

**MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES  
FEDERAL TRADE COMMISSION AND THE FEDERAL REPUBLIC OF NIGERIA’S  
CONSUMER PROTECTION COUNCIL AND ECONOMIC AND FINANCIAL CRIMES  
COMMISSION, ON MUTUAL ENFORCEMENT ASSISTANCE IN CONSUMER  
PROTECTION MATTERS**

The United States Federal Trade Commission (“FTC”), on the one hand, and the Federal Republic of Nigeria’s Consumer Protection Council (“CPC”) and Economic and Financial Crimes Commission (“EFCC”), on the other hand (each side “a Participant”),

RECOGNIZING that fraudulent and deceptive commercial practices, and other unlawful conduct against consumers, undermine the integrity of both domestic and global markets to the detriment of all businesses and consumers, and undermine consumer confidence in those markets;

RECOGNIZING that the enforcement challenges that exist go beyond national frontiers and that cooperation between national public authorities responsible for the enforcement of laws that protect the interests of consumers is essential to fight such practices;

RECOGNIZING that cross-border fraud and deception often involve violations of both criminal and civil laws, and that cooperation between civil and criminal enforcement bodies can effectively help address and deter such unlawful conduct;

RECOGNIZING that coordination between civil and criminal agencies can provide complementary approaches to serious economic crime, including mass marketing fraud, through information and intelligence sharing and cooperative enforcement; and

RECOGNIZING that the Participants have already worked together in connection with the African Consumer Protection Dialogue (“African Dialogue”), established by the FTC, the CPC, and other agencies, and the International Mass Marketing Fraud Working Group and the London Action Plan, in which both the FTC and the EFCC have participated;

HAVE REACHED THE FOLLOWING UNDERSTANDING:

**I. Definitions**

For the purposes of this Memorandum of Understanding (“Memorandum”),

- A. “Applicable Consumer Protection Laws” means the laws and regulations identified in Annex 1, and such other laws or regulations as the Participants may from time to time collectively identify in writing to be an Applicable Consumer Protection Law for purposes of this Memorandum.

- B. "Covered Violation" means practices that would violate the Applicable Consumer Protection Laws of one Participant's country and that are the same or substantially similar to practices prohibited by any provision of the Applicable Consumer Protection Laws of the other Participant's country.
- C. "Evidence" means information, testimony, statements, documents or copies thereof, or other things, that are obtained in anticipation of or during the course of an investigation or proceeding under the Participants' respective Applicable Consumer Protection Laws.
- D. "Person" means any natural person or legal entity, including corporations, unincorporated associations, partnerships, or bodies corporate existing under or authorized by the laws of either the United States, its States, or its Territories, the laws of Nigeria, or its Territories, or the laws of other countries.
- E. "Request" means a request for assistance under this Memorandum.
- F. "Requested Participant" means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance.
- G. "Requesting Participant" means the Participant seeking or receiving assistance under this Memorandum.

## **II. Objectives and Scope of Assistance**

- A. This Memorandum sets forth the Participants' intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with Applicable Consumer Protection Laws. The Participants do not intend the provisions of this Memorandum to create legally binding obligations under international or domestic laws.
- B. The Participants understand that it is in their common interest to:
  - 1. cooperate with respect to the enforcement of the Applicable Consumer Protection Laws, including sharing complaints and other relevant information and providing investigative assistance;
  - 2. facilitate mutual exchange of knowledge and expertise through training programs and staff exchanges;
  - 3. facilitate research and education related to consumer protection;
  - 4. promote a better understanding by each Participant of economic and legal conditions and theories relevant to the enforcement of the Applicable Consumer Protection Laws; and

5. inform each other of developments in their respective countries that relate to this Memorandum.
- C. In furtherance of these common interests, and subject to Section IV, the Participants intend to use best efforts to:
1. share information, including complaints and other personally identifiable information, that a Participant believes would be relevant to investigations or enforcement proceedings regarding Covered Violations of the Applicable Consumer Protection Laws;
  2. provide investigative assistance in appropriate cases, including obtaining evidence under the Participants' respective legal authorities, on behalf of the other Participant;
  3. exchange and provide other relevant information in relation to matters within the scope of this Memorandum, such as information relevant to consumer and business education; government and self-regulatory enforcement solutions; amendments to relevant legislation; and staffing and resource issues;
  4. pursue further staff exchanges and joint training programs;
  5. coordinate enforcement against cross-border Covered Violations that are priority issues for both Participants;
  6. participate in periodic teleconferences to discuss ongoing and future opportunities for cooperation;
  7. provide other appropriate assistance that would aid in the enforcement against Covered Violations;
  8. engage in cooperative action to address the use of wire transfers with a nexus to Covered Violations;
  9. explore membership in, and the use of complaint data from, the multinational project [www.econsumer.gov](http://www.econsumer.gov); and
  10. coordinate participation in efforts to address consumer protection issues relating to spam and cyber threat enforcement, including participation in the London Action Plan.

#### D. Joint Implementation Committee

1. The Participants intend to establish a Joint Implementation Committee, made up of not more than three representatives from the FTC, CPC, and the EFCC, to review the implementation of this Memorandum and such other matters that would promote collaboration and/or cooperation between the Participants in the discharge of their duty to protect consumers.
2. The Joint Implementation Committee is to confer every six (6) months, or at such other time as may be mutually determined by the Participants. At least one (1) representative from each agency is to be present at the meetings.
3. The Joint Implementation Committee is to periodically review the results of the Memorandum, and when appropriate, is to consider the need for improvements and make suitable proposals for modification.

### III. Requests for Assistance

- A. Each Participant is to designate a primary contact for the purposes of requests for assistance and other communications under this Memorandum.
- B. If the request relates to Enforcement of Applicable Consumer Protection Laws, then Participants understand that:
  1. requests for assistance are to include sufficient information to enable the Requested Participant to determine whether a request relates to a Covered Violation and to take action in appropriate circumstances. Such information may include a description of the facts underlying the request and the type of assistance sought, as well as an indication of any special precautions that should be taken in the course of fulfilling the request, as described in Annex 2;
  2. requests for assistance are to specify the purpose for which the information requested will be used;
  3. consistent with Section V, a request for assistance certifies that the requester is to maintain the confidentiality of each request for assistance, the existence of any investigation related to the request, all materials related to each request, and all information and material provided in response to each request, unless otherwise determined; and

4. prior to requesting assistance, Participants should perform a preliminary inquiry to ensure that the request is consistent with the scope of this Memorandum and does not impose an excessive burden on the Requested Participant.
- C. Participants should use their best efforts to resolve any disagreements related to cooperation that may arise under this Memorandum, and, failing resolution in a reasonably timely manner, by discussion between appropriate senior officials designated by the Participants.

#### **IV. Limitations on Assistance**

- A. The Requested Participant may exercise its discretion to decline the request for assistance, or limit or condition its cooperation, including, where it is outside the scope of this Memorandum, or more generally, where it would be inconsistent with domestic laws, or important interests or priorities.
- B. The Participants recognize that it is not feasible for a Participant to offer assistance to the other Participant for every Applicable Consumer Protection Violation. Accordingly, the Participants intend to use best efforts, as outlined in Section II, to seek and provide cooperation focusing on those Covered Violations most serious in nature, such as those that cause or are likely to cause injury to a significant number of persons, and those otherwise causing substantial injury.
- C. A Requesting Participant may request the reasons for which a Requested Participant declined or limited assistance.
- D. The Participants recognize that confidential material often contains personally identifiable information. If the Requesting Participant wishes to obtain confidential information that includes personally identifiable information, then the Participants understand that they are to take additional appropriate measures to safely transmit and safeguard the information, including but not limited to transmitting the material in an encrypted format and using passwords to restrict access.

## **V. Confidentiality**

- A. To the fullest extent possible, and consistent with applicable laws, each Participant certifies the confidential treatment of information to be shared under this Memorandum. The certification of confidentiality applies not only to the shared information, but also to the existence of an investigation to which the information relates. The Participants are to treat the shared information, the existence of the investigation to which the information relates, and any requests made pursuant to this Memorandum as confidential, and not further disclose or use this information for purposes other than those for which it was originally shared, without the prior written consent of a Requested Participant.
- B. Notwithstanding Section V.A., it is understood that:
1. A Participant may disclose information provided pursuant to this Memorandum in response to a formal demand from a Participant country's legislative body or an order issued from a court with proper jurisdiction in an action commenced by the Participant or its government; and
  2. Material obtained in connection with the investigation or enforcement of criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of either Participant's country's criminal laws.
- C. Each Participant is to use best efforts to safeguard the security of any information received under this Memorandum and respect any safeguards mutually decided upon by the Participants. In the event of any access or disclosure of the information not authorized by a Participant, the Participants are to take all reasonable steps to prevent a recurrence of the event and are to promptly notify the other Participants of the occurrence.
- D. The Participants are to oppose, to the fullest extent possible consistent with their countries' laws, any application by a third party for disclosure of confidential information or materials received from a Requested Participant, unless the Requested Participant consents to its release. The Participant who receives such an application is to notify forthwith the Participant that provided it with the confidential information.

## **VI. Retention of Information**

If Participants wish to obtain materials under this Memorandum, then Participants understand they are not to retain such materials for longer than is reasonably needed to fulfill the purpose for which they were shared or than is required by the Requesting Participant's country's laws. The Participants recognize that in order to fulfill the purpose for which the materials were shared, the Participants typically need to retain the shared

materials until the conclusion of the pertinent investigation or related proceedings for which the materials were requested. The Participants are to use best efforts to return any materials that are no longer needed if the Requested Participant makes a written request that such materials be returned at the time they are shared. If no request for return of the materials is made, then the Requesting Participant may dispose of the materials using methods prescribed by the Requested Participant, or if no such methods have been prescribed, by other secure methods, as soon as practicable after the materials are no longer required.

## **VII. Costs**

Unless otherwise decided by the Participants, each Participant bears its own costs.

## **VIII. Duration of Cooperation**

- A. The Participants intend cooperation in accordance with this Memorandum to become available as of the date it is signed by both Participants and to continue until discontinued in accordance with the provisions of this Memorandum.
- B. Assistance in accordance with this Memorandum is understood to be available concerning Covered Violations occurring before as well as after this arrangement is signed.
- C. This Memorandum may be discontinued at any time by either Participant, but a Participant should provide 30 days written notice of such discontinuation. However, prior to providing such notice, each Participant should use best efforts to consult with the other Participant.
- D. On discontinuation of this Memorandum, the Participants are to, in accordance with Section V, maintain the confidentiality of any information communicated to them by the other Participant in accordance with this Memorandum, and return or destroy, in accordance with the provisions of Section VI, information obtained from the other Participant in accordance with this Memorandum.

## **IX. Legal Effect**

Nothing in this Memorandum is intended to:

- A. Create binding obligations, or affect existing obligations, under international or domestic law.
- B. Prevent a Participant from seeking assistance from or providing assistance to the other Participants pursuant to other agreements, arrangements, or practices.
- C. Affect any right of a Participant to seek information on a lawful basis from a Person located in the territory of the other Participant's country, or preclude any such Person from voluntarily providing legally obtained information to a Participant.
- D. Create a commitment that conflicts with either Participant's national laws, court orders, or any applicable international legal instruments.
- E. Create expectations of cooperation that would exceed a Participant's jurisdiction.

Signed at the Federal Trade Commission, Washington DC, United States of America, on August 28, 2013, in triplicate.

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Chairwoman Edith Ramirez  
Federal Trade Commission  
United States of America

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Mrs. Dupe Atoki  
Director-General  
Consumer Protection Council  
Nigeria

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Ibrahim Lamorde  
Executive Chairman  
Economic and Financial Crimes Commission  
Nigeria

## **ANNEX 1**

### **Applicable Consumer Protection Laws**

#### **For Nigeria:**

1. The Consumer Protection Council Act CAP. C25 Laws of the Federation of Nigeria, 2004 and all the Regulations made pursuant thereto.
2. Part II of the Economic and Financial Crimes Commission (Establishment) Act 2004.

#### **For the United States of America:**

The Federal Trade Commission Act, 15 U.S.C. §§ 41-58, the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, the CAN-SPAM Act of 2003, 15 U.S.C. §§ 7701-7713, and other consumer protection laws, and the regulations promulgated pursuant to such laws, except those provisions comprising Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C § 6211(5))).

## **ANNEX 2**

### **Standard Request Form**

The Standard Request form is to include the following:

- (a) the names of the Requested and of the Requesting Participants;
- (b) the name, location, and contact details of the subject(s) of the investigation, if available;
- (c) a general description of the alleged infringement including, where applicable, the name of the product or service and the advertising or sales medium involved;
- (d) the estimated number and location of consumers likely to be harmed and the estimated economic harm;
- (e) the Applicable Consumer Protection Laws allegedly violated;
- (f) the description of the assistance requested;
- (g) the purpose for which the information requested will be used;
- (h) the statutory basis for maintaining confidentiality of a Request and all Information exchanged in connection with the Request;
- (i) an indication of any special precautions that should be taken in the course of fulfilling the Request;
- (j) a description of any investigation and consultations undertaken by the Requesting Participant; and
- (k) a description of the evidence establishing a Covered Violation including witnesses and documents that the Requesting Participant can provide to the Requested Participant.