A Multilateral Global Consumers Action to Combat the Mockery of Consumer Protection in Transitional Economies by Multinational Companies

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for 17th World Consumers participants

"Anemic" is how some market and economic pundits describe the state of consumer protection in the Philippines. While there have been scores of significant consumer triumphs over the last few years, the struggle for empowerment remains an elusive lofty vision.

Scholars blame it on a complex capitalist society that virtually condones and submits to the power ands immunity of multinational companies, a relatively passive, subservient, unresponsive and timid citizenry, lack of consumer education, information, government support and local and global networks, among others.

With the population growing younger (roughly one-fifth of the country's 80 million people belong to the 15 to 24 age range), and the rapid technological breakthroughs that have been sweeping the archipelago lately, both producers and consumers are struggling to cope with these dramatic changes.

And since every Filipino is a consumer and vital component of the nation's lifeblood, the economic fate of the country rests on it. How is the Philippine government protecting its consumers? What are the developments that accounts for this seemingly "anemic" state of consumer protectionism? How do Filipino consumers respond to this?

Laws and policies

Article 16, Section 9 of the Philippine Constitution says: "The State shall protect consumers from trade malpractices and from substandard or hazardous products." For a long time now, the Philippine government's Department of Trade and Industry (DTI) is tasked of ensuring that consumer welfare ranks high in its action agenda.

Protection comes in the forms of laws and as far as the Philippines is concerned, there are 32 DTI fair trade laws, which range from guidelines for the disposition of products seized or forfeited, use of price tags and the creation of a task force on anti-piracy and counterfeiting, to standardization of electrical components and fire protection devices.

A major problem in handling consumer complaints is the large number of agencies enforcing consumer protection laws, most of which have no clear-cut roles on consumer issues and at times overlapping functions.

The problem with the Philippines is not in its laws but on how they are being implemented and enforced. Sociologists say the problem stems from a culture of dependence, with the country having experienced more than four centuries of Spanish, American and Japanese hegemony. Others opine it has something to do with the country's archipelagic nature, which nurtures a regionalistic attitude towards development.

Still, others say it has something to do with an endemic culture of judicial and bureaucratic corruption, which leads to corporate immunity from liability to consumers. It is perhaps a conglomeration of all these and more. It's a complex web that trickles down to the sinews and marrows of the whole spectrum of market forces and players. Indubitably, it is the consumers who suffer.

Sometimes, the consumer's hurts could take the form of a colossal marketing disaster involving a multinational company. Such is the case of the Pepsi 349 fiasco, a soft drink promo that erupted in May 1992, which to this day, has yet to pay thousands of Pepsi 349 cap holders. As a matter of fact, today, the case mirrors how irresponsible multinational organizations relate and abuse consumers in developing countries.

The 11-year old Pepsi 349 , a case of multinational tyranny on poor consumers

This so far is the most authentic portrait of how U.S. multinational giant firms treat poor consumers in developing countries where corporate social responsibility remains a dream. The sales promotion was supposed to be the ultimate soft drink promo – a brilliant scheme called "Number Fever" that would catapult Pepsi as the winner in the bruising cola wars.

The promo was an overnight success. People were winning millions of pesos everyday. Several weeks later, Pepsi's luck ran out. In the Asia week report, it said on May 25, 1992, Pepsi announced the number 349 as the winning number. "Later the same night, realizing that more than many thousands of consumers were in possession of 800,000 caps with the number "349" winning number, the company backtracked and came out with a new winning number, but it was too late." The television TV broadcast had flashed it already. Several days later, hundreds of thousands of angry people, claiming to have won a million pesos, stormed at Pepsi's offices and bottling plants throughout the Philippines to demand that they be given their attractive millions of cash prizes as announced in the advertising campaign.

Asiaweek further reports that Pepsi encountered the same problem in Chile in April 1992 when thousands of Chileans demonstrated against Embotelladora Chile, the local Pepsi bottler after it refused to pay the prices corresponding to the number

688 in its own version of Number Fever. But unlike Chilean President Augusto Pinochet who intervened so that the issue eventually subsided, then Philippine President Fidel Ramos "opted to let the problem run its full course."

In the Philippines, Pepsi blames its PepsiCo consultant, Pedro Vergara of D.G. Consultares for the error and reasons out that the multinational organization has no obligation to the consumers despite the fact that Pepsi officials had the authority and time to prevent the chaos. This official corporate thinking and rationale of passing the blame to their consultants and abstaining from any consumer liability in the fiasco would be difficult to swallow in any civilized society especially now in the era of corporate citizenship and corporate social responsibility.

Nevertheless, whatever happened, the harm has been done and thousands of hopeful millionaires, struggle for justice in courts to this day after almost 11 years. Winning decisions in the lower courts in favor of 349 capholders are being appealed, remanded back to the Lower Courts and suspended to prevent it from reaching the Supreme Court. Such an act makes a mockery of the judicial effort of the powerless and marginalized consumers.

The only thing that Pepsi did in the first month after the "349" announcement was to pay 500 pesos to some 500,000 winners, even if thousands have won one million pesos cash prizes under the 349 cap and offered words of apology. "But who is to blame?" asks a top Filipino columnist in a New York newspaper on August, 1993, "The fact that Pepsi paid $10 compromise is admission of guilt or responsibility to the fiasco."

The consumers who trusted the credibility of Pepsi felt hoodwinked and insulted. The claimants banded together in **"349"** protest groups. Time magazine, in its August 9, 1993 issue reported that "more than 22,000 people holding the 349 number have filed civil suits seeking damages, as well as 5,200 criminal complaints alleging fraud and deception." Such big protests nearly as big as the first historic EDSA People Power revolt in February 1986 led to numerous government investigations of the case. No less than the DTI and the Philippine Senate and Congress became convinced that a massive marketing blunder took place and that the company should be held accountable for gross negligence, deception and misleading advertising.

What really happened to the "Number Fever?" The DTI, which created a Task Force on June 2, 1992, found that Pepsi violated the government's rules when it established that after the incident, holders of the winning 349 crowns did not match their security codes. Since the law states that any modification, deviation or addition or deletion to any approved mechanics should first be approved, no move to that effect ever took place. Pepsi argues that the 349 crowns have both winning and non-winning security numbers and said that their supplier from Mexico gives them the list of winning numbers and security codes together with a master list through a computer program.

But Pepsi's grave error was that it never mentioned anything about pre-determined winning security codes to validate the 3-digit combinations in their advertisements. The fact that it was never mentioned in the published rules of the promotion means it is not part of the legal contract between Pepsi and the consumers. The report further said, Pepsi Co. Inc. (PCI) from Mexico received those pre-determined list of security codes on April 14, 1992, which means that the company had enough time to verify the list. It was modified only when the controversy surfaced. Furthermore the Mexico consultant of PepsiCo was never mentioned in the rules or contract. It is not a party to contract between Pepsi and the consumers. To settle the problem, Pepsi immediately offered the DTI Task Force a P150, 000 compromise settlement penalty to the government which was accepted without consultations with any consumers group. An obvious attempt to stonewall consumers.

The Senate report, which was headed by no less than Philippine President Gloria Macapagal Arroyo (then Chairman of the Fact Finding Committee) said, Pepsi-Coca Products Philippines, Inc. (PCPPI) and PepsiCo, Inc. (PCI) may be faulted for gross negligence because of its mistake of announcing "349" as winning number combination. It can also be faulted for "misleading and/or deceptive advertising by changing rules of the game contrary to that made known to the consuming public and by its failure to disclose to the consuming public in clear and unmistakable terms the importance and relevance of the security codes." The Senate report upheld the validity of the consumer's winners to the cash prizes. As far as Rule No. 129 of the Philippine Rules of Court, official investigations and reports are evidences considered as judicial notices which need not be proven in court. The government findings clearly reflected the liability.

That statement angered more policymakers. Human rights lawyer Rene Saguisag, to whom many of the 349 holders have turned for help says Pepsi International "cannot escape responsibility from the fiasco." He said some of the winners have lost their homes, jobs and even their spouses. There was even a story about a family who sold everything to finance a trip to Manila to collect the prize they believed to have won only to be totally crestfallen by what Fortune magazine claims to be the world's 50th largest corporation. Even former Senator Orlando Mercado, author of the new Consumer Code, says, "Pepsi is guilty of deceptive advertising."

The above-mentioned events led to the birth of Coalition 349, whose 6,000 members, all of whom have been victimized by Pepsi, encouraged the author to file a class suit for $400 million from the soft drink company. It was a long and storied struggle, which was even elevated to a court in New York. The controversy landed in American newspapers. Columnists and reporters called Vicente del Fierro, Jr. , the son of an illustrious name in Philippine journalism, considered by many as a Filipino Don Quixote, a biblical David going up against a global Goliath. He drew sneers and laughs from the uppity New Yorkers but he remained undaunted and fearless even when confrontations with the PCI's top management ensued. His raw courage is firmly riveted on the truth he discovered on Pepsi's crime.

Meanwhile, as the whole imbroglio was taking place, violence erupted in the Philippines. The press reported that, "explosives have been thrown at Pepsi plants and offices, and 37 of the country's delivery trucks have been stoned, overturned or set on fire. In the worst incident," Time magazine reports that, "a school teacher and a five-year old girl were killed in February, 1993, when a grenade pitched at a Pepsi truck that bounced off and exploded in front of a store."

Naturally, PCPPI blames the 349 Coalition for the violence. But this was found to be false when a senior official of the National Bureau of Investigation said Pepsi Cola might have staged attacks against its own trucks to discredit consumers seeking compensation in the "Number Fever." The December 18, 1993 issue of People's Journal Tonight reported a certain Artemio Sacaguing, head of the Bureau's Anti-Organized Crime Division, who told the Associated Press that he ordered the arrest of two officers of the 349 Coalition "based on testimony by a witness who linked them to the attacks. But further investigation found that the witness had given investigators a false name.

When the witnesses' real name was discovered, he turned out to be a Pepsi security guard." As a matter of fact, Sacaguing filed a sworn affidavit before the Manila City prosecutors saying that the 349 Coalition had been unfairly accused in at least three attacks on Pepsi delivery trucks in the Manila area.

On May 12, 1994, three months before this author was scheduled to go back to New York to pursue the case against Pepsi, a benighted twist happened when unidentified men who claimed to be NBI agents picked Vicente del Fierro and his son at a lobby in a hotel in Cagayan de Oro City, Mindanao, Southern Philippines on a series of speaking engagements to 349 chapters in Muslim Mindanao key cities. They were taken to a local police station and were interrogated like common criminals.

An unsigned court subpoena and warrant of arrest was presented to him. Three hours later, after the harrowing experience, he suffered his first stroke. Surprisingly, among the papers submitted by the accused law enforcement agents to justify their action against the consumer leader, were evidences they received from Pepsi Cola lawyers. Still, such harassment did not dampen the author's spirit to pursue the case for the consumers.

When he filed a class suit against Pepsi in New York November 1994, PepsiCo lawyers in Manila simultaneously retaliated by filing multiple libel suits, with no legal basis, against Vicente del Fierro which who had endured for the past eight years since then. Despite the inherent defective complaint the corrupt judicial prosecutors elevated the same to the court acting as accessory to the harassment against the consumer advocate.

In 1995, American Judge Eugene Nickerson favorably decided and ordered the US PepsiCo to submit to the jurisdiction of the Philippine Courts. But this good news was distorted through propaganda and misinformation committed by certain PR agencies in the Philippines. Envelop mental journalism quelled public awareness and focus on the issue. There was a large scale news embargo on any news regarding the Pepsi Number Fever scandal that to this day, very few people know that the case is still ongoing in the court in Las Piñas, Metro Manila.

Today, Coalition 349 is still seeking the immediate intervention of President Arroyo for an out-of-court settlement to this P20 billion claim since it is using the President's Senate Report No. 90 as basis for this. It is a continuing court struggle, which the group hopes to fight until the end for many more years to ensure victory in the world's biggest marketing disaster involving a multinational organization which seems to have corporate immunity from public liability as condoned by the Philippine government. Perhaps underscoring the reality that in weak developing countries, multinational corporations are above the law.

Harassments and intimidations & Expectations

The Pepsi 349 case is just one of the many cases in the Philippines where harassments and intimidations are being resorted to by multinational firms against militant consumer groups and leaders who fight for their rights in seeking redress to their numerous claims. There are currently no figures to substantiate how many cases of harassments, intimidations and violence big companies have committed, but some stories have not escaped the glare of media and public scrutiny.

There are countless stories like the abovementioned, which are still undocumented and unreported. Consumer groups hope to gather all these in order to disseminate those silent cases that scream for justice and foment a heightened sense of awareness and enlightenment to the public. But gathering and presenting information is not enough. This has to be coupled with lobbying and advocacy activities in order for consumers to be more empowered.

Coalition 349 and its active lobbying role for the consumers

From a mere advocate of the consumer battle against Pepsi, Coalition 349 and the Coalition for Consumer Protection & Welfare, Inc. have evolved into bigger organizations that deal with issues other than soft drink marketing disasters. As a matter of fact, one of their active roles is to lobby and represent consumer interest in the deliberation of several policy issues, which have a direct bearing on the lives of ordinary Filipino consumers.