the Companies fail to appoint a Monitor acceptable to the Commission, the Commission shall appoint a Monitor(s) it finds acceptable in the circumstances. The fees and any and every expense associated with the monitor-ship shall be at the cost of the Companies individually, or jointly. The scope of the monitoring shall be communicated in more detail with, or pursuant to the Commission's Final Order.
- e. As part of the monitoring, **the Companies** is hereby required to develop, or strengthen and implement a *Standard of Business Conduct on Consumer Protection and Competition Compliance Framework*, which shall include a relevant training schedule for board members, management staff, branding and marketing personnel, distributors, and relevant operatives, as well as periodic compliance classes or requirements. This framework shall be subject to the Commission's review and approval, prior to implementation the Companies and upon submission for review by the Monitor(s), tasked with assisting in the creation of the framework; or the strengthening of an existing framework in this regard, particularly in respect

to branding and advertising. All advertorial materials created pursuant to the final order shall be submitted through the monitors for the Commission's consideration and approval.

- f. Where **the Companies**, or either **NBC or Coca-Cola Nigeria** fail to appoint an acceptable and approved Monitor by the Commission within 30 days of the Final Order, the Commission reserves the right to appoint a Monitor or Monitoring Trustee accordingly. Also, where the Commission is dissatisfied with the progress of the Monitor-ship, the Commission may appoint a Monitor or Monitoring Trustee either as a substitution, in continuation, or in addition/complimentary for and to the role of the existing Monitor or Monitor-ship. The Companies shall be responsible for the payment of the Monitor, and any additional/complimentary or substitute Monitor or Monitoring Trustee appointed by the Commission.
- g. **The Companies** shall provide satisfactory Written Assurances to the Commission to the effect that they shall refrain from any continuation of the violations of the FCCPA, pursuant to **Section 153 of the FCCPA**.
- h. **The Companies** are hereby required to provide their Audited Financial Statement/Accounts for the year 2023. You are required to provide this information, with any other information you consider relevant or helpful to the investigation, on or before the close of business on **Thursday, August 1, 2024**.

TAKE NOTICE of your compliance obligation under Sections 157, 158 and 159 of the Federal Competition and Consumer Protection Act 2018; and the Federal Competition and Consumer Protection Commission (Administrative Penalties) Regulations 2020.

BY ORDER AND UNDER THE SEAL OF THE FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION



ACHIMUGU A. W.

AG. DIRECTOR, LEGAL SERVICES

DATED AT ABUJA THIS 29TH DAY OF JULY, 2024

