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## CONSUMERS PROTECTIVE REGIMES IN THE HOSPITALITY INDUSTRY IN NIGERIA: A REVIEW

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**Abstract:** *This paper reviews the consumer's protective regimes in the hospitality industry in Nigeria. The work also appraise conceptual framework and the meaning of consumer, and service providers in the hospitality industry, consumer protection issues in the hospitality industry, duties of the operators of hospitality services and some criticism and the ambiguity of section 2 of the Akwa Ibom State innkeepers and hotel proprietors. Consumers of services in the hospitality industry in Nigeria encountered a number of issues that in turn make them victims of defective services and deficient goods such as drinks and food. Other consumer issues considered in this paper are inter alia, the security and safety of the guest; whether the extent legislation has provided adequate protection for the consumer in the event of breach of his rights by the hotelier and when tort base regime can be resorted to in the event of breach of consumer rights by the hotel proprietors. The paper, therefore, recommends among others that the law should endeavour to balance the interest of the guests and that of the service providers for a robust hospitality industry that will yield foreign exchange for Nigeria.*

**Keywords:** Consumers Protective, Hospitality Industry, Nigeria

**Research Area:** Social Science

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### 1. INTRODUCTION

Home away from home is the popular slogan employed by hotels, inns, motels, bars, guest houses and restaurants in inviting potential guests to patronize their services and products. Proprietors in the hospitality industry are inured with the statutory duty of providing the secure and safe business environment for the purpose of protecting the properties, vehicles and persons of the guests. These responsibilities set out the scope, nature, and extent of liability of service providers to the guests in the course of supplying services in the hospitality sector. The extent to which a hotel proprietor or an operator of an inn, guesthouse, motel, or bar incurs liability<sup>1</sup> in the event of loss, damage, or theft of a consumer's property or an injury to a guest arising from the negligence of its agent or employee, as well as exceptional cases like act of God or an enemy, are the consumer issues plaguing the hospitality industry in Nigeria that this paper interrogates. In doing this, reference shall be made to statutory and judicial authorities from local and foreign jurisdictions to decipher how the law has enhanced the protection of guests in the hospitality industry at the global level.

### 2. DEFINITION OF CONSUMER

The word consumer enjoys a wider definition by virtue of the statute guaranteeing consumer protection in Nigeria. It provides;

*"Consumer" includes any person- (a) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacturer of any other goods or articles for sale; or (b) to whom a service is rendered<sup>2</sup>*

Thus, being the principal legislation on consumer protection, the Federal Competition and Consumer Protection Act 2018 supersedes and overrides the provisions of any other law (inclusive of the Innkeepers and Hotel Proprietors Law) but is only subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, in all matters relating to the protection of the consumer<sup>3</sup>.

The combined effect of the foregoing is that, a consumer in the hospitality industry is a guest to whom hospitality services are rendered by operators, owners or agents of hotels, motels, guest houses, resorts, bars, clubs, restaurants, etc., and enjoys benefits and is obliged to fulfill certain obligations to the hotelier, innkeepers and operators, of the hotels, guest houses, motels, bars, tourist sites and allied facilities under the law to which breach of same makes him liable to the consumer for legal remedy<sup>4</sup>.

In the case of *James Randolph Bo We V Smc Electrical Products Inc*<sup>5</sup> the United States of America's court define a consumer as:

*Individuals who purchase, use, maintain and dispose of products and services. Consumer is a member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practices for which the state and federal consumer protection laws are enacted.*

In this paper except the context otherwise admits when the word consumer is mentioned reference is made to a guest that is been defined as a person who is entertained or to whom hospitality is extended. A guest is equally referred to as a person who pays for services at an establishment such as a hotel or restaurant, inns, motels and eating places<sup>6</sup>. More so, the term guest has been elaborately considered to generally refer to a person who pays to stay in a hotel, motel or inn for a short period of time and he is clothed with the right to sue for injury or loss he suffers from the service providers as innkeepers, hotel proprietors or restaurants or motel operators. In the same vein, a consumer within the context of the present discuss refers to a traveler who stays at an inn, lodges in a hotel, or guesthouse of the tavern with the consent of the owner for any length of time, be it a day, a week, a month or a longer period in which the innkeeper, hotelier, motel owner or guesthouse operator may incur liability for all the goods belonging to the guest within his premises when lost, damaged or stolen on the principle of public utility<sup>7</sup>.

### **3. THE MEANING OF SERVICE PROVIDERS IN THE HOSPITALITY INDUSTRY**

The term service provider in the hospitality industry is subject primarily regulated by Federal and States Laws. It is in the light of the foregoing that the express provision of section 15 of the Hospitality and Tourism Establishment (Registration, Grading and Classification) Regulations, 1994 defines "hotels" to means any building or numbers of buildings which are

grouped together containing not less than ten bedrooms in which accommodation is provided for the public by common management and enjoy ancillary hotel services.

Conversely, it defined "hotel owner" to mean any person to whom a license to manage a hotel has been issued and includes any person to whom a license has been transferred under these Regulations. Similarly, the regulation defines "motel" as a stopover accommodation establishment with or without sufficient packing space and may consist of a minimum of ten bedrooms. While on the other hand, an "innkeeper" is statutorily defined to mean the owner of an inn.

Furthermore, by the tenor of the Regulation, "commercial guest house" means an accommodation establishment or building with a minimum of five bedrooms. At the State level, section 12 of the Innkeepers and Hotel Proprietors Law<sup>8</sup> defined "inn" to mean an establishment held out by the keeper or proprietor as offering food or drink without a special contract, to any person presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and who is in a fit state to be received, and in the case of a hotel, which offers sleeping accommodation if so realized.

From a conglomerate analysis of the provisions of the aforesaid Federal Regulations and State Law one can say that service providers in the hospitality industry refer to persons with license to operate services and facilities such as hotels, motels, inns, guesthouses, relaxation centres, amusement parks, recreational enterprises, tour operation, tourism establishment, travel agents, hire services offered to guests and consumers of hospitality products and services within the contemplation of the law in which they can be held liable for defective services and other injuries suffered by the consumer-guest.

#### **4. CONSUMER PROTECTION ISSUES IN THE HOSPITALITY INDUSTRY**

The Nigerian consumer who patronizes facilities, services and products offered by the hospitality industry is faced with a lot of issues that impedes the enjoyment of the offered made by the service providers and thereby making him dissatisfied as a guest who feels he has maximize the value of his money. The issues faced by the consumer in the hospitality industry are discussed seriatim:

##### **4.1 Separating Liability for Goods from Services**

While the express provisions of sections 11-15 of the Sale of Goods Act 1893 could be said to provide a roadmap for the liability of manufacturers, producers and distributors of defective goods, it would appear we are yet to have none for defective services. A learned author has painted the picture in the following terms:

Relative to the consumer of goods, the protection accorded the consumer of services is a more neglected aspect for legal regulation and enforcement. The rules which regulate the provision of services are not only submerged within the crevices of the law of obligations, part appear incapable of any practical relevance in view of the fact that the attendant consumer complaints in the service subsector are often viewed as a mere nuisance. Yet it our firm believe that we should be able to develop a concept of "service liability" in the manner in which that of "product(s) liability" developed<sup>9</sup>.

In addition to the foregoing, the consumer in the hospitality industry is faced with the issue of harmonization of offer and demand for services which is hinged on the fact that simultaneous nature of production and consumption is typical of most services such as that offered in the hospitality sector. Another issue the consumer in the hospitality industry is bound to encounter is the difficulty in evolving the concept of service liability as it has been done in product liability<sup>10</sup>. Commenting on this issue the learned authors<sup>11</sup> posited thus:

The first is that its application may be restrictive and may relate to only those situations where the consumers complain of shoddy services; while it may remain inapplicable in addressing the difficulties encountered in cases of late service delivery and overcharging. The nature of service compared to product is unique. The major characteristic of services has to do with separating them neatly from products. The distinctiveness of service is buried in what can be described as the impossibility to separate supply from consumption, the impossibility to preserve or store services, their non-material quality, transience and heterogeneity<sup>12</sup>. The same sendees can be rendered by different persons in different ways, so that heterogeneity also counts among characteristics of services that differentiate them from products. Implicit in this, is the problem of having a standard for service, Thus, since services have no tangible parameters, and have, in the past been far less standardized than products has perhaps, resulted in it being more difficult to draft apposite general provisions and on reliance being placed rather on definite regulation of particular industry<sup>13</sup>.

#### **4.2 The Rules for Determining of Liability in Defective Hospitality Services**

Consumer are bound to face the issue of categorization of hospitality services in hybrid cases where there is the difficulty of demarcating whether a transaction involves only service or product or both<sup>15</sup>. This brings to the fore the appropriate rules to apply as the determinant factor for liability in given circumstances namely, fault-based or strict<sup>16</sup>. More so, liability may differ depending on whether it is a person, chattel or both that are involved.

#### **4.3 The Relationship Between Guests and Service Providers**

The consumer is faced with the issue of the nature of the relationship he has with his service provider which is believed to be outstandingly different from that involving contract for the sale of goods. Thus, while goods are manufactured miles apart from the consumer, guests who patronizes hospitality services are said to interface with service providers. Whereas this proposition may be correct in some instances, the same does not apply in cases involving five-star hotels wherein services are carried out on the basis of specialization and departmentalization.

Under this arrangement cooks are saddled with the responsibility to prepare the cuisines, the duty of the waiters is to wait on the guest, serve them the food if not buffet and the stewards wash the dishes. In the case of drinks, they are usually manufactured in far away factory supplied by a contractor via a distributor. Therefore, when things go wrong in circumstances such as drinks containing sediments or food poisoning how would liability be determined<sup>17</sup>.

#### **4.4 Electronic Transaction Challenges**

It is not gainsaying the fact that in this era of information and communication technology, consumers tend to be prone to transactions involving services than goods. This is on the

understanding that electronic transaction, electronic commerce and electronic contract have permeated all sphere of the social and economic life of consumers across the globe<sup>18</sup>. The issue the guest is likely to face in this regard is telemarketing, false and misleading adverts. By this it is meant that what the service provider may advertise on his website may be totally different from what is obtainable on ground upon physical inspection. This reality may done on the guest after payments have been made, the hotel facility booked online; transaction completed and the refund of the money almost an impossible task<sup>14</sup>.

#### **4.5 Hotel Proprietor's Liability Limited by Statute**

The consumer is faced with the issue of a statutory provision that has place a maximum amount of damage that can be incurred by a hotel proprietor who is liable to make good the loss, theft or damage to his property of a guest. For the avoidance of doubt the section 6 of the Cross River State Innkeepers and Hotel Proprietorship Law is cited with approval, thus:

*Where a hotel proprietor is liable to make good the loss of or any damage to property brought to the hotel, his liability to any one guest shall not exceed five hundred naira in respect of any one article, or two thousand naira in the aggregate, except where-*

- a) The property was stolen, lost or damaged through the default, neglect or willful act of the hotel proprietor or some servant of his; or*
- b) he property was deposited by or on behalf of the guest expressly for safe custody with the hotel proprietor or some servant of his authorised, or appearing to be authorised, for the purpose; or*
- c) At a time after the guest had arrived at the hotel either the property in question was offered for deposit aforesaid and the hotel proprietor or his servant refused to receive it, or the guest or some other guest acting on his behalf wished so to offer the property in question but through the default of the hotel proprietor or his servant, was unable to do so.*

The simple legal implication of the foregoing statutory limits placed on the liability of hotel proprietors is to the effect that failure of a consumer to proof negligence, deposition or pinpoint an employee who must be so authorised by virtue of his job description is that such a guest can be entitled to a total aggregate sum of N2000 (two thousand naira) for any and all his articles, chattels, property or goods stolen, damaged or lost within the premises of the facility. It is to be parenthetically noted that the attitude of legislature in their failure to carry out periodic review of our laws speaks of legislative lethargy. This is evident in the fact that the current law has existed for more than two decades<sup>15</sup>.

It is equally doubtful if any serious-minded consumer will spend more than two hundred thousand naira in instituting a legal action and employing legal services only to be awarded two facilities to check crime been committed in their premises? Closely related is the issue of hotels guaranteeing the privacy of guests who lodges in their facilities.

#### **4.5 Delay in The Dispensation of Justice Encounter by Consumer**

The guest who may have a good case with chances of successfully maintaining an action against the service provider may be discouraged by the technicalities and several adjournments that are inherent in our judicial process that brings about delay in the

dispensation of justice. This factor is a challenge to the consumer who wishes to enforce his right; apart from the very fact that the cost of litigation in Nigeria is very high. For instance, the *Hon. Justice Anya V Imo Concorde Hotels'* case took about fifteen years from the court of first instance to the Apex Court.

## **5.6 Duties Of the Operators of Hospitality Services**

In the relationship between consumers and owners of facilities offering hospitality products and services. The law has imposed some legal duties on the operators in the hospitality sector, to wit:

### **5.6.1 Issue of Receiving Guests Without Discrimination**

An innkeeper is under statutory duty to receive any consumer presenting himself as requiring any of the services and facilities offered by the inn unless there is are reasonable grounds for refusal. Thus, where an innkeeper, hotelier or service provider<sup>33</sup> in the hospitality sector refuses to grant accommodation or neglect to offer consumers services as guests on the grounds of race, religion, colour or nationality, they would be held liable in breach of this statutory duty. Thus, in the case of *Constantine V Imperial Hotels Ltd*<sup>16</sup>. The plaintiff, a West Indian Cricketer, was refused accommodation at one of the defendant's hotels on the grounds of his colour. Birkett, J., held that the defendants were in breach of their duty to provide lodging and accommodation to guest as owners/operator/agents or employees of inns and hotels. Again, the issue of discrimination based on the circumstances of birth or sex of the individual reared its ugly head in the Zambian case of *Longwe V Intercontinental Hotels*<sup>5</sup> where a plaintiff was refused entrance into the defendant's hotel based on the rules put in place by the Hotel management to the effect that unaccompanied women should not be permitted entry. The court in allowing her petition ruled that: "the petitioner was discriminated against because she was a female... this was very naked discrimination against females on the basis of their sex by the hotel."

### **4.6.2 Hotelier to Take Reasonable Care for The Safety of Its Guests**

By the express provision of section 2 of the Law, service providers in the hospitality sector are under statutory obligation to ensure that reasonable care has been taken in respect of the safety of their guests to forestall injury through any act of misconduct or negligence on the part of the service providers or their servants while the relationship with the consumer subsist. There is therefore, a legally determined relationship between the service provider and the consumer in which the former is responsible for the protection of his guest.

## **5. CRITICISM**

The ambiguity in section 2 of the Akwa Ibom State Innkeepers and Hotel Proprietors'. Law as to whether the safety of the guest is restricted only to the period "he is the innkeeper's guest" and the privity of contract issue can be solved by repealing and amending the law to read "it is the duty of an innkeeper or hotel proprietor to take reasonable care for the safety of the person of the guest and those of his visitors to the facilities, so that they are not injured in the premises of the facilities".

The current position in Nigeria that tends to portray a picture that leaves the consumer who does not lodge in the hotel without remedy is worrisome. Therefore, it is advocated that



whether the consumer secures accommodation or not or utilizes other facilities offered by service providers in the hospitality sector, the hotels, inns, guest houses derive economic benefit from him and therefore as entrepreneurs they should be made to share in the losses incurred as a result of their relationship with the guest in the course of transaction<sup>58</sup>. A situation where consumers without lodging are not afforded protection is an invitation to exploitation of the guests by the service providers. This is absurd and contrary to position of the law as exemplified by the English case of *William V Linnitt*<sup>17</sup> where the plaintiff stopped, parked his car in the parking lot of an inn to have a drink, he did not retain any sleeping accommodation. An hour later he discovered that his car had been stolen. Despite a disclaimer's notice displayed at the parking lot, the proprietor of the inn could not evade liability in an action for the recovery of the stolen vehicle by the plaintiff. The plaintiff did not enter into a second contract for the safety of his vehicle as was erroneously held in *Imo Concorde Hotels V Justice Anya*.

The consumer of hospitality services like Justice Anya in Nigeria have left our courts dissatisfied unlike what transpired in the English case of William that left the English court satisfied that justice was done. This may be due to the dogmatic reasoning of our judicial officers who are lacking in judicial activism and ignorant of consumer protection law or are religiously clinching to contract-based liability regime in granting redress to aggrieved guests who feel dissatisfied by the services offered by service providers in the hospitality industry.

The contract-based liability regime has left the Nigerian consumer with little or no protection in the hospitality industry perhaps because of the negative perception Nigerians and Nigerian judges have about the hospitality industry in general due to the proclivities of societal standing and religious beliefs. It is in the light of the aforesaid that the adoption of the eco-contort liability regime is now being advocated in order to greatly improve the status of the consumer of hospitality services. By eco-contort liability regime, it is meant a combination of economic or business considerations, privity of contract and the neighbourliness principle within the purview of the tortuous liability regime considered in this paper.

## 6. CONCLUSION

The paper shows that under certain legal rules service providers in the hospitality industry are strictly liable for the loss, theft or damage to any of the property, goods or chattel of consumers who patronizes their services as guests once it occurred within the premises of the facilities within their control. In the analysis aforesaid, it has been unraveled that service providers will be absolved of liability if it is proven that the lost, theft or damage occurred as an act of God, by an alien enemy or as a result of the negligence of the guest themselves. In recent times, the courts are of the firm view that there is no need to prove negligence on the part of the service providers or their employees for them to incur liability. Subject to the aforementioned exceptions, the strict liability applies irrespective of the cause of loss, the value of the property, or whether the property in question was delivered to the service providers or their employees, servants or agents for safekeeping or not as clearly demonstrated by the dictum of Edozie, JCA in *Hill Station Ltd v Adeyi*<sup>18</sup>.

The analysis equally covered the conflicting decisions of the Supreme Court in Justice Anya's case and the Court of Appeal's decision in the case of Adeyi on the extent of liability of a service provider to the vehicle of a consumer parked within its premises in spite of the

presence of the exemption clause "cars are parked at owner's risk". This judicial review is vital as the Anya's authority remains binding though with due respect to the Apex Court we are of the humble opinion that that decision was reached *per incuriam* and the Court of Appeal's judgment in Adeyi's case that though is persuasive but represent the correct position of the law not just in Nigeria but the world over (the United Kingdom and the United States of America inclusive).

In the final analysis, both statutory and judicial interventions are urgently required to address the myriads of consumer issues bedeviling the hospitality industry in Nigeria. In this regards, there is the need to down play on contract as the basis for determining liability in favour of the eco-contort liability regime, while in appropriate instances the courts should be guided by a desire to do justice and protect the ultimate consumer as the epoch of technicalities are said to be over. When all the foregoing are put in place it is hoped that the issues complaints by the consumers of the services provided by the hospitality industry would have been addressed.

## **7. RECOMMENDATIONS**

The law should endeavour to balance the interest of the guests and that of the service providers for a robust hospitality industry that will yield foreign exchange for Nigeria. That will provide the way forward and correspond with the current trend across several jurisdictions. For instance, in the United States of America, the position of the law is that absolute liability is unnecessarily burdensome on modern day holiday resort owners, innkeepers, hotel proprietors and operators of motels. Thus, all the States legislature have adopted statutes that will limit the liability of service providers for loss, theft and damage to guests' properties provided they follow stringent rules of engagement, abide by the standards, follow the ethics and comply with procedures applicable to the hospitality sector and tourism industry in general. This approach is recommended for legislation in Nigeria with suitable modification to conform to the peculiarities of our environment.

In addition, to effectively tackle the issues earlier identified, the laws regulating the hospitality industry should be amended to vest jurisdiction to hear matters on this area of the law on the Federal High Court, States High Court, High Court of the Federal Capital Territory and he Magistrates Courts by way of providing consumers unfettered access to the temple of justice in a bid to seek for redress for defective services. This is to avoid congestion of matters in the Competition and Consumer Protection Tribunal<sup>60</sup> located only in Abuja and may be Lagos.

More so, in the light of the conflicting judicial authorities of the Nigerian Supreme Court and the Court of Appeal on the liability of hotel proprietors to cars of their guests parked in their premises. The situation calls for a reinterpretation of the law and specific provisions in the legislation embodying stringent conditions relating to security, develop the industry and introducing certainty in order to settle the confusion created by the courts. In the interim, we hope that the Supreme Court will be bold enough to overrule itself in Anya's case by upholding the correct position of the law as decided by the Court of Appeal in Adeyi's case when next opportunity present itself. The courts can also by way of judicial review of legislative instrument declare certain obnoxious provisions of the laws on hospitality



excluding or limiting liability null and void in conformity with the current position of the law on the subject.

Also, service providers in the hospitality sector must ensure that they employ staff with the requisite skills, competence and passion so as to offer satisfactory services that meet international standards to their guests. It is equally important for the government to place priority on tourism through increased funding to provide training institutions to promote professionalism in the tourism industry and address the challenges of poor infrastructures, insecurity, eco-tourism, transportation and communication, marketing and expansion. Conversely, the privacy of their guests should be respected and protected while crimes should be reported to the law enforcement agencies so they would not be regarded as accessories before the fact or accessories after the act by way of installation of functional CCTV cameras and other modern gadgets.

Conversely, there is an urgent call for consumer campaigns, workshops, seminars and introduction into the schools curricula at all levels of education by the Federal, State and Local Government as well as Consumer Advocacy Groups as to enlighten consumers on their rights and the remedies under the law for redress where defective services are provided by service providers in the hospitality sector. In the same vein, regulatory agencies should demonstrate political will, shun bribery and corruption by ensuring compliance by service providers in the tourism industry with the provisions of the law.

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## Notes

<sup>1</sup> Section 5 of the English Unfair contract term act 1977 provides that a consumer guarantee for goods, where damage or loss is attributable to defective goods while in use by the consumer or as a result of the negligence of the manufacturer or distributor of goods or service provider. S. D. Duru and O. W. Igwe, the law of negligence and liability for defective products (2007) (XI) the Calabar Law Journal 154 at 169; J. Mickleburg, Consumer Protection (Professional Books 1979) 182.

<sup>2</sup> Section 167 (1) Federal Competition and Consumer Protection Act, 2018

<sup>3</sup> Section 104 Federal Competition and Consumer Protection Act, 2018

<sup>4</sup> B. B. Kanyip, service Liability under Nigerian Consumer Law (2005) (1)(1) Consumer Journal 79

<sup>5</sup> (1996) 935 F. Supp. 1126 (D. Colorado)

<sup>6</sup> Bryan A. Garner, Black's Law Dictionary (8<sup>th</sup> edn, Minnesota: West Group 2004) 2077

<sup>7</sup> The free dictionary

<sup>8</sup> Cap. 15 Laws of Cross River State, 2004

<sup>9</sup> Benedict B. Kanyi, consumer protection in Nigeria: Law, theory and policy (Abuja: Rekon Books Ltd 2005) 171

<sup>10</sup> D. Harland, Recent development in product and service liability in the Asian pacific region (1998) (6) consumer Law journal.

<sup>11</sup> Etefia Ekwere Ekanem and Mojisola Eseyin, No Longer at ease. The contract-based liability posture of the Nigeria law toward consumers of hospitality services (2015) (2) (9) Journal of Humanities and social sciences 10-19

<sup>12</sup> J. Grzanic, concepts of service quality measurement in the Hotel Industry (2007) (xvi)(1) Ekon. MisaopraksaDbk.

<sup>13</sup> Ekanem and Eseyin (in 12) 11, Harland (n11) 29.

<sup>14</sup> E. E. Ekanem, et al, publication of legal materials in the twenty – first century (being a paer presented by the faculty of Law, University of Uyo, Nigeria at the Annual Law Teachers Conference held at Kogi State University, Anyigba from 17-20 March 2010.

<sup>15</sup> 1991 to 2020 is 29 years, that is Cross River State inkeepers and Hotel proprietors Law has been in existence for twenty eight years without review and amendments in the light of present day day reality in respect of the value of the naira in the exchange market.

<sup>16</sup> The term service providers is a generic and general term that refers to innkeepers, hoteliers, tourist/tour guides/couhes, operators of motels, amusements parks, leisure, relaxation parks, centres, holiday resorts ect

<sup>17</sup> (1951) 1 All ER 278

<sup>18</sup> Supra

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