
CONSUMER AWARENESS OF THE RIGHT TO TRUTHFUL ADVERTISING INFORMATION IN KENYAN FM RADIO STATIONS

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Abstract (12pt)

The objective of this study was to investigate consumer awareness of their right to truthful advertising information in Kenya FM radio stations. Truthful and factual advertising information is essential because it enables consumers to make informed purchase decisions on new goods and services. However, advertisers use persuasive words that might end up misleading the consumer to believe whatever an advert says about a product is true even when there is a possibility of deception. The study was conducted through mixed methods approach, where sampling involved a stratified random sampling of consumers of goods and services in selected estates within Nairobi City County Kenya. Quantitative data was collected using questionnaires. Qualitative data was collected using Focus Group Discussions and interviews. The study established that some of the consumers had low awareness of their right to truthful advertising information and also unaware of the organizations that they could complain to when products did not have the advertised quality. The study concluded that at times, advertisements are deceptive, hence the need to enforce the consumer rights protection laws and regulations against deceptive advertising in Kenya FM radio stations.

Keywords:

consumers;
advertising;
consumer deception;
puffery;
consumer rights.

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1. Introduction

Advertising is information that seeks to persuade consumers to buy goods or services. This makes advertising an expression that proposes a commercial transaction or expression related solely to economic interests of the speaker (Royal 2012). Advertising has among the most ubiquitous messages in the market place of ideas because of dissemination by every mass medium ranging from magazine, radio, television to internet. Advertising communicates the products offers, price or event and explains how to get the offered product (Omboi B.M, Mutali J.M.I (2011). However, promotion of illegal goods and services is prohibited (Hopkins 2001). The illegal business may include gambling, prostitution or even pornography as they have serious negative effects on the morality of the family in particular and society in general. Githui B.M (2013) posits that advertising can betray its crucial role as a source of information by misrepresentation and with holding of relevant facts that could enable consumers to make a more informed decision about the product. He avers that advertising may attempt to move consumers to act on the basis of irrational motives such as brand loyalty, status, fashion or sex appeal and not the essential aspects such as the quality or price of the advertised product in relation to the competing brands. The potential to mislead makes advertising among the most regulated forms of communication with the legal protection being enjoyed to the extent that it enables consumers to get information on new products as well as the right to producers of goods and services to advertise (Pember & Calvert 2010). Products that are subject to regulation or ban include tobacco products and alcohol. Both have serious health problems or concern and their prohibition is based on the desire to protect vulnerable groups such as children (O'Guinn, Allen & Semenik 2006, Bennet 2011

Advertisers are supposed to give consumers truthful information to enable them to make informed purchase decisions. In a number of countries, consumers rights to accurate or truthful advertising information is protected by the constitutions. For example, in Kenya consumer rights to information is guaranteed under Article 46(2) of the constitution which anchors Kenya Consumer Protection Act 2012. The Act “spells out consumer rights and obligations vis a vis product and service liability, make provisions for the promotion and enforcement of consumer rights as well empower consumers to seek redress for infringement of their right as consumers and also makes provision for compensation (Nzomo V.2018). Other than legal provisions, consumers are also protected against deceptive advertising through codes of professional conducts such as the Code of Advertising Practice and Direct Marketing in Kenya (2003). The laws and codes of conduct seek to protect consumers against false or misleading product information by advertisers.

Despite the legal requirements that advertisers should give only factual and truthful information about the promoted products, there is a possibility that it is not always so. In a bid to capture the attention of consumers, advertisers use persuasive words that claim their product is the *best option, freshest, tastiest, top one percent, most modern, most or creative* or use computer generated images and camera tricks to enhance the appeal of the advertised product. Even though no evidence might be provided to substantiate such claims, a consumer can assume the advertisement is factual and that the product contains the advertised qualities. To increase product appeal, advertisers also use known local media celebrities who pose as experts even though they may just be doing so as paid advertising actors and not as experts. Celebrity product endorsement is a regular trend in the media in many countries.

Therefore, with in that kind of situation there is need to examine consumers' awareness of their right to truthful advertising information.

It is hoped the findings of the study will provide information to researchers, policy makers and advertising industry regulators on consumers' awareness of their right to truthful advertising information. The findings are useful as a source of critical information to consumers, consumer lobby groups, advertising regulators and government. The information is important to advertising policy makers in formulating policies that seek to protect consumers from misleading or false radio advertising.

Advertising is information that seeks to persuade consumers to buy goods or services. Advertising entails sending out messages with persuasive information "as to who is producing and selling what product, for what reason and at what price" (Post 2000, p.8). Omboi B.M & Mutali J.M.I (2011) posit that consumers need information about the features of the product, its price and how can access. Such information they aver is important because it helps the consumer to make an informed purchase decision. Freedom of advertising enables consumers to receive information on new products and services and according to Hopkins (2001) advertising has among the most ubiquitous messages in the market place of ideas because of dissemination by every mass medium ranging from magazine, radio, television to internet. Hopkins however posits that advertising has a negative side and can inflict harm to society through advertising that is less than truthful or that promotes illegal goods or services. Githui D.M (2013) argues advertising can in fact betray its crucial role as a source of information by misrepresentation and withholding relevant fact about a product especially when such information may be discloses something negative. That realization has made many countries to put in place various laws to regulate advertising in a bid to protect consumers from deception or misleading advertising.

In Kenya, consumer protection is anchored in the Constitution of Kenya 2010 article 46 that states that consumers have a right to goods and services of a reasonable quality and to information necessary for them to gain full benefit from goods and services. The constitution further gives the consumer the right to protection of their health, safety and economic interests.

The right to truthful advertising information is a strong indicator of the extent to which the Kenyan constitution seeks to protect the consumer from misleading information on the quality of goods and services in the country. The Constitution of Kenya 2010 protection of consumer rights is however not an isolated case as other countries, for example, the United States have also been known to use constitution to protect consumers.

Holsinger & Dilts (1994), Pember & Calvert 2010 point out that deception is one of the many accusations that advertisers face from regulators and consumers and any promoter of a product who intentionally makes claims that are not truthful is penalized heavily by regulators of commercial speech. Often the advertisers do not disclose all the information about a product and only tell of the positive attributes of the product that leads to consumer deception since through concealment of the products negative attributes or side effects.

In product packing and promotion, advertisers use appealing words and attractive product packaging to capture consumer attention. The use of "small print" that accompanies raffle tickets or other services where the consumer is not guaranteed to win the advertised product as well as using superlatives such as "best toilet soap" or "better option" are some of the strategies used by advertisers (O'Guinn, Allen & Semenik, 2006).

According to Coughlin S (2017), authorities that enforce advertising standards are usually concerned about the use of terms such as *the best option or top of the range* because such claims are unjustified unless the advertiser can have good evidence.

The use of hyperbole or puffery to promote a product is legal and therefore difficult to pin down as deception as they are considered subjective remarks with varying interpretation and cannot be proved or disapproved. For example, claiming that a product removes stains faster is just a claim that cannot be proved or disapproved because the issue of removing a stain faster is subjective because the claim is made by the consumer and not the advertiser. Through puffery, advertisers push non facts to enhance the image of their product and not the brand but about the consumer and social context in which the consumer uses the brand. For example, advertising a soft drink and calling it “the choice of the new generation” or a cigarette and saying “the smooth way to go places” are subjective claims. However, this is not to say that puffery cannot mislead consumers. It has the potential to mislead some consumers because it represents “soft core” deception (O’Guinn, Allens&Seminik, 2006, p.129) and some can just believe it. This loophole could be exploited by advertisers in a bid to attract more customers.

Truth is central in advertising as products and services must have the qualities that the promoters say they have. When an advert is carried in the media, it must be truthful, not misleading and backed by evidence. Advertisers are expected to operate within legal regimes that define what is truthful or true information or facts about something. Other than legal or regulatory requirements, professional ethics also regulate the conduct of members in a particular industry or undertaking.

Professional ethics are important since they are values that set professionally accepted standards of personal, business values and principles that guide members in performing and upholding common standards in professional bodies. For example, the Code of Advertising Practice and Director Marketing in Kenya 2003 is the core document that regulates the Advertising industry in the country.

However, even though laws and codes of professional conduct have been put in place to guarantee consumers the right to truthful advertising information, the battle cannot be won unless the consumers themselves are at the forefront. The awareness of their rights enables the consumer to identify any misleading advertisement and report such offenders to the regulatory bodies. That is why consumer awareness of their right to truthful information is critical in the war against deceptive or misleading advertising.

2. Research Method

The mixed methods research was chosen for this study. Creswell and Plano Clark (2007) define mixed methods research as research with philosophical assumptions as well as methods of inquiry and focuses on collecting, analyzing and mixing both quantitative and qualitative data in a single study or series of studies. Mixed method research includes at least one quantitative method (designed to collect numbers) and one qualitative method (designed to collect non-numerical data)

This study employed the descriptive design to collect qualitative and quantitative data in a single phase. The quantitative and qualitative data were collected separately but both were given equal importance in the study.

The targeted population was estimated to be around three million people based on the population census of 2009 (KNBS 2010). The research was carried in four districts of Nairobi City County, namely: Nairobi East, Nairobi West, Nairobi North and Westlands.

Sampling of the consumer respondents was done based on the 2009 Population Census for Nairobi City County which was 3.138 million people (KNBS 2010). The researcher used multistage random sampling method to obtain respondents from Nairobi East, Nairobi

North, Nairobi West and Westland's districts. The formula used in calculating the sample from the census was Cochran formula, where 314 respondents were sampled as shown

$$N = \text{deff} \times Z^2 p (100 - p) / e^2.$$

below.

N = sample size

Deff = Design effect

Z = Significance level

P= the estimated percentage or proportion

E=Error tolerance

Source: Magnani, R (1997)

Table 1. Respondent's distribution

Area	Samples
Westlands	24
Dagoretti	26
Kasarani	34
South B & C	36
Langata	22
Kamukunji	39
Embakasi	32
Makadara	29
Starehe	37
Nairobi CBD	35
Total	314

The quantitative data collection was done through open and closed ended questionnaires administered to the selected consumers. The questionnaires were administered on consumers in the selected locations and the qualitative data collection was carried out through interviews and focus group discussions. Probing questions during the discussions were asked to gain better insight and elaboration on diverse issues.

Focus group discussions were held with four groups of between 8-12 participants whose ages ranged from 18 years to early 50s all with characteristics useful to the study. During the focus group discussions, the researcher sought to get information about the participants' views on advertisements and how such adverts enhanced their awareness of new products in the market as well what influenced them to purchase the advertised product. After the focus group discussions were held with different participants, their responses were compared with the views expressed by other respondents through the questionnaires. This helped to bring out common themes or differences among the respondents of the various focus group

The data was analyzed using both qualitative and quantitative methods. Data from the questionnaires was cleaned and coded into excel software. The data was then transferred to SPSS software where charts and tables were derived.

The qualitative data collected through interviews and focus group discussions was sorted and classified in themes. Specifically, the data collected through participant interviews were transcribed and analyzed through the scissor-and-sort technique to identify relevant topical issues. The first step was to go through the transcript and identify those sections that were relevant to the research question.

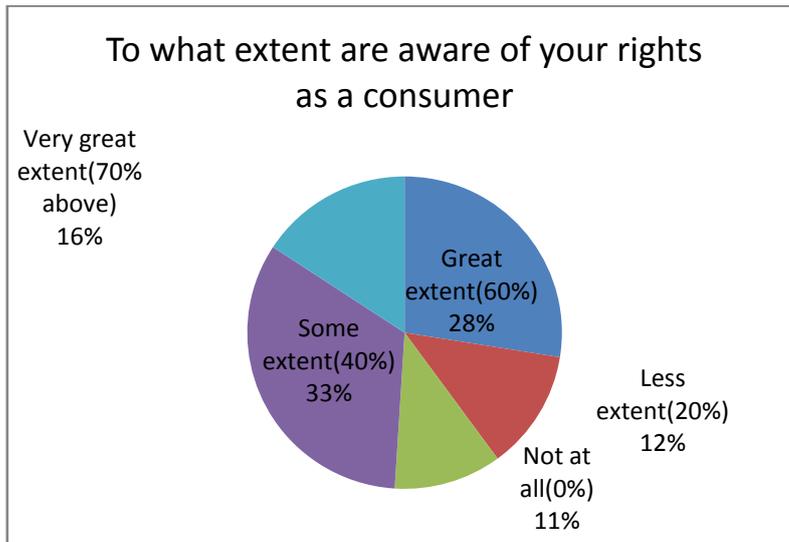
3. Results and Analysis

The study established that media advertising was the greatest source of information on new products (36%) followed by friends (22%), sales people (21%) and work colleagues (7.4%) but 10% of the respondents indicated that they had other sources of information on new products. The other sources included friends, and advertisements on the internet and billboards. In a Focus Group Discussion session, one participant summarized by saying, “today we receive information on new products and services from many sources, especially the groups we belong to on Whats’up, Facebook, Instagram and Google plus”. Consumers’ awareness of the right to truthful advertising information is critical for their protection against deception in advertising. The awareness is important because consumers themselves must be at the forefront in fighting deception in advertising because it is not possible for regulators to investigate every claim of misleading advertising information. Without consumer awareness of their rights to truthful advertising information, it is difficult to protect them against deceptive advertising.

To establish the consumers’ awareness of their right to truthful advertising information, the study focused on the following themes namely whether they would complain against misleading advertising, where they would direct their complaints, which documents protected their rights to truthful advertising information and how familiar they were with the contents of the documents that protect them against deceptive advertising information.

The decision to complain about an unsatisfactory service or goods can be used as a yardstick of a consumer’s awareness of his rights. The study established that the majority of consumers would complain if they found that a product did not have the advertised property. Only 3% strongly disagreed and 15% disagreed that they would not complain if a product did not have the advertised quality (Figure 1). The findings painted a grim picture of the unassertiveness of consumers towards advertisers. Most of the consumers do not know their right to complain about products that do not have the advertised qualities. This is why advertising regulations ought to be very strong to ward off consumer abuses through advertising. For this reason, an advertising regulator in Kenya recommended consumer education on their right, as evident in an interview with Kenya Consumer Protection Advisory Committee (KECOPAC) CEO Mr. Mburu, who asserted that: “In the absence of consumer education, most of these claims of deception will not end anytime soon”.

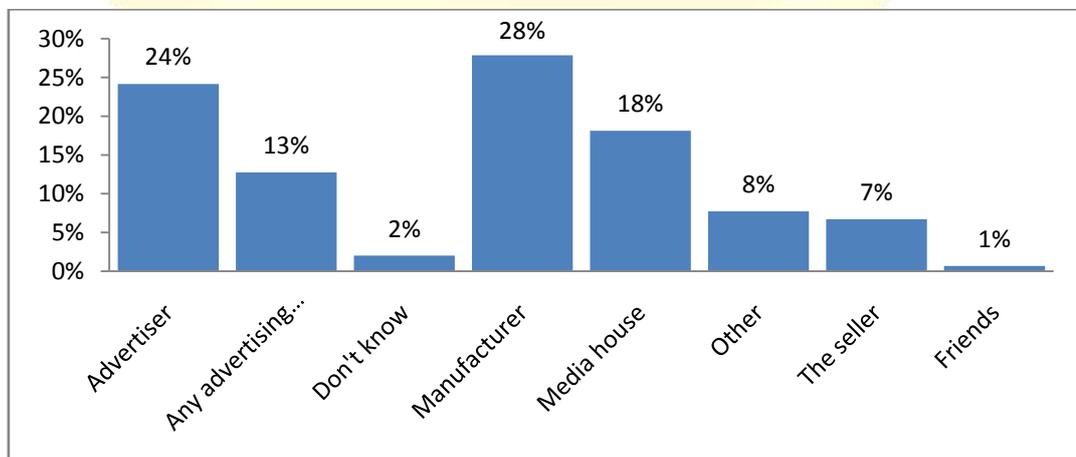
Figure 1: Extent of awareness on consumer rights



The study established that consumers were aware of the various organizations where they could direct their complaints in case of grievances when they purchased products that did not have the advertised qualities. Some respondents said they would complain to the advertiser (24%), advertising regulatory bodies (13%) while others cited the manufacturer (28%) the media house (18%) the seller (7%) others (8%) and friends (1%) as shown in Figure 26. These findings were corroborated during both interview and Focus Group Discussion sessions where the participants enumerated the all the offices where they would report their complaints of deceptive advertising.

Even though the consumers said they would direct their complaint to someone, only 13% said they would direct their complaint to an advertising regulatory body. This raises the concern that the consumers actually do not know the organization to complain to in case of misleading advertising content. Figure 2 shows the recipients the consumers indicated they would report complaints about errant advertising to.

Figure 2: Recipients of Consumer complaints



The other organizations cited such the advertisers, the manufacturers and media houses would ideally be part of the accused persons for aiding advertisers to publicize a product that did not have the promoted efficacy. This leads one to argue that even though the consumer would feel relieved that one has complained about the low quality of the product, the complaint would not lead to any punishment since one would not have complained to the right organization.

The respondents said they had at one time or other complained about the quality of the product to either the vendors or manufacturers but found the process very tedious because they were taken round until they gave up. They also complained that some companies have help lines that customers are supposed to call to register a complaint but even when the call goes through not much help is offered.

From the findings of this study, one can argue that some of consumers are not aware of the right channels or organization where they can channel their complaint in case they find the quality of a product is lower than what is advertised in the media. Awareness of rights is critical to consumer protection. The study established that consumers were aware of their rights at varying degrees, with those who said they were aware at very great extent being 16%, great extent 28% some extent 33% and not at all at 11 % (Figure 2).

Even though the majority of consumers said they were aware of their rights, there has been no corresponding level of issues raised by consumers whenever they are aggrieved. The awareness does not seem to be matched by reporting of grievances to authorities for any action. This could be due to lack of awareness of the complaint mechanism (Musamali 2014), or the time consuming grievance registering process cited by some of the respondents in this study.

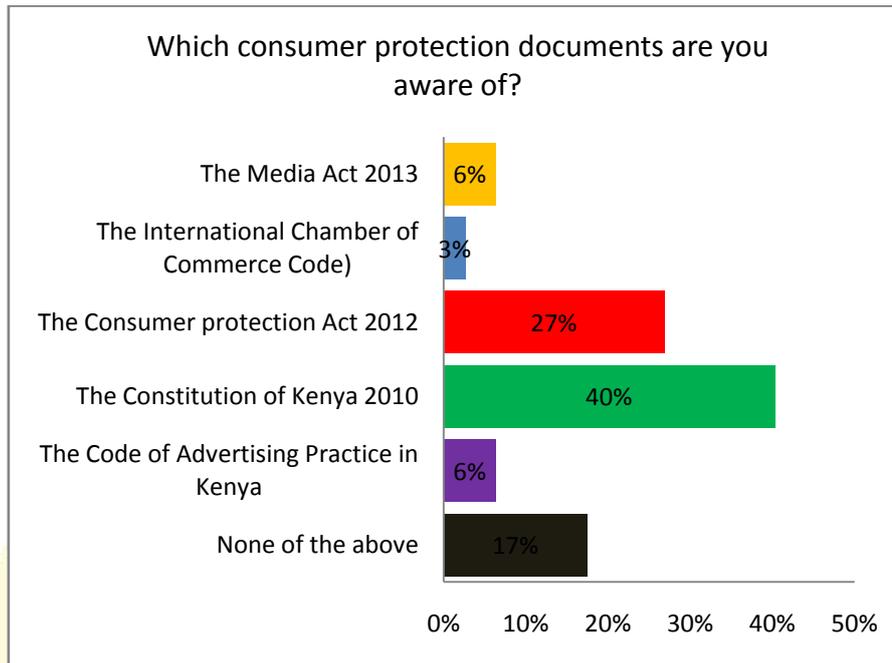
Other than the reasons for not raising a complaint mentioned by the respondents, one also observes Kenya does not have a vibrant consumer protection lobby groups that can be cited as evidence of consumer awareness of their rights. Such bodies are critical pointers of consumer awareness as well defenders of consumer rights (Arens 2000).

In Kenya, the Consumer Federation of Kenya (COFEK) is a fledgling organization with great potential for consumer protection because of the enactment of the Consumer Protection Act 2012 which is meant to protect consumers in the country. The Federation advises consumers to take time and scrutinize products that are in market to ensure they are of the right quality. This can be taken be an indication the consumers are not aware of their right to truthful information as the regards the price or quality of an advertised product. However, the consumers interviewed for this study had varying degrees of awareness of their consumer rights as well as commercial speech rights.

Some said they were aware of their rights as consumers and attributed knowledge to an awareness creation seminar that they had attended facilitated by the Kenya Bureau of Standards. Others said they were aware that selling of counterfeit goods is illegal. Other consumers said it was the responsibility of the Kenya Bureau of Standards to ensure consumers got the right quality of products. One consumer candidly said “I am not aware of any consumer rights. The only one that I usually hear is the advert on medicine that says *if symptoms persist, seek medical advice!* It was clear from the study that some of the consumers did not have a very deep level of awareness of their consumer rights to truthful information in advertising.

The study sought to find out the extent to which the consumers were aware of the available consumer protection documents. The majority of the respondents (40%) said they were aware of the Constitution of Kenya 2010 among other documents while 18% said they were not aware of any document at all (Figure 3).

Fig 3. Awareness of Consumer Protection documents

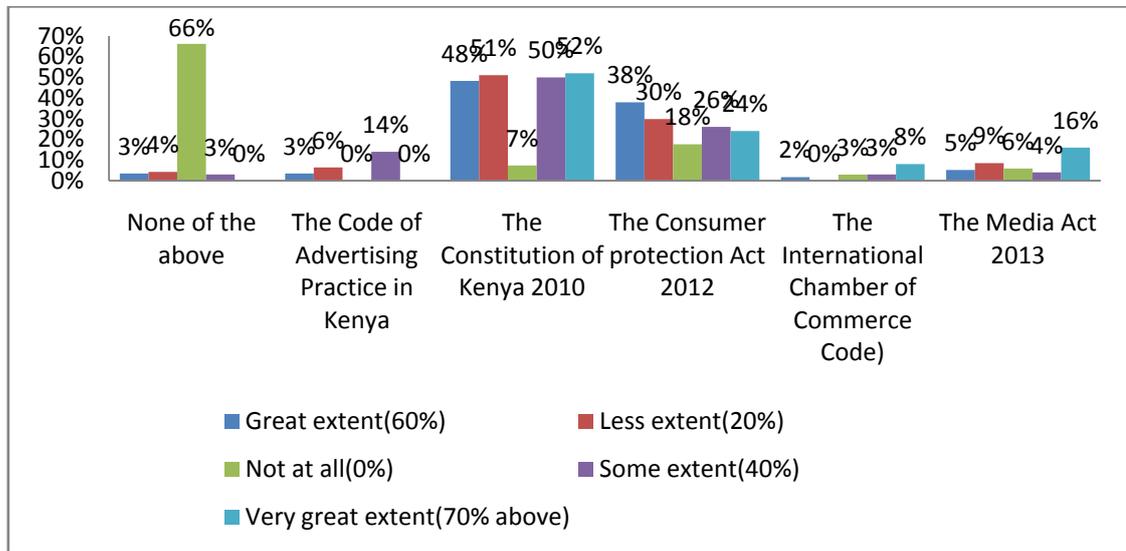


Awareness of any regulatory documents is critical in the protection of rights and it was therefore important that the consumers be aware of the documents that protect them under the consumer speech rights. The respondents' low awareness of the critical documents that protect consumer rights, namely the Code of Advertising Practice (6%) and the Consumer Act 2012 (27%) paints a picture of consumers who are not very familiar with the important documents that they can use to protect their commercial speech rights. Even though the Consumer Federation of Kenya (COFEK) has complained in the past of many cases of false advertising where marketers carry content that is not factual or representative of goods of services not many cases of consumer complaints have been evident in the media.

The low awareness of consumer protection documents could impinge on their ability to act as regulatory agents in the enforcement of their consumer speech rights bearing in mind that consumers themselves are motivated to protect their own rights such as product safety, reasonable choice and the right to information (O'Guinn, Allen & Semenik 2006).

The study established that very few respondents could identify any specific consumer protection clause in the documents they had identified (Figure). This may mean that even though the respondents mentioned the consumer protection documents, they do not have any thorough knowledge of the documents and therefore cannot be said to be well versed with the specific contents in the documents that protect their rights as consumers.

Figure 4: Familiarity of contents



This researcher argues that low consumer awareness of the specific sections of the law or Codes of Advertising that protect rights to truthful commercial speech make consumers incapable of raising complaints when their rights are infringed by advertisers. In Kenya, consumers seem to take minimal action or register their complaints even when they are victims of misleading advertising information. This appears an anomaly because consumers themselves should be at the forefront in protecting their rights to truthful advertising information. According to O'Guinn, Allen & Semenik 2006; Mwaura, Oroko & Oyugi (2015) consumers themselves should be motivated to act as regulatory agents because of their interest in among other issues, product safety, reasonable choice; and the right to information. That is not the case in Kenya because the findings of this study established that consumers have low awareness of their right to truthful advertising information. That finds leads one to conclude that consumers' rights can be infringed by misleading advertising in FM Radio with minimal complaint by consumers because of low awareness of the sections of the sections of the law that they can use as a basis of their complaint.

4. Conclusion

This study aimed at investigating consumer awareness of the right to truthful advertising information in Kenya. Even though advertisements are a major source of information and consumers rely on them to make purchase decisions, there are fundamental issues of deception that underlie advertising and consumers should be aware of that. This study established that even though some consumers said they were aware of their right to truthful advertising information, they could not clearly identify the organizations or bodies where they could direct their complaints in case a product did not have the advertised qualities neither sure they would complain. The Consumer protection organizations in Kenya include the Advertising Standards Body of Kenya, the Kenya Bureau of Standards and the

Kenya Consumer Protection Committee and not many respondents could name them. They also could not identify the core Consumer protection documents such as the Kenya Consumer Protection Act 2012, The Code of Advertising Practice and Direct Marketing 2003 or even the Constitution of Kenya 2010 as the documents they would rely on as a guide to demand for truthful advertising information.

These findings therefore justifiably lead this study to the conclusion that consumers in Kenya do not have much awareness of their right to truthful advertising information.

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