

**THE WHITE ELEPHANT IN THE ROOM: THE ROLE OF THE  
CONSUMER PROTECTION REGULATORY FRAMEWORK IN  
KENYA IN REGULATING THE INCREASE OF HAZARDOUS  
SKIN LIGHTENING COSMETICS**

**A Dissertation Submitted in Partial Fulfillment of the Bachelor of Laws  
(LL.B) Degree**

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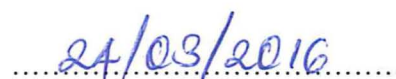
## Declaration

I hereby declare that this is my original work done in partial fulfillment of the Bachelor of Laws degree. All sections of the paper that use quotes or describe an argument or concept developed by another author have been referenced, including all secondary information used, to show that this material has been adapted to support my dissertation.

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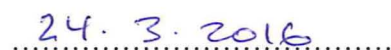


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**Date**

Who taught you to hate the texture of your hair? Who taught you to hate the color of your skin to such extent that you bleach to get like the white man? Who taught you to hate the shape of your nose and the shape of your lips? Who taught you to hate yourself from the top of your head to the soles of your feet? Who taught you to hate your own kind? Who taught you to hate the race that you belong to so much so that you don't want to be around each other? ...you should ask yourself who taught you to hate being what God made you. –Malcolm X

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This study is an initial attempt to investigate the effectiveness of the current consumer laws in Kenya, in protecting consumers from the exposure to unregulated skin whitening products. Though research on the implication of consumer laws in other sectors of the economy has been conducted, less focus has been placed on the cosmetic industry. For this reason, the author sought to bridge that gap with the aim of stimulating further development on the topic. Using international resolutions, published literature, statutes, interviews and surveys, an exploration was made in understanding the health risks attached to the use of unregulated whitening cosmetics and the factors influencing their continued presence in the Kenyan market.

The paper initially gives a recap of the possible historical underpinnings of what is known as skin whitening today, highlighting the notions of White supremacy, as expressed in colonialism and slavery, as plausible influences. It then goes on to assess the current obsession with skin lightening in different continents, specifically Africa and Asia, as backed by the impetus of trending media ideals of beauty. An overview of how toxic whitening cosmetics make their way into Kenya is then put forward and an identification is made of the areas in Nairobi that host the presence of the same. Accordingly, the potential side effects of these products are expounded upon and an analysis of the state of the Kenyan laws in regulating their presence in the country is made. This insight is particularly important in understanding whether the problem lies in the inadequacy of consumer protection legislation or its parallel implementation.

It was concluded that better-executed implementation measures are required by all relevant consumer protection regulators, in controlling the presence of unregulated whitening cosmetics in the Kenyan market. Effective inspection of suspect areas; regular updating of the list of banned cosmetics; increased co-operation between regulators through a more harmonized institutional framework; education of consumers on the effects of these products, their consumer rights and responsibilities; and encouraging consumers to embrace their natural skin

colour and cultural identity are just but some of the recommendations made as a step towards productive enforcement.

## **Key operational terms**

**Skin lightening/whitening/bleaching-** the use of home-made, cosmetic or dermatological products to inhibit or control the production of melanin in the skin.

**Unregulated/illegal skin whitening products-**skin whitening/lightening/bleaching cosmetics that have not been approved as safe to use by a governmental quality assurance body. These products commonly contain potentially harmful ingredients such as mercury, lead and hydroquinone.

**Regulated/legal skin whitening products-** skin whitening/lightening/bleaching cosmetics that have been approved as safe to use by a governmental quality assurance body.

**Colorism-**discrimination amongst same-race individuals on the basis of skin colour.

**White supremacy-** a historically based, institutionally perpetuated system of exploitation and oppression of continents, nations and peoples of color by white peoples and nations of the European continent; for the purpose of maintaining and defending a system of wealth, power and privilege.

**Information asymmetry-** a situation where one party to a transaction has more or better information, regarding the product or service in question than the other party.

## **List of abbreviations**

Kenya Bureau of Standards-**KEBS**

Kenya Consumer Protection Advisory Committee-**KCPAC**

Consumer Federation of Kenya-**COFEK**

Kenya Revenue Authority-**KRA**

United Nations Guidelines on Consumer Protection-**UNGCP**

## **List of cases**

*Andrews Brothers Ltd v Singer & Co. Ltd* [1934] 1 KB 17

*Edgington v Fitzmaurice* (1885)

*Farr v Butters Brothers & Co. Ltd* [1932] 2 KB 606

*Redgrave v Hurd* (1881) CA

*For Mueni, Bonso, Kaveni I and Mutoro*

# Chapter 1

## Introduction

*If you begin to understand what you are without trying to change it, then what you are undergoes a transformation.*

*--Jiddu Krishnamurti*

The cosmetic use of chemical agents to lighten the complexion of one's skin, also known as skin whitening, skin bleaching or skin lightening,<sup>1</sup> dates back to ancient Greece.<sup>2</sup> Where in a quest to defy genetics, both women and men in this era resorted to using creams laced with lead and mercury-chemicals associated with blood poisoning and organ failure<sup>3</sup>-so as to maintain the societal standards of beauty of the time. The practice was handed down over generations, becoming highly popular in the Middle Ages<sup>4</sup> and eventually resurfacing during the post-colonial/post-slavery period, specifically amongst coloured nations and communities. This phenomenon is interestingly juxtaposed with the growing number of individuals in America and Latin American countries for instance, who seek to venture in the exact opposite direction and darken their skin to obtain a more appealing look. It is also intriguing to note that currently, the African continent has been highlighted as having the highest percentage of

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<sup>1</sup> Blay Y. A, 'Skin Bleaching and Global White supremacy: By Way of Introduction' *The Journal of Pan African Studies*, vol 4, no. 4 (2011), 4.

<sup>2</sup> Pan E, 'Beautiful White: An Illumination of Asian Skin-Whitening Culture', Thesis on a Program in Visual and Media Studies & International Comparative Studies, Duke University, April 2013, 16.

<sup>3</sup> Diane Mapes, 'Suffering for Beauty has ancient roots', *NBC News*, 11 January 2008 <http://www.nbcnews.com/id/22546056/ns/health/t/suffering-beauty-has-ancient-roots.html> on 3 November 2015; see also Marzulli F.N. and Brown D.W.C. 'Potential systemic hazards of topically applied mercurials', 23 *Society of Cosmetic Chemists* (1972), 877-886; Barr R. D, Woodger B.M. and Rees P.H, 'Levels of mercury in urine correlated with the use of skin lightening creams', 59 *American Journal of Clinical Pathology* (1973), 36-40; see generally Nordberg F. G, Fowler A. B, Nordberg M and Friberg L, *Handbook in toxicology of metals*, (Third Edition), Academic Press, 2007.

<sup>4</sup> Tungate M, 'Branded Beauty: How Marketing Changed the Way We Look' *Philadelphia, PA: Kogan* (2011), 14.

women who disproportionately practicing skin bleaching<sup>5</sup> with a variety of psychological influences, such as the idea of White supremacy,<sup>6</sup> being linked to the propensity for the practice.

Despite the ghastly side effects that some skin whitening products have, due to their incorporation of chemicals like mercury, hydroquinone and excessive steroids as ingredients,<sup>7</sup> they still continue to be present in the global market—in particular, the African market.<sup>8</sup> This is by virtue of the fact that they are more potent than legitimate skin whitening treatments (those sold upon the approval of national or international quality assurance bodies). A number of countries in Africa have consequently recognized the health risks associated with such products and banned their presence in the market. Kenya serves as but one example, as evidenced by the embargo that KEBS imposed on toxic whitening cosmetics through gazette notices no. 4310 of 1998 and 7169 of 2000.<sup>9</sup> The restriction seemed to work for a time but as years passed by, prioritized scrutiny was given to other goods and services and the products slowly crept back into the Kenyan market. With the advent of a new consumer regulatory framework<sup>10</sup> in the country, it is uncertain if the legislation and implementation of the same will prove prescriptive in tackling the problem of unregulated skin bleaching products. This study seeks to analyze this position with the view of proposing alternative solutions to the management of these cosmetics in the local market.

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<sup>5</sup> Spade Z. S, Valentine G. C, *Kaleidoscope of Gender: Prisms, Patterns and Possibilities*, Pine Forge Press, California, 2011, 241.

<sup>6</sup> Blay, 'Skin Bleaching and Global White supremacy: By Way of Introduction', 8.

<sup>7</sup> 'Banned Skin Bleaching Products Containing Harmful Substances', *Meladerm* <http://www.whiterskin.com/banned-skin-bleaching.html> on 1 February 2015.

<sup>8</sup> Spade et al, *Kaleidoscope of Gender: Prisms, Patterns and Possibilities*.

<sup>9</sup> Kenya Bureau of Standards, 'Banned products', *KEBS*, 21 April 2009 <http://www.kebs.org/index.php?opt=qai&view=banned.html> on 1 February 2015.

<sup>10</sup> See the *Consumer Protection Act* (No. 46 of 2012) and the functions of the Kenya Consumers Protection Advisory Committee as outlined in section 90 of the Act.

## Background to the study

### 1.1. A panoramic view of the cosmetic industry in Kenya

Africa is among the fastest developing markets in the world<sup>11</sup> and the demand for cosmetics is growing at a frantic pace. Not only is there a huge pent-up demand for upmarket products from Europe and North America but also for the entire range of beauty and personal care products from major manufacturers around the world.<sup>12</sup> According to a recent survey done by Roland Berger Strategy Consultants, the cosmetic market is expected to double over the next decade with annual minimum growth rates of 5 %.<sup>13</sup> The exploding population of the continent, which is expected to account for more than 40% of the world population growth by 2030,<sup>14</sup> verily stands to make Africa an alluring consumer base for both local and international beauty brands. Notwithstanding the fact that the growth of the populations' middle-class and increased urbanization has also played a major role in enhancing this 'brand-attraction' effect.

Kenya has similarly witnessed an increased local presence of international cosmetic brands ranging from Estée Lauder to L'Oréal,<sup>15</sup> with the latter going as far as buying out, in 2013, the local cosmetics manufacturer, Interconsumer Products Ltd.<sup>16</sup> So keen was the international cosmetic giant in tapping into East-Africa's low-end cosmetic market, that it managed to beat the Kenyan Haco Tiger brands in the acquisition of the regional manufacturer.<sup>17</sup> Similarly, Lintons Beauty World, originally a Kenyan pharmacy, also saw the potential in the cosmetic business and decided to trade in its pharmaceutical business for the sale of high-end cosmetics 3 years ago. It is now a well-known home for many international brands and has recently

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<sup>11</sup> 'Africa's Impressive Growth', *The Economist*, [http://www.economist.com/blogs/dailychart/2011/01/daily\\_chart.html](http://www.economist.com/blogs/dailychart/2011/01/daily_chart.html) on 17 February 2015.

<sup>12</sup> 'The Beauty Business', *Africa Business Pages* <http://www.africa-business.com/features/cosmetics.html> on 17 February 2015.

<sup>13</sup> Roland Berger Strategy Consultants report, 'Beauty and Personal Care Market in Africa: One Billion People to Care For', *Think: Act Content, Fresh Thinking For Decision Makers*, 2.

<sup>14</sup> Roland Berger Strategy Consultants, 'Beauty and Personal Care Market in Africa: One Billion People to Care For', 2.

<sup>15</sup> Isabella Mukumu, 'International beauty brands lured by Kenyan market', *The Business Daily*, 15 October 2015.

<sup>16</sup> Reporter BD, 'L'Oreal beats Tiger brands in buyout of Nice & Lovely', *The Business Daily*, 14 April 2013.

<sup>17</sup> Reporter BD, 'L'Oreal beats Tiger brands in buyout of Nice & Lovely', *The Business Daily*.

opened its fourth outlet in Nairobi.<sup>18</sup> Scores of Kenyan middle-class men and women have consequently been able to conveniently access these coveted skin care products as opposed to resorting to importing them as seen in the past. Given the fact that these international brands are legally approved and have safe skin-whitening product ranges, local consumers are duly protected from any adverse health effects produced by the use of whitening cosmetics. Though this protection is ostensibly only afforded up to a certain extent.

## **1.2. The Skin-whitening industry in Kenya**

The difficulty arises from the fact that an estimated 42% of the Kenyan population live below the poverty line (which translates to under a dollar a day)<sup>19</sup> and access to basic quality services such as health care, education, clean water and sanitation, is often a luxury for a number of people.<sup>20</sup> Inevitably, this makes it difficult for large segments of the population to even afford high-end skin whitening cosmetics. Fortunately enough, some reputable international brands such as Unilever, provide cheaper yet safe skin whitening options for the low-income consumer. Its Fair & Lovely brand, for instance, has gained worldwide popularity, with an approximated 250 million consumer base as indicated on its website.<sup>21</sup> The results of using these cheaper options are however not realized as fast and are not as uniform or as effective as many would desire. Many of the middle-income earners who cannot afford the high-end skin bleaching products also express similar sentiments. This partly explains why the market for more potent unregulated skin whitening products is so ambivalent—despite the fact that it is dominated by low-income earners, a substantial percentage of it is also taken up by the middle and even upper-class earners.

River-Road Street in downtown Nairobi is notoriously home to probably the largest illicit skin lightening black market in the city. Stalls found in Mombasa House, Sew- Tech mall and Mepaluz Plaza trade in all sorts of precarious skin-whitening concoctions, ranging from topical

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<sup>18</sup> Isabella Mukumu, 'International beauty brands lured by Kenyan market', *The Business Daily*.

<sup>19</sup> 'Kenya at a glance', *UNICEF* [http://www.unicef.org/kenya/overview\\_4616.html](http://www.unicef.org/kenya/overview_4616.html) on 20 February 2015.

<sup>20</sup> 'Kenya at a glance' *UNICEF* [http://www.unicef.org/kenya/overview\\_4616.html](http://www.unicef.org/kenya/overview_4616.html).

<sup>21</sup> 'Celeste Hibbert and Wil Crisp: Kenya's backstreet #BleachedBeauty trade', *Al Jazeera*, 24 June 2014 <http://www.aljazeera.com/indepth/features/2014/06/kenya-backstreet-bleachedbeauty-trade-201462313468381417.html> on 20 February 2015.

creams to intravenous injections. Many of them have been found to contain hydroquinone or mercury, whose long-term use extends to causing severe acne, exogenous ochronosis (a rare skin disease characterized by extensive hyperpigmentation), hyperpigmentation, blood poisoning and kidney failure.<sup>22</sup> In addition, these whitening treatments are administered and recommended by unqualified personnel, whose primary goal is to sell the products as fast and as vastly as possible, without going into the details of exposing their ingredients. It is not uncommon to find that most of these products contain either no list of ingredients, a list of ingredients written in a foreign language or a list that deliberately omits the presence of the banned chemical substances. How average consumers are therefore protected from these products is thus a growing concern.

### **1.3. Why is consumer protection so important?**

Countries around the world have developed consumer protection laws in a bid to mitigate the problem of information asymmetry in contracts for the sale of goods and services. More so, the laws are tailored to empower the consumer with government-backed rights and responsibilities over these transactions, all through the negotiation process up to when legal remedies are sought in the event that a breach of contract is made. Often, consumer laws are drafted as a blanket legislation that is meant to cater for all sorts of transactions, ranging from financial service transactions to the purchase of cosmetics. This is the case in Kenya, where aside from provisions in the constitution, consumer protection rights are also enshrined in the Consumer Protection Act.

Given the potential problems that can arise from the lack of consumer laws in the cosmetic industry, such as lack of information on unsafe and harmful products, unfair trade practices and false advertising, consumer laws are deemed to be the much-needed tool for leveling out the playing field between buyers and sellers. Regardless, consumer laws can only do so much

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<sup>22</sup> Julien N, 'Skin Bleaching in South Africa: A Result of Colonialism and Apartheid?', *Discovery: Georgia State Honors College Undergraduate Research Journal: Vol. 2, Article 4 (2014)*; see also Souza M, 'The concept of skin bleaching in Africa and its devastating health implications', *Clinics In Dermatology (2008)*, 26-29; Ly F, Soko A, Dione D, Niang S, Kane A, Bocoum T, & Ndiaye B, 'Aesthetic problems associated with the cosmetic use of bleaching products', *International Journal of Dermatology, 46 Suppl (2007)*, 15-17.

without their subsequent implementation and it is at this juncture that relevant institutions come into play to ensure the successful application of the law. In the event that there is a missing link between the specifications of the law and the execution of the duties of its implementing organs, a potentially adverse condition is bred, which in this case is the continued presence of illegal skin whitening cosmetics in the country.

### **Problem Statement**

The rising demand for illegal skin lightening products in Kenya and Africa at large is on an exponential curve. The market expresses a need to acquire inexpensive skin lightening treatments that provide both powerful and fast acting results, consequently blinding many to the severe health risks that such products potentially bear. In light of this, the government acquires the duty of protecting the average consumer through legislation that not only controls the infiltration of these products into the local market but also bars their presence and subsequent sale.

Although the Kenyan government has recently enacted consumer protection laws in response to the problem, toxic skin-whitening products continue to be available in the local market and a growing number of consumers continue to experience the severe health ravages effected by their use. Little research has been done to chart the way forward as concerns this predicament and this study seeks to investigate the reasons for the discrepancy between the ideological standard of consumer protection and the reality of the skin bleaching black market industry. The adequacy of the current consumer protection laws in dealing with the skin whitening problem in Kenya shall be explored, in addition to the role that relevant institutions play in the enforcement of the same.

## **Research Questions**

The purpose of this study is to evaluate the extent to which the Kenyan consumer is protected from unregulated skin whitening products. In directing the evaluation, the following will be assessed:

1. A glimpse of the possible theories behind the historical development of the skin bleaching practice in dark-skinned communities.
2. The current state of the use of illegal skin lightening creams in Kenya against the backdrop of the same in selected countries in Africa, the Middle East and Asia.
3. The Kenyan consumer protection laws, their regulators and ensuing implementation as far as their relevance to cosmetics is concerned.
4. The inefficiencies of these laws and regulators, if any, in dealing with the continued presence of unregulated skin whitening cosmetics.

## **Literature Review**

The skin lightening industry in Kenya has been booming for a couple of years now as catalyzed by the idolized European standards of beauty—which laud physical features such as fair, alabaster skin, a narrow nose and slim figure. A growing number of local and international celebrities have in tandem been accused of lightening their skin and consequently setting the pace for many women and men in the country, who yearn to access the privileges that are ordinarily reserved for people with fair skin. Though some skin lightening procedures are legitimate, many happen to draw their lightening potency by use of precarious ingredients and as the trend continues, it would be interesting to underscore the potential implications that this state of affairs will have in the implementation of consumer protection laws.

Regarding the rationale behind the use of skin lighteners, it appears that some plausible reasons can be linked to the practice, particularly in a portion of the dark-skinned community. Blay<sup>23</sup> examined the skin bleaching practice in Africa as influenced by the historical institutions of colonialism and slavery and incited by the construct of White supremacy. The roots of the skin whitening phenomenon in Africa are traced by exploring the symbolic meaning of whiteness for African people as indoctrinated by colonialists and the Christian religion. Whiteness is accorded the surreal description of being the lack of dirt, evil and darkness. Similarly, whiteness is currently commoditized through various skin whitening products on advertisements, and associated with all things civilized, modern, luxurious, beautiful and desirable. Through consumerism, Africans are thus assumed to seek to achieve these characteristics and gain social respectability and power. In this way, White supremacy continues to perpetuate itself by employing the fabrication of imagery to convince African masses that the white ideal is the human ideal.

In a follow-up study, Jones T<sup>24</sup> explores how the skin lightening phenomenon has traversed cultures and affected even Asian communities. Here, skin tone variations are found to matter even if such racial categories have not historically been a focus of extensive scholarly attention or public concern as compared to African communities. The discrimination across races by virtue of skin tone-colorism-seems to be a largely muffled concern which is rapidly gaining clout that is only paralleled with racial discrimination. Perceptions of skin tone across races, as influenced by European imperialism and White superiority also found to perpetuate the breakdown of cohesion amongst racial groups. Malik S<sup>25</sup> and Bropleh M<sup>26</sup> then go on to expound on how the commodification of whiteness on the media as the preferable beauty ideal is a propagator for colorism.

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<sup>23</sup> 'Skin Bleaching and Global White supremacy: By Way of Introduction'.

<sup>24</sup> 'The Significance of Skin Colour in Asian and Asian-American Communities: Initial Reflections', *UC Irvine Law Review* (2013), vol 3.

<sup>25</sup> 'The Domination of Fair Skin: Skin Whitening, Indian Women and Public Health', Published MPH thesis, Department of Health Education, San Francisco State University, 14 May 2007.

<sup>26</sup> 'Incongruent Premodern and Modern Beauty Ideals: A Case Study of South Korea's and India's Reconciliation of Current Beauty Trends with Foundational Religious Ideals', Published B. A Senior Thesis, Claremont McKenna College, 2014.

In supporting this, studies carried out by Hearold S<sup>27</sup>; Wood W, Wong F.Y & Chachere J. G<sup>28</sup>; Paik & Comstock<sup>29</sup> and Baran S.J & Davis D.S.K<sup>30</sup> provide insights on how the media has been found to be an effective means of socialization and transmission of popular culture. Its effects on the society is authoritative whether or not the messages it delivers are actually reflective of societal views. Hence, popular culture as transmitted by the media is instructive in matters related to race, class, gender, and other forms of socially significant difference.<sup>31</sup> Coupled with the fact that television constantly depicts stereotyped images of women and minorities,<sup>32</sup> it is apparent how vital a role the media plays in hypnotizing viewers and listeners into placing western values of beauty - fair skin in particular - on a pedestal.

How consumer laws can be used to protect unsuspecting consumers from such products in Kenya is thus urgent to explore. Over the past couple of decades, the adoption of consumer protection laws has phenomenally risen, especially in Western countries. In the USA for example, only 8 states had consumer protection Acts in the 1960s but less than twenty years later, they had literally become fixtures of every state's regulatory regime.<sup>33</sup> Initially meant to supplement the perceived gap in consumer protection by allowing for private causes of action, they have now widened in scope to incorporate class action suits, making it easier and more economical to bring consumer protection matters to court. Large African economies like South

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<sup>27</sup> 'A synthesis of 1043 effects of television on social behavior' in Comstock G (ed), *Public Communication and Behavior* (Vol. 1, pp. 65-133), Academic Press, Florida, 1986 as cited in Robinson A. P, 'Perceptions of Beauty an Identity: The Skin Bleaching Phenomenon in Jamaica', Texas A & M University, 581.

<sup>28</sup> 'Effects of media violence on viewers' aggression in unconstrained social interaction', *Psychological Bulletin*, 109 (1991), 371-383 as cited in Robinson A. P, 'Perceptions of Beauty an Identity: The Skin Bleaching Phenomenon in Jamaica', 581.

<sup>29</sup> 'The effects of television violence in antisocial behavior', *Communication Research* 21 (1994), 516-546.

<sup>30</sup> *Mass communication theory: Foundations, ferment, and future*, Wadsworth Publishing, California, 1995 as cited in Robinson A. P, 'Perceptions of Beauty an Identity: The Skin Bleaching Phenomenon in Jamaica', 581.

<sup>31</sup> Guy T, 'Learning who we (and they) are: Popular culture as pedagogy' in Tisdell E.J & Thompson P.M (ed), 'Popular culture and entertainment media in adult education', *New Directions for Adult and Continuing Education* 115 (2007), 15-23.

<sup>32</sup> Signorielli N, 'Television's mean and dangerous world: A continuation of the Cultural Indicators Perspective' in Signorielli N & Morgan M (ed), *Cultivation analysis: New Directions in media effects research*, California, Sage Publishing, 1990, 285-306; see also Robinson A. P, 'Perceptions of Beauty an Identity: The Skin Bleaching Phenomenon in Jamaica', 581.

<sup>33</sup> Wright D. J and Helland E, 'The Dramatic Rise of Consumer Protection Law' in Buckley F.H. (ed), *The American Illness: Essays on the Rule of Law*, Yale University Press, Connecticut, 2013.

Africa have also not been left behind in the consumer rights wave as evidenced by their widely acclaimed consumer protection framework.<sup>34</sup> Kenya recently jumped onto the consumer protection bandwagon, what with the unprecedented provision of consumer protection rights in the constitution and the enactment of the Consumer Protection Act of 2012. This perhaps being done in a bid to help control the prevalence of counterfeit goods in the country.

In spite of this, various investigations reveal that unregulated whitening cosmetics have been found to openly exist in the Kenyan market. The problem of information asymmetry has played a hand in this, given that lack of adequate information on consumer goods by the consumer can lead to distortions in the purchase decision-making process (as emphasized by Kivetz R and Simonson I<sup>35</sup>). A number of consumers are thus tricked into purchasing the harmful bleaching products without sufficient knowledge of the fact that they have grievous side effects. Though a considerable amount of research has been done on how consumer protection laws should be developed to cater for more industrial goods such as cars and batteries, the cosmetic industry has largely been forced to assume a self-regulatory mechanism. Which places some of the responsibility and burden on consumers to be informed, discerning and vigilant in order to safeguard their own health and safety.<sup>36</sup> There is need therefore to analyze the role of consumer protection laws in Kenya in managing the presence of hazardous skin whitening cosmetics. Likewise, it is important to stress, from the outset, that this paper is primarily geared to stimulate further research and development on the topic. Evidently, additional investigation is necessitated to steer the topic to arrive at the peak of its intellectual maturity.

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<sup>34</sup> Consumers International, *'The State of Consumer Protection around the World'*.

<sup>35</sup> 'The Effects of Incomplete Information on Consumer Choice', *Journal of Marketing Research*, 37(4) 2000, 427-448.

<sup>36</sup> Daum Lee M. C, 'Self-regulation in the cosmetic industry: Unnecessary reality or a cosmetic illusion', Harvard Law School, published 3<sup>rd</sup> year coursework paper, 2006, 18.

### **Limitations to the research**

The time constraints on writing the paper were not favorable in facilitating the extensive development of the study, coupled with the fact that minimal research tackles the objective of this paper. The phenomenon of skin whitening, though bearing ancient roots, has not been previously sufficiently linked with the emerging field of consumer protection. Obtaining empirical data related to the research topic was an additional difficulty given that the nature of the paper requires an understanding of the black market industry, which still remains highly elusive. Given these reasons, it is my hope that this study will pave the way for more research on the topic at hand.

## Chapter 2

### Theoretical Framework

Consumer protection has its underpinnings on the presumption that consumers are inherently entitled to obtain goods and services that are non-hazardous and of merchantable quality.<sup>37</sup> Accordingly, protection is meant to be afforded to the consuming market, from any goods and services that fall short of these standards.<sup>38</sup> The development of consumer protection laws was thus a counter-active response to the capitalistic<sup>39</sup> problem of information asymmetry in buyer-seller relationships, where one party (usually the buyer) had the disadvantage of having less information on the goods or services provided as compared to the seller. In any market, the consumer forms his preferentiality in the case of differentiated goods, based on the recognizable characteristics of its properties, the product's reputation or even product quality.<sup>40</sup> The unfavorable influence of asymmetric information can thus lead to distortions in this decision-making process<sup>41</sup> and competition between traders to satisfy consumer preferences.<sup>42</sup>

Although a potential consumer can engage experts to test the quality of the goods or the seller can give a warranty for the same, this necessitates significant costs that could otherwise be avoided through information symmetry.<sup>43</sup> Intervention in the market in favour of the consumer is therefore required to facilitate the provision of adequate, rather than perfect information in relation to goods and services. This being so as even though it might be possible to stipulate

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<sup>37</sup> Article 1, *United Nations Guidelines for Consumer Protection*, 26 July 1999; see also 'Consumer rights', *Consumers International* <http://www.consumersinternational.org/who-we-are/consumer-rights/> on 1 December 2015.

<sup>38</sup> Article 2-3, *UN Guidelines for Consumer Protection*.

<sup>39</sup> Information asymmetry is prevalent in many capitalist economies due to the profit accumulation ideology of the economic system.

<sup>40</sup> Sagi A and Pataki E, 'Consumer Behaviour and Asymmetric Information Theory', 10th International Symposium of Hungarian Researchers on Computational Intelligence and Informatics, Budapest, Hungary, 12<sup>th</sup>-14<sup>th</sup> November 2009, 1.

<sup>41</sup> Huffman W, 'Does Information Change Behaviour?', 3rd OECD World Forum on "Statistics, Knowledge and Policy", Busan, Korea, 27<sup>th</sup>-30<sup>th</sup> October 2009.

<sup>42</sup> Sagi et al, 'Consumer Behaviour and Asymmetric Information Theory', 3-7.

<sup>43</sup> Sagi et al, 'Consumer Behaviour and Asymmetric Information Theory', 3.

that consumers should be armed with all possible information, doing so would prove to be inefficient since the cost of intervention would far outweigh any benefits derived therefrom.<sup>44</sup> Regulation necessitating the disclosure of information to consumers is, however, bad for business as far as suppliers are concerned.<sup>45</sup> Businesses which have the habit of deliberately omitting information about certain goods, do so with the aim of maximizing profits that would perhaps not be garnered if adequate information on goods was provided. The end result is that consumers are exposed to goods that have undesirable effects such as those brought about by unregulated whitening cosmetics and harmful ingredients contained in the products are deliberately excluded from the ingredient list altogether.

Despite the introduction of consumer protection laws in Kenya, the disjunction between information symmetry and the actual sale of goods continues to prevail and a growing number of women and men<sup>46</sup> alike continue to unknowingly purchase harmful skin lighteners. Few are actually aware that the health risks involved in their use may not be immediately apparent<sup>47</sup> and once fast results are seen, the demand for these products simply expands in larger proportions. Nevertheless, behind the current fad of having fair skin perhaps lies the subconscious psychological dilemmas of identity that precipitated during the historical epochs of colonialism and slavery. Through the imbibition of the notion of White supremacy, a phenomenon known as the ‘social cognitive theory’<sup>48</sup> came into play--since behavior is learned through observation and interaction with the social environment,<sup>49</sup> the learned behaviour of skin bleaching could only be understood as an effect of colonial and later post-colonial

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<sup>44</sup> Oughton D & Lowry J, *Textbook on Consumer Law* (2<sup>nd</sup> Edition), Oxford University Press, 2012, 17.

<sup>45</sup> Jin G, Luca M, Martin D, ‘Is No News (Perceived As) Bad News? An Experimental Investigation of Information Disclosure’, March 2015, 2-4.

<sup>46</sup> There has also been a parallel rise of men in India using skin whiteners as mentioned by Hubert Prolongeau: ‘India’s skin-whitening creams highlight a complex over darker complexions’, *The Guardian*, 24 July 2015 <http://www.theguardian.com/world/2015/jul/24/dark-skin-india-prejudice-whitening> on 01 November 2015.

<sup>47</sup> ‘Tamar Kahn: Illegal skin lighteners on sale in SA, study shows’, *Business Day*, 26 August 2015 <http://www.bdlive.co.za/national/health/2015/08/26/illegal-skin-lighteners-on-sale-in-sa-study-shows> on 01 November 2015.

<sup>48</sup> As conceived by social psychologist, Albert Bandura.

<sup>49</sup> Merriam S.B, Caffarella R.S & Baumgartner L.M, *Learning in adulthood: A Comprehensive Guide* (Third Edition.), Jossey-Bass, 2007.

socialization. Catalyzed by the beauty ideals touted by the media,<sup>50</sup> light-coloured skin has been largely pedestalised as an asset<sup>51</sup> and the skin-whitening practices of Western celebrities have led societies around the world to the misconstrued belief that fair skin possesses an almost celestial value. Of course, there are some exceptions to this rule as evidenced by the growing number of individuals in Latin American countries and even America who resort to tanning their skin for a more appealing look.

Regardless, a new form of cultural discrimination, which is an offshoot of racism—colorism, has arisen and empirically, women in the African-American community with light skin, for instance, have been found to experience greater success in relationships, education and employment than their darker-skinned counterparts.<sup>52</sup> This stereotype has further developed in other black communities such as those in Africa and Kenya to be specific. Dark-skinned women have been increasingly forced to take a backseat over their light-skinned peers on fronts ranging from job opportunities to marriage.<sup>53</sup> The intriguing dynamic is that women who possess fair skin are generally deemed to be able to convert it to economic capital, educational capital or social capital, thus ensuring economic and social mobility.<sup>54</sup> Accordingly, consumers ingrained with this paradigm are willing to do whatever it takes to secure admiration from the community, which includes experimenting with cheap yet dubious skin lightening cosmetics that contain hazardous chemicals.

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<sup>50</sup> 'Incongruent Premodern and Modern Beauty Ideals: A Case Study of South Korea's and India's Reconciliation of Current Beauty Trends with Foundational Religious Ideals', 11-15.

<sup>51</sup> Robinson T. L., & Ward J. V., 'African American adolescents and skin color', *Journal of Black Psychology*, 21 (1995), 256-274.

<sup>52</sup> 'Obiora N. Anekwe, Global Colorism: An Ethical Issue and Challenge in Bioethics', *Voices in Bioethics*, 9 September 2014 <http://voicesinbioethics.org/2014/09/09/global-colorism-an-ethical-issue-and-challenge-in-bioethics/> on 15 October 2015; see also Kerr E. A., *The Paper Bag Principle: Class, Colorism and Rumour and the Case of Black*, University of Tennessee Press, Tennessee, 2006, 1-20 and 103-112; Mathews J. T., 'The relationship between skin complexion and social outcomes: how colorism affects the lives of African-American women', Published M.A. thesis, Atlanta University Center, 2013, 2-16.

<sup>53</sup> 'Annabel Fenwick Elliott: Kenyan men Like women with lighter skin: The rise of wealthy Nairobi women illegally injecting themselves with skin lightening creams', *Daily Mail*, 6 June 2014 <http://www.dailymail.co.uk/femail/article-2650766/Kenyan-men-like-women-whiter-skin-The-rise-wealthy-Nairobi-women-illegally-INJECTING-skin-lightening-creams.html> on 30 March 2015.

<sup>54</sup> Hunter M., 'If you're light you're alright: Light skin color as social capital for women of Color', *Gender & Society* 16(2) (2002), 175-193 as cited in Robinson A. P., 'Perceptions of Beauty and Identity: The Skin Bleaching Phenomenon in Jamaica', 580-581.

Entrepreneurs around the world have long established that one of the surest ways of tapping into any market is by seducing two human propensities: the tendency for vanity and the quest for youth. It is therefore small wonder that the cosmetic industry is among the biggest industries in the world today and particularly one of the fastest growing ones in Africa. Skincare products specifically take up the largest portion of the cosmetic market worldwide, amounting to 35.3% of the cosmetic market share as at 2014<sup>55</sup> from a previous 31% market share occupied in 2011.<sup>56</sup> Given that the most coveted skin whitening product ranges and procedures tend to be quite costly, easy incentive is given to entrepreneurs to facilitate the manufacture and sale of cheap toxic whitening cosmetics. The question of whether such products should be regulated has however been one of debate, with liberalists arguing that the liberty of the human person is a universal ideal<sup>57</sup> and consumer protection regulations are a conduit for the abandonment of that very freedom.<sup>58</sup> Governments are thus deemed to have no room to prohibit customers from buying products the effect of which will be to harm themselves<sup>59</sup> nor limit the supply of such products, given the proprietary right that one has over their body.

Nevertheless, one of the driving forces behind consumer protection laws is the precept that a sovereign is charged with the paternalistic duty of protecting its citizens from harm; and sometimes, there may be distrust in the consumer's ability to protect himself, particularly in cases where physical injury and considerable financial loss is concerned.<sup>60</sup> The government thus steps in to minimize such risks by imposing certain limitations on one's personal rights and freedoms to the extent that it does not infringe completely on one's freedom of choice.

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<sup>55</sup> 'Statistics and Facts on the Cosmetic Industry', *The Statistics Portal*

<http://www.statista.com/topics/1008/cosmetics-industry/> on 1 December 2015.

<sup>56</sup> 'Breakdown of the cosmetic market worldwide from 2011 to 2014, by product category', *The Statistics Portal*  
<http://www.statista.com/statistics/243967/breakdown-of-the-cosmetic-market-worldwide-by-product-category/>  
on 1 December 2015.

<sup>57</sup> Article 3, *the Universal Declaration of Human Rights* (10 December 1948).

<sup>58</sup> Pohlmann D. M (ed), *Capitalism v Collectivism: 1945 to the Present: African American Political Thought* (Vol 4), Routledge, New York, 2003, 363.

<sup>59</sup> Friedman M, 'Who protects the consumer?', *an episode of the PBS Free to Choose television series* (1980, vol. 7 transcript).

<sup>60</sup> Oughton et al, *Textbook on Consumer Law* (2<sup>nd</sup> Edition), 13-19.

Technically, the government's prohibition on the sale of dangerous skin lightening treatments does not necessarily discourage the resort to safer, legal methods of skin whitening. One's freedom to lighten their skin or not is therefore not flouted. The primary issue though is not so much how many legislations the government can make to demonize harmful cosmetics but how much it can actually execute to stop the demand for these cosmetics. As Kenya takes steps in establishing itself as an industrial economy as guided by the Vision 2030 project, prioritization of country necessities has changed and luxury goods such as cosmetics have fallen short of governmental interest. Consumer protection institutions such as KEBS and the KCPAC, despite being charged with the major responsibility of protecting consumers from unregulated cosmetics, have not taken adequate measures in controlling their presence. Conceivably, the very essence of the direction that the government is taking in dealing with this issue is slightly misinformed. New innovative solutions, a fresh surge of interest and unwavering implementation of current legislation is required as a matter of urgency to effectively approach the problem.

### **Scope of research and methodology**

The burden of this study is purposefully confined to assessing the effectiveness of the consumer protection regulatory framework in Kenya in battling the menace of unregulated skin lightening products. This direction of consumerism is taken in view of the fact that these products are ultimately made for and have the most pronounced effect on the consumer. As a result of the time limit dictated in writing this paper, other areas of law affiliated to the regulation of these cosmetics, such as but not limited to smuggling laws and anti-dumping laws, have not been sufficiently tackled. More so, delving into these areas of law would necessitate the availability of a wider girth of information than that readily available, coupled with more extensive research.

The information gathered in this research was heavily sourced from internet literature due to the fact that consumer protection is a relatively emergent field in law which has not been extensively applied to cosmetics, leave alone harmful skin whitening products. Key material

derived from internet sources include journals, articles, reports, databases, blog posts, international UN resolutions and pieces of local and foreign legislation. A few hard copy textbooks were also instrumental in providing the general guideline of how consumer protection law works and the underpinnings of the practice of skin bleaching. Interviews were also carried out in various institutions such as KEBS, KRA and Oriflame Kenya Ltd. A few individuals who have used these unregulated whitening cosmetics were also interacted with to gain an understanding of the side effects that these products have and how they find their way into the market. This was complemented by physical surveys carried out by the author on the River Road Street in the downtown area of the Central Business District in Nairobi, in selected shops around Strathmore University in Nairobi West ward and in Maringo ward in Makadara constituency. The surveys were employed to assess the general presence of unregulated skin lightening creams in the Nairobi market.

## Chapter 3

### A glimpse at the theories behind skin lightening in dark-skinned communities

The allure behind fair skin, though seemingly a recent trend, is documented as tracing its roots to ancient Greece,<sup>61</sup> where pallid skin, red lips and light-coloured hair were features that were considered the ideal standards of beauty. Women especially were pressured into acquiring these physical traits to seem more alluring to men and in a quest to defy genetics, extreme measures were taken to achieve the desired skin colour. The facial application of creams laced with lead<sup>62</sup>, so as to attain clear complexions devoid of blemishes and to improve skin colour and texture, was highly popular. Upper-crust Romans then assumed the mantle and went on to use white lead<sup>63</sup> to lighten their facial colour and red lead<sup>64</sup> on their cheeks for a ‘healthy’ rose glow. Sublimates of mercury were also other popular ingredients. Known to have blemish fading properties, women in Ancient Greece used them as a skin peeler to remove blemishes primarily caused by smallpox (a disease which was prevalent at the time).<sup>65</sup>

Prolonged use of the same, however, resulted in premature aging of the skin. Nonetheless, this did not deter the practice from trickling down centuries, through to the Middle Ages and the Renaissance, as evidenced by portraits of women depicted as having the realistic ravages of lead poisoning to which they subjected themselves in order to maintain the white ideal.<sup>66</sup> Despite the ghastly side effects these concoctions were associated with, such as severe scarring

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<sup>61</sup> Pan, ‘Beautiful White: An Illumination of Asian Skin-Whitening Culture’, 16.

<sup>62</sup> A chemical element that is highly poisonous when inhaled, swallowed or absorbed by the body. The main target of lead toxicity is the nervous system and when used as part of the ingredients in topical skin whitening creams, it gradually ate the skin away, caused severe scarring and lead poisoning.

<sup>63</sup> Also known as *cerussa*, it was previously used as an ingredient for lead paint until it was banned in most countries for its contribution to lead poisoning.

<sup>64</sup> Also known as *minium*, it is currently used in the manufacture of batteries and rust-proof paint.

<sup>65</sup> History Lesson, ‘Lead, mercury and leeches were used to whiten skin complexions in the 1400s’, *Whiter Skin*, 3 May 2014 <http://www.whiterskin.info/history-lesson-lead-mercury-and-leeches-were-used-to-whiten-complexions-in-the-1400s/> on 15 November 2015.

<sup>66</sup> Tungate, *Branded Beauty: How Marketing Changed the Way We Look*, 14.

and lead poisoning - manifested through hair loss, muscle paralysis and deteriorating mental capacity - the practice remained prevalent for about 300 years.<sup>67</sup> Queen Elizabeth I was notably reported as having died from the prolonged use of white lead.<sup>68</sup> The chemical was however classified as a poison in 1634.<sup>69</sup>

#### 1.4. Slavery, White supremacy and colonialism

Upon the advent of the 17<sup>th</sup> century, it appears that the preference for fair skin materialized in the oppressive institution of slavery. It is also during this time period that the notion of White supremacy, as we know it today, began to take hold. Slaves shipped from Africa to America to work on plantations were divided into hierarchies based on skin tone. Light-skinned African slaves were apparently accorded some additional privileges, such as working in the house as opposed to the fields, the occasional opportunity to learn to read, and the rare chance for manumission.<sup>70</sup> Furthermore, the brutal molestation of young African women by White slave owners gave rise to a breed of half African and half White descendants commonly referred to as 'Mulattos',<sup>71</sup> who were afforded similar privileges. Together with originally light skinned Africans, they came to evolve into a small but elite class of freedmen who became the early business leaders, clergy, teachers, artisans, economic and community leaders of the early African-American community.<sup>72</sup>

Some Africans who witnessed the societal, financial and academic achievements attained by the half White children of their African counterparts subsequently entered into deliberate adulterous liaisons - known as placage - with White men. This was to ensure that their children

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<sup>67</sup> History Lesson, 'Lead, mercury and leeches were used to whiten skin complexions in the 1400s.'

<sup>68</sup> History Lesson, 'Lead, mercury and leeches were used to whiten skin complexions in the 1400s.'

<sup>69</sup> History Lesson, 'Lead, mercury and leeches were used to whiten skin complexions in the 1400s.'

<sup>70</sup> Davis F. J, *Who Is Black? One Nation's Definition*, Pennsylvania State University Press, University Park, 1991 as cited by Hunter M in 'The Persistent Problem of Colorism: Skin Tone, Status, and Inequality', *Sociology Compass Vol 1, Issue 1 (2007)*, 237-254.

<sup>71</sup> Kerr, *The Paper Bag Principle: Class, Colorism and Rumour and the Case of Black*, 5-6.

<sup>72</sup> See generally Edwards G. F, *The Negro Professional Class*, Praeger, New York, 1982; see also Frazier, E. F, *Black Bourgeoisie*, The Free Press, Illinois, 1957; Willard B. G, *Aristocrats of Color: The Black Elite, 1880-1920 (Black Community Studies)*, University of Arkansas Press, Arkansas, 2000 as cited by Hunter M in 'The Persistent Problem of Colorism: Skin Tone, Status, and Inequality'.

secured similar societal success as interracial marriages back then were considered a taboo.<sup>73</sup> Now White Supremacy, which seemingly played a hand in morphing the attitude of the African slaves towards their identity and 'whiteness' as a whole, is argued to be founded upon the religious ideals of Christianity with which the Europeans had historically viewed the world. The biblical curse of Ham to eternal slavery in the book of Genesis<sup>74</sup>, for example, was long used as a justification for Black slavery despite the fact that there is no mention of Blacks in it at all. Scholars have however linked Ham to being the father of Black Africa, a fact that is subject to dispute. The Manichean doctrine of dualism - the permanent struggle between the divine realm of light that signifies good and darkness which symbolizes evil<sup>75</sup> is also argued to have influenced the hegemonic white identity constructed to accord Christianity a 'white' feel.<sup>76</sup> Consequently, the whitening of religious imagery, particularly the image of Christ,<sup>77</sup> allowed whiteness to be projected and perceived as a symbol of godliness, light and moral good, whilst blackness represented darkness, damnation, immorality and evil.<sup>78</sup>

Determinately, the ideologies of White supremacy and Manichean Christianity did progress to the era of colonialism where African and specifically Kenyan natives were hypnotized into reinforcing the white ideal through submitting to colonial masters and assimilating the European way of life. Bending over backwards, the foreign oppressors ensured that the Africans knew their place as physically and ideologically inferior to them.<sup>79</sup> The development of class barriers by the British called attention to social privilege, access to and exclusion from

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<sup>73</sup> Kerr, *The Paper Bag Principle: Class, Colorism and Rumour and the Case of Black*, 29.

<sup>74</sup> New International Version Bible, Chapter 9: 20-27.

<sup>75</sup> 'Jones K: A Comparison between Manichean and Christian Views of Evil' [http://www.meta-religion.com/Philosophy/Articles/Other/Mani\\_paper.htm#.VnF\\_8NJ97Mx](http://www.meta-religion.com/Philosophy/Articles/Other/Mani_paper.htm#.VnF_8NJ97Mx) on 15 November 2015.

<sup>76</sup> Blay, 'Skin Bleaching and Global White supremacy: By Way of Introduction', 6.

<sup>77</sup> Christ, the iconic measure of perfection, is (re)interpreted, (re)imagined, and (re)presented as not just white skinned, but extremely white; so white as to illuminate. Additionally, Christ is depicted with blonde hair and blue eyes, reflective of the proclaimed racial superiority of the Nordic race. It was deemed necessary for God be as far removed as possible from everything that could suggest darkness or blackness as noted by Blay in 'Skin Bleaching and Global White supremacy: By Way of Introduction', 11; *see also* Bastide B, 'Color, Racism, and Christianity' in J. H. Franklin (ed.) *Color and Race*, Houghton Mifflin Company, Boston, 1968.

<sup>78</sup> Blay Y.A, 'Editorial: Struck by Lightning: The Transdiasporan Phenomenon of Skin Bleaching', *Jenda: A Journal of Culture and African Women Studies*, vol 14, 1-10 as cited in Blay Y. A, 'Skin Bleaching and Global White supremacy: By Way of Introduction', 8.

<sup>79</sup> Blay, 'Skin Bleaching and Global White supremacy: By Way of Introduction', 6.

resources and opportunities, deeming the lighter complexion to be the dominant force.<sup>80</sup> The black African was associated with barbarism, unattractiveness, dirt, disease, pollution, immorality and unattractiveness while the white body, on the other hand, was portrayed as being virtuous, beautiful and lovable.<sup>81</sup> Given the fact that White supremacy has historically been constructed by whites for the benefit of whites, the notion has been isolated as a reserve for white people.<sup>82</sup> However, it is argued that White supremacy, as a system, potentially transcends to broader ideological horizons as people can embody it and in many ways uphold it without actually being 'white'.<sup>83</sup> A number of individuals who bleach their skin are demonstrated to vehemently reject accusations that they desire to be white and, in fact, are aware that no amount of chemical intervention will actually render them white. Nevertheless, they are deemed to do so in the hope that 'whites' and 'non-whites' alike, will grant them access to the social acceptance, privileges and skin colour stereotypes ordinarily reserved for people of the white race or those of lighter skin tones as an approximation of people of the white race.<sup>84</sup>

It is arguable whether this psychological mark on the natives of the time - that the lighter one's skin color is, the more bountiful their path to success - is indeed indelible. It could be argued that it diffused its way from generation to generation, climaxing in the latter part of the 20<sup>th</sup> Century, where the paradigm assumed new found vigor in Africa in the form of skin-lightening. On the contrary, it is important to note that not all Africans embrace the practice and some actually abhor it. Therefore bringing to question whether light skin is an objectified standard of beauty or a relative one. It appears that it is relative, considering that not all individuals propagate skin lightening. However, an increasing number of women and men in the continent are resorting to the practice of skin bleaching primarily in the hope of being

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<sup>80</sup> Malik, 'The Domination of Fair Skin: Skin Whitening, Indian Women and Public Health', 10.

<sup>81</sup> Julien, 'Skin Bleaching in South Africa: A Result of Colonialism and Apartheid?', 5.

<sup>82</sup> Blay, 'Skin Bleaching and Global White supremacy: By Way of Introduction', 6.

<sup>83</sup> Blay, 'Skin Bleaching and Global White supremacy: By Way of Introduction', 7.

<sup>84</sup> Blay, 'Skin Bleaching and Global White supremacy: By Way of Introduction', 8; *see also* Vickermann M, *Crosscurrents: West Indian Immigrants and Race*, Oxford University Press, New York, 1999 as cited in CERS Working Paper, 'A Liquid Modern Analysis of Skin Bleaching in Jamaica, 2012.

accorded the privileges and stereotypes subconsciously assigned to light-skinned races and individuals.<sup>85</sup>

Contrastingly, in India, the skin whitening phenomenon largely traces its roots to the caste system and the aristocratic Aryan rule. The controversial superiority of the light-skinned Aryan race by virtue of their historical domination over darker-skinned Dravidians<sup>86</sup> and the development of the caste system that posited upper castes as supposedly being more fair-skinned than members of the lower castes are plausible influences.<sup>87</sup> India's history dictates that its rulers have often been white, from the Aryans to the British colonialists, giving rise to the idea that pale skin is associated with the exercise of power.<sup>88</sup> A misconception that some scholars have argued is ideologically strikingly similar to that of White supremacy—it is structured and maintained not for the purpose of legitimizing racial or colorist categories as much as it is for the purpose of maintaining and defending a system of wealth, power and privilege.<sup>89</sup>

Similarly, in states such as Japan and Vietnam fair skin was associated with privileged status in the same way that fair skin once served as a sign of upper-class status in various parts of Europe and the United States.<sup>90</sup> This was at least before leisure travel became more accessible and common among elites in the West and before advances in medical care demonstrated the benefits of some sun exposure.<sup>91</sup> Coupled with the increased pressure to acquire Western

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<sup>85</sup> See Blay, 'Skin Bleaching and Global White supremacy: By Way of Introduction', 8.

<sup>86</sup> 'Murali Balaji: Not Caste in Color: Dispelling Myths in Our Classrooms', *Huffington Post*, 11 November 2013 [http://www.huffingtonpost.com/murali-balaji/not-caste-in-color-dispel\\_b\\_4243013.html](http://www.huffingtonpost.com/murali-balaji/not-caste-in-color-dispel_b_4243013.html) on 1 August 2015; see also 'David Frawley: The Aryan Dravidian Controversy' [http://www.hindunet.org/hindu\\_history/ancient/aryan/aryan\\_frawley\\_1.html](http://www.hindunet.org/hindu_history/ancient/aryan/aryan_frawley_1.html) on 15 August 2015.

<sup>87</sup> 'Hubert Prolongeau: 'India's skin whitening highlights a complex over darker complexions'', *The Guardian*, 24 July 2015.

<sup>88</sup> Hubert Prolongeau: 'India's skin Whitening highlight a complex over darker complexions', *The Guardian*.

<sup>89</sup> Blay, 'Skin Bleaching and Global White supremacy: By Way of Introduction', 6.

<sup>90</sup> Jones, 'The Significance of Skin Color in Asian and Asian American Communities: Initial Reflections', 1115; see generally Glenn N. E., 'Consuming Lightness' in *Shades of Difference: Why Skin Color Matters*, Glenn N. E (ed), Stanford University Press, California, 2009.

<sup>91</sup> According to Jones in 'The Significance of Skin Color in Asian and Asian American Communities: Initial Reflections', having a tan is indicative of wealth, good health, and a life of leisure. The same article cites Segrave K in *Sun-tanning in 20th Century America*, McFarland & Company, McFarland, 2005, as describing how changes in the desirability of pale versus tanned skin has developed over time.

features to be considered more marketable in modern Asia, it is no wonder that in the year 2002, estimates put the market for skin whiteners in China at an estimated \$ 1 billion.<sup>92</sup>

With the awareness that skin lightening is attributable to a number of theories, some of which have been mentioned above and that it is a practice that runs parallel to other contrasting skin enhancement practices such as skin tanning, it would be justified to say that its roots and influences demand some deeper investigation. It is not within the purview of this paper to extensively deal with that but rather to bring to light the existence of the practice and evaluate how the Kenyan government seeks to regulate it.

### **1.5. The current state of the use of illegal skin lightening creams in Africa, the Middle East and Asia**

Skin whitening is not a new phenomenon in Kenya as records as far back as the 1980s substantiate the use of skin bleaching products, majorly by the female population. It is largely speculated that these creams first infiltrated into the country via the borders of Tanzania, Uganda and extensively the Democratic Republic of Congo (DRC), where their use was particularly prevalent. A long list of other African countries have also been associated with the use of these products, notably in a recent poll carried out by the World Health Organization.<sup>93</sup> Nigeria, for instance, is cited as being the country with the largest population of skin whitening products users in Africa, with about 77% of the female population actively using the treatments.<sup>94</sup> Togo, South Africa, Senegal and Mali follow closely behind with female population percentages of 59%, 35%, 27% and 25% respectively, reported to use skin

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<sup>92</sup> For additional analysis of the marketing of skin-lightening products in China, geared to draw upon existing cultural conceptions of beauty, see Ka Ying Mak A, 'Advertising Whiteness: An Assessment of Skin Color Preferences Among Urban Chinese', *Visual Communication Quarterly*, Vol 14, Issue 3 (2007), 144-146; see also Jones, 'The Significance of Skin Color in Asian and Asian American Communities: Initial Reflections', 1118.

<sup>93</sup> World Health Organization (WHO), 'Preventing disease through healthy environments, Mercury in Skin Lightening Products', 2011, 1.

<sup>94</sup> United Nations Environment Programme (UNEP), Division of Technology, Industry and Economics, Chemical Branch, 'Mercury in products and wastes', 2008, 11.

lightening products on a regular basis.<sup>95</sup> In Cote d'Ivoire furthermore, it is estimated that eight out of every ten seemingly fair-complexioned women have used skin lightening products.<sup>96</sup>

Comparing jurisdictions, Asian countries are also affected by the trend as in 2004, more than one-third (38%) of women surveyed in Hong Kong, Korea, Malaysia, the Philippines and Taiwan were found to use skin lightening products, up from 34% in 2002.<sup>97</sup> More so, in a survey carried out in June 2004, 61% of respondents in Hong Kong, Malaysia, the Philippines, South Korea and Taiwan said they felt younger with a fair complexion.<sup>98</sup> The situation in India has similarly escalated over the years with an estimated 60% of Indian women currently using various skin whitening creams daily.<sup>99</sup> It is estimated that the Indian whitening market is growing at about 18% a year and will peak at an all-time high growth rate of 25% this year, with a \$435 million worth.<sup>100</sup> Local whitening brands make up most of the market share, what with the Hindustan Unilever's 'Fair & Lovely' cream being the dominant product of use for the females while Calcutta Emami group's 'Fair and Handsome' taking the lead for the males.<sup>101</sup>

In Dubai and other parts of the Middle East as well, skin whitening cosmetic surgery is becoming a largely sought after procedure,<sup>102</sup> leading to growing numbers of young men and women spending thousands of dollars in a bid to acquire fairer skin. The numbers of these analyses are bound to increase significantly over the years if left unchecked. A potential factor that can be attributed to this growth is the advancement of technology and capabilities of the

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<sup>95</sup> UNEP 'Mercury in products and wastes', 11.

<sup>96</sup> Blay, 'Skin Bleaching and Global White supremacy: By Way of Introduction', 5.

<sup>97</sup> UNEP, 'Mercury in products and wastes', 11.

<sup>98</sup> UNEP, 'Mercury in products and wastes', 11.

<sup>99</sup> 'Time for a reality check on skin lightening creams', *The Conversation*, 11 September 2012 <http://theconversation.com/time-for-a-reality-check-on-skin-lightening-creams-7770.html> on 01 November 2015.

<sup>100</sup> The estimates are given by AC Nielsen, India's largest research agency as recorded by Shantanu Guha Ray in 'India's unbearable lightness of being', *BBC News*, 23 March 2010 <http://news.bbc.co.uk/2/hi/8546183.stm> on 10 November 2015.

<sup>101</sup> 'Shantanu Guha Ray: India's unbearable lightness of being', *BBC News*.

<sup>102</sup> 'Another African nation bans popular skin-whitening creams', *The New York Times*, 12 May 2015 <http://nytlive.nytimes.com/womenintheworld/2015/05/12/another-african-nation-bans-popular-skin-whitening-creams.html> on 1 November 2015.

internet, such as social media presence and global networking, which provide a conducive environment for increased media hype on the alluring nature of fair skin.

### **1.6. Beauty ideals of the 21<sup>st</sup> century**

The materialism of the current century has bred a culture of the desperate need for social acceptance. Despite the fact that philosophically such acceptance can be attained by cultivating ethical values and virtues such as kindness, goodness, prudence, current trends celebrate physical attributes - the 'Westernised' version of beauty - as benchmarks of social correctness. Big eyes, slender figures, slim noses and fair skin are just but a few among the increasingly, universally appealing features that we have today that have primed the phenomenal investment, by individuals in all age groups, in the multi-billion dollar plastic surgery industry.<sup>103</sup> External influences such as social media and the press have been pivotal in inculcating these ideals and fair skin, as one revered ideal, has been sought after disproportionately in countries with dark-skinned inhabitants.

The skin whitening industry in India and Ivory Coast have been particularly awash with immense controversy, especially as concerns product advertisements. One notable Fair & Lovely advertisement in India, for instance, played on the psychological vulnerability that many young Indian girls have of associating fair skin with success and acceptance. It recounted the tale of a retired father with financial problems, lamenting over the fact that he doesn't have a son to bail him out. Hearing this, his dark-skinned daughter decided that she would "be a son" and used the Fair & Lovely cream to lighten her skin and consequently land a coveted job as a flight attendant.<sup>104</sup> Similarly, the Fair & Handsome cream advertisement is endorsed by the famous Bollywood actor, Shahrukh Khan, who is an influential personality in the country. The message that this impliedly passes to young Indian males is that fair skin is a necessary

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<sup>103</sup> 'Global Cosmetic Surgery and Service Market Report 2015-2019-Analysis of the \$ 27 Billion Industry', *PR Newswire*, 20 March 2015 <http://www.prnewswire.com/news-releases/global-cosmetic-surgery-and-service-market-report-2015-2019---analysis-of-the-27-billion-industry-300053760.html> on 15 November 2015.

<sup>104</sup> 'India debates racist skin cream', *BBC News*, 24 July 2003 [http://news.bbc.co.uk/2/hi/south\\_asia/3089495.stm](http://news.bbc.co.uk/2/hi/south_asia/3089495.stm) on 15 November 2015.

prerequisite to fame and stardom or rather, success. It has accordingly been a matter of contention for a number of Indian activists, such as ‘Women of Worth’,<sup>105</sup> who are trying to encourage Indians to embrace their natural skin colour and discourage celebrities and cosmetic companies alike from rooting the paradigm that being dusky-skinned is detrimental to one’s path towards financial and societal achievement.

Comparably, Ivory Coast’s economic capital, Abidjan, teems with an array of billboard skin whitening advertisements. The bleaching phenomenon in the country became so rampant and reckless that the Ivorian government recently banned unregulated skin whitening cosmetics. Fears over the long-term health problems that the cosmetics caused were a growing concern, with the ban primarily aimed at unregulated whitening creams and lotions that contain mercury and its derivatives, cortisone, vitamin A, or more than two percent of hydroquinone.<sup>106</sup> A good number of the Kenyan population knowingly or unknowingly sacrifice their biological health for the use of skin lightening treatments that contain such banned substances, incentivized by the fact that they are cheaper and more potent in the short-term as compared to their more expensive and legitimate or cheap but slow-acting counterparts.

### **The syndicate of unregulated skin lightening creams in Kenya**

The illegal skin whitening market has its foundations on two premises—there are willing buyers and willing sellers. Budding entrepreneurs of the 19<sup>th</sup> and 20<sup>th</sup> century observed the increasing value accorded to fair skin within the African community; and thus came up with products in the form of creams, soaps, lotions, injections and pills<sup>107</sup> that men and women

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<sup>105</sup> In 2009, Women of Worth launched the “Dark is Beautiful,” movement, a campaign that seeks to draw attention to the unjust effects of skin color bias (colorism) as well as celebrate the beauty and diversity of all skin tones, as seen in ‘About the Campaign’, *Beauty Beyond Colour*, <http://darkisbeautiful.blogspot.co.uk/p/about-us.html> on 10 November 2015.

<sup>106</sup> ‘Agence France-Presse: Ivory Coast bans potentially deadly skin whitening creams’, *The Guardian*, 6 May 2015 <http://www.theguardian.com/world/2015/may/07/ivory-coast-bans-potentially-deadly-skin-whitening-creams> on 14 August 2015.

<sup>107</sup> Felistas Wangari, ‘Dying for light skin’, *Daily Nation*, 9 June 2012.

could use to change their skin color as a first or subsequent imitation of whiteness.<sup>108</sup> This was a major advancement from the whitening treatments previously used that ranged from household detergents and bleach to natural herbs such as gram flour and sandalwood powder.<sup>109</sup>

The unregulated products found in Kenya are majorly manufactured in India, the DRC and in West African countries<sup>110</sup> and the DRC was actually one of the trend-setting countries as far as the use of unregulated skin whitening creams were concerned. With its average per individual annual income of only \$220, it is no small wonder why a large majority of their population resort to the use of cheap and unregulated whitening products.<sup>111</sup> The underlying aim being that of gaining wider social acceptance and accessing better opportunities that they believe only fair skin can provide. Over time, a number of other countries caught up with the trend and the products found their way into the East African region and as far as South Africa as well.

The syndicate of unregulated skin whitening creams is in the purview of the enigmatic and lucrative black market industry, whose mechanics are difficult to substantiate. In Kenya, the products are allegedly brought into the country mainly via the land borders of Tanzania and Uganda through dumping or smuggling. 'Dumping' generally refers to an unfair commercial competitive behavior in international trade, where a producer in one country sells a product at a lower price than the normal value, to a specific export market.<sup>112</sup> This phenomenon could precipitate in a variety of ways, including the depositing of goods that are destined for another

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<sup>108</sup> Other imitations of whiteness could include the mimicking of Western accents, clothing and lifestyles.

<sup>109</sup> Lewis M. K, Harris S, Camp C, Kalala W, Jones W, Ellick L.K, Huff J, Younge S, 'The Historical and Cultural influences of Skin Bleaching in Tanzania' in Hall R (ed.), *The Melanin Millennium: Skin Color as 21<sup>st</sup> Century International Discourse*, Springer Science & Business Media, Netherlands, 2012, 19.

<sup>110</sup> Manufacturing information found in a physical survey carried out by the author in Mombasa House on River Road Street and Maringo estate in Nairobi; see also 'Mpume Madlala: Warnings against use of illegal cosmetics' *Daily News*, 1 June 2012 <http://www.iol.co.za/dailynews/news/warnings-against-use-of-illegal-cosmetics-1.1309747#.VnFcGdJ97Mw> on 15 November 2015.

<sup>111</sup> 'Democratic Republic of the Congo', *World Vision* <http://www.worldvision.org/our-impact/country-profiles/democratic-republic-congo> on 30 August 2015.

<sup>112</sup> Article 2.1, *WTO General Agreement on Tariffs and Trade*, 1994.

location, into a location other than that intended. According to Mr. Felix Ohato, a customs official at the Kenya Revenue Authority (KRA),<sup>113</sup> this phenomenon could occur when goods that are registered as being destined for Tanzania from Uganda for example, are deliberately and finally deposited in Kenya, which is the 'transit' country. This could be because the market for those goods in Kenya is considerably higher than that in Tanzania or because there seems to be a growing market for the goods in Kenya. Tax is however paid on these goods to the importing country as required by the relevant laws on customs and normal tracking procedures are embarked upon by the revenue authority in the transit country, to ensure the safe arrival of the goods to the country of import. The only thing that goes amiss, however, is that the goods inadvertently get 'lost' in the transit country and thus KRA, in this case, finds it hard to track them down.

On the contrary, illegal goods, such as banned skin lightening cosmetics are smuggled into the country. Mr. Ohato emphasized that such cosmetics rarely find their way through the Kenyan borders by way of sea or as exclusively air-shipped cargo due to the intense and thorough verification processes that imported goods and transfers<sup>114</sup> undergo at the various customs checkpoints in ports and airports. These presumptions, of course, take into cognizance the fact that corruption in Kenya is a reality that hampers these efforts. One of the most common ways through which skin lightening products manage to get into the Kenyan market is as luggage when travelers come into the country from abroad. This is because KEBS has neither the checkpoints nor the capacity at airports to investigate the contents of each individual traveler's luggage. This method of smuggling is nevertheless confined to a very limited market base and quantity of products as the number of labelled, unlabeled or mislabeled skin lightening treatments one can carry in an average sized luggage without arousing suspicion is minimal. The other common method, however, is the most preferred. A variety of goods are easily smuggled through Kenya's porous land borders and dubious cosmetics are among them. Interestingly, KRA is also short of resources to have checkpoints closely interspersed along

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<sup>113</sup> Interview 1.

<sup>114</sup> These are goods that are transported across countries within the East African Community (EAC), contrary to 'imports' which refer to goods transferred from a country outside the EAC to one within the EAC.

the land borders. Unscrupulous traders thus take advantage of this loophole by smuggling in truckloads worth of goods either via a number of motorcycle/ bicycle rides across borders or via a number of walks across borders in a day by a number of individuals.

A truck is then usually on stand by a safe distance away from the Kenyan border to facilitate the on-loading of these illegal products. It then makes its way to Garissa where the goods are repackaged and then sent to Eldoret and later their destination of choice, Nairobi, where the lion's share of the market for these goods abounds. The goods are then commonly stored in Nairobi's Eastleigh estate before they are unpacked and rearranged for distribution.<sup>115</sup> This is how they ultimately make their way to the stalls in River Road and some shops around Kenya.

Despite their ban, the market for these products is still booming. The black market moguls are incentivized to provide the supply of these goods, bearing witness to the millions of shillings being racked in by large cosmetic brands such as Unilever in selling skin whitening creams such as Fair & Lovely. Taken as a whole, it is not within the scope of this paper to assess the level of effectiveness of the measures put in place by the KRA to regulate the entry of illegal goods into the country. Nor is it to assess the lacunas contained in the country's customs legislations. It is, however, important to note that this is a potential area of research and the inadequacy of governmental resources coupled with the menace of corruption may be the primary factors that deter the effective control of the presence of these products in the country. Nevertheless, now that they are commonplace in the market, there is a need to assess how consumer protection laws mitigate the potential damage they pose to the general public.

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<sup>115</sup> Interview 2 with KEBS official at the 'Market Surveillance' department who did not wish to be named in this study.

## Chapter 4

### The health effects of skin whitening products

As stated in chapter one, the adverse health effects of skin whitening cosmetics tend to be far-reaching, although they do not necessarily manifest immediately after use. The following analysis gives an overview of the most common health implications of the most notorious ingredients found in these products.

#### 1.7. Mercury

This element exists in three forms i.e. elemental mercury, organic mercury and inorganic mercury. The latter is the form that is commonly used in toxic skin lightening products. Though low levels of the same are permitted as ingredients of disinfectants and fungicides, high levels of the same have severe side effects such as kidney damage; skin discoloration and scarring; reduction in skin's resistance to bacterial and fungal infections; anxiety; depression and peripheral neuropathy (damage to the peripheral nerves, which is the nervous system that send information from the brain and spinal cord to the rest of the body).

According to a recent WHO report<sup>116</sup>, some tested skin whitening soaps contain approximately 1–3% of mercury iodide and mercury concentrations of up to 31 mg/kg.<sup>117</sup> The creams, on the other hand, are composed of 1–10% mercury ammonium and mercury concentrations of as high as 33 000 mg/kg.<sup>118</sup> This is compared to the 1 mg/kg average standard stipulated in

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<sup>116</sup> 'Preventing disease through healthy environments, Mercury in Skin Lightening Products', 2011, 1-2.

<sup>117</sup> Glahder C. M, Appel P.W. U, Asmund G, 'Mercury in soap in Tanzania', Copenhagen, Ministry of Environment and Energy, National Environmental Research Institute Technical Report No. 306, 1999, as cited in WHO, 'Preventing Disease Through Healthy Environments, Mercury in Skin Lightening Products.'

<sup>118</sup> Minnesota Department of Health, 'Skin-lightening products found to contain mercury', 2011 as cited in WHO, 'Preventing Disease through Healthy Environments, Mercury in Skin Lightening Products.'

countries such as the USA<sup>119</sup> and the complete ban of the same in many African states.<sup>120</sup> Although most

skin whitening creams containing mercury do not list it as an ingredient, some indications of a product containing mercury cite the following ingredients: Hg, mercuric iodide, mercurous chloride, ammoniated mercury, amide chloride of mercury, quicksilver, cinnabaris (mercury sulfide), hydrargyri oxydum rubrum (mercury oxide) and mercury iodide.<sup>121</sup> Directions to avoid contact with silver, gold, rubber, aluminum and jewelry may also indicate the presence of mercury.<sup>122</sup>

### 1.8. Hydroquinone

It is a kind of phenol - an aromatic organic compound that is mildly acidic - that can be used as an ingredient in specific topical creams. Restricted in its use, clinical preparations containing 2-4% hydroquinone are prescribed for the treatment of hyperpigmentation such as melasma, freckles, senile lentiginos as well as chloasma. They do this by inhibiting melanin production. Products containing this ingredient are thus classified as drugs and not cosmetics. This implies that they are required to be registered with the Pharmacy and Poisons Board prior to sale. Cosmetics that contain levels of hydroquinone over 4%, such as some black market whitening cosmetics, are deemed dangerous for use and in the case of Kenya, have been banned. Their side effects include but are not limited to dermatitis; cataracts; cancer (due to the accumulation of metabolites of hydroquinone in the liver and the bone marrow); acute myeloid leukemia,

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<sup>119</sup> United States Food and Drug Administration (USFDA), '*Cosmetics: ingredients prohibited & restricted by FDA regulations*', United States Department of Health and Human Services, Silver Spring, 2000, as cited in WHO, '*Preventing Disease Through Healthy Environments, Mercury in Skin Lightening Products.*'

<sup>120</sup> Glahder CM et al, 'Mercury in soap in Tanzania', 1999; see also Uram E, Bischofer B. P, Hagemann S, 'Market analysis of some mercury-containing products and their mercury-free alternatives in selected regions', Gesellschaft für Anlagen und Reaktorsicherheit (GRS), 2010, 253 as cited in WHO, '*Preventing Disease through Healthy Environments, Mercury in Skin Lightening Products.*'

<sup>121</sup> UNEP, '*Mercury in products and wastes*', Geneva, Division of Technology, Industry and Economics, Chemicals Branch, 2008; see also New York City Department of Health and Mental Hygiene, '*Mercury in soaps and creams*', New York, 2011 as cited in WHO, '*Preventing Disease through Healthy Environments, Mercury in Skin Lightening Products.*'

<sup>122</sup> World Health Organization, '*Preventing Disease through Healthy Environments, Mercury in Skin Lightening Products.*'

skin disfigurement; nerve damage which is shown in symptoms such as headaches, dizziness, tinnitus, delirium, muscle twitching, tremor and nausea; and kidney failure.<sup>123</sup>

### **1.9. Steroids**

Ordinarily used for creams that are used to treat conditions such as eczema, dermatitis and psoriasis, the use of steroids in topical products is highly regulated. They are primarily found in creams in the form of corticosteroids and ordinary steroids, in conjunction with other powerful ingredients such as clobetasol propionate, fluocine acetonide and betamethasone dipropionate.<sup>124</sup> The peculiarity with steroids, regardless of their use, is that they incidentally lighten skin colour, hence their rampant incorporation into skin whitening products. In collaboration with substances such as hydroquinone and mercury, the skin lightening properties of such a concoction become extremely powerful. Prolonged use of steroids nevertheless results in devastating permanent damage. This includes excessive stretch marks; excess hair growth; fungal or bacterial infections; inflamed hair follicles; swelling of the face and abdomen (due to the presence of excessive cortisol in the body); thinning of the skin; high blood pressure and diabetes.<sup>125</sup>

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<sup>123</sup> Ly et al, 'Aesthetic problems associated with the cosmetic use of bleaching products', 15-17; *see also* Souza, 'The concept of skin bleaching in Africa and its devastating health implications', 27-29 as cited in Julien, 'Skin Bleaching in South Africa: A Result of Colonialism and Apartheid?', 3.

<sup>124</sup> 'Corticosteroid creams should not be used to lighten skin', *Whiter Skin*, 26 January 2015 [www.whiterskin.info/corticosteroids-should-not-be-used-to-lighten-skin/](http://www.whiterskin.info/corticosteroids-should-not-be-used-to-lighten-skin/) on 16 November 2015.

<sup>125</sup> 'Time for a reality check on skin lightening creams', *The Conversation*.

### **1.10 Hydrogen peroxide**

Though thought to be generally safe to use as a dark spot remover if applied in small quantities, excessive concentrations of hydrogen peroxide on the skin can cause skin burns, blisters and ulcers.<sup>126</sup> When used in small quantities as a lightening agent, the chemical works by restricting the flow of blood to the skin capillaries, hence making the skin look whiter. However, as the compound clears slowly from your skin, the skin normally returns back to normal following the resuming of blood flow to the capillaries.<sup>127</sup>

#### **List 1 Controlled medicines sold in open air markets**

Some products that have potential lightening effects have been registered with the Pharmacy and Poisons Board, to be used as prescription human medicines for some skin conditions.<sup>128</sup> They are not to be sold in open air markets but only in registered pharmacies and chemists. Contrastingly, in a survey the author conducted in the areas of Maringo ward in Makadara constituency and selected shops near Strathmore University in Nairobi West constituency, the following creams, though banned from sale in open air markets, were found being sold without prescription:

1. BETNOVATE
2. MEDIVEN
3. DERMOVATE

#### **List 2 Banned cosmetics found in River Road**

A number of cosmetic products that are known to contain hydroquinone, steroids, mercury and hydrogen peroxide were banned by KEBS through legal notices in 1998 and 2000.<sup>129</sup> In a

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<sup>126</sup> 'Hydrogen peroxide', [www.dermnetnz.mobify.me/treatments/hydrogen-peroxide.html](http://www.dermnetnz.mobify.me/treatments/hydrogen-peroxide.html) on 16 November 2015.

survey conducted by the author in River Road's Mombasa House, Sew-Tech mall and Mepalux plaza, the following banned cosmetics were found on sale (due to the precarious nature of the survey, not all products on sale were able to be registered):

1. Fair and White Body Clearing Milk
2. Pimplex Medicated Cream
3. Miki Beauty Cream
4. Cleartone Skin Toning Cream

From this analysis, it can be seen that unregulated whitening cosmetics not only exist in the River-Road area of Nairobi but also in average shops and outlets, making them easily accessible. In addition, even though some consumers may become aware of their side effects, the dilemma is that once one starts using them, they tend to become dependent on them due to fear of re-pigmentation and steroid withdrawal.<sup>130</sup> This is a fact that was supported by the Oriflame Kenya Branch Manager-Westlands,<sup>131</sup> who recounted how one of their customers (who is of Tanzanian origin) resorted to the use of natural Oriflame products after the prolonged 15-year use of unregulated whitening cosmetics. Some of the health effects she had suffered as a consequence of their use were crippling of the legs, permanent scarring and thinning of the blood. Proving that the repercussions of these products are indeed a reality which no individual is deemed to be invincible to.

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<sup>127</sup> 'How Can Hydrogen Peroxide Bleach Your Skin, Lighten Dark Spots, Lips and Remove Acne Scars?', *Beauty Clue* [www.beautyclue.com/skin-whitening/can-hydrogen-peroxide-bleach-your-skin-lighten-dark-spots-acne-scars](http://www.beautyclue.com/skin-whitening/can-hydrogen-peroxide-bleach-your-skin-lighten-dark-spots-acne-scars) on 16 November 2015.

<sup>128</sup> 'Banned Products', *KEBS* <http://www.kebs.org/?opt=qai&view=banned> on 15 November 2015.

<sup>129</sup> 'Banned Products', *KEBS* <http://www.kebs.org/?opt=qai&view=banned>

<sup>130</sup> Ly et al, 'Aesthetic problems associated with the cosmetic use of bleaching products', 15-17; *see also* Mahé A. M, 'Skin diseases associated with the cosmetic use of bleaching products in women from Dakar, Senegal', *British Journal Of Dermatology*, 148(3) (2003), 493.

<sup>131</sup> Interview 3.

## Chapter 5

### Consumer protection

#### 1.11. The development of consumer protection laws

J. F. Kennedy was the first ever head of state who publicly addressed the issues surrounding what became known as consumer protection today. The then US president made a historic address to the US congress on the 15 March 1992, emphasizing what was to become the mantra of consumer lobby groups around the world: “Consumers by definition, include us all. They are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group...whose views are often not heard.”<sup>132</sup> The comments, perhaps made in cognizance of the extensively individualistic business practices by goods and service suppliers in the American capitalist environment, gave birth to 8 principles that now internationally define the rights of the average consumer. These principles are:<sup>133</sup>

- **The right to satisfaction of basic needs** - To have access to basic, essential goods and services e.g. adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.
- **The right to safety** - To be protected against products, production processes and services that are hazardous to health or life.
- **The right to be informed** - To be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labelling.
- **The right to choose** - To be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.
- **The right to be heard** - To have consumer interests represented in the making and execution of government policy, and in the development of products and services.

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<sup>132</sup> ‘Consumer Rights’, *Consumers International* [www.consumersinternational.org/who-we-are/consumer-rights/](http://www.consumersinternational.org/who-we-are/consumer-rights/) on 11 November 2015.

<sup>133</sup> ‘Consumer Rights’, *Consumers International* [www.consumersinternational.org/who-we-are/consumer-rights/](http://www.consumersinternational.org/who-we-are/consumer-rights/)

- **The right to redress** - To receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services.
- **The right to consumer education** - To acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them and;
- **The right to a healthy environment** -To live and work in an environment that is non-threatening to the well-being of present and future generations.

These rights also form the basis of the United Nations Guidelines for Consumer Protection (UNGCP),<sup>134</sup> to which all national consumer protection laws are to be dictated by. The guidelines, however, are not binding and one of the pivotal factors that actually incentivize states to adopt them are diplomatic interests. The world's only consumer federation, Consumer International, was the original brain behind the formation of these 8 principles and the primary catalyst for the establishment of the UNGCP guidelines. Having been founded in 1960, the group currently has over 240 member organizations in 120 countries, with Kenya's COFEK as one of its affiliates.

Consumer International's main objective is to fight for a fair and sustainable future for all consumers via diverse strategies, among them, being campaigning for the revision of the UNGCP guidelines, in light of the rapid advancement of technology and business practices. This goes on to show that on the international scale, notable strides are indeed being taken in forwarding the consumer protection movement to governmental and non-governmental actors alike. However, Consumer International's direct initiatives as regards the fight against dangerous skin whitening creams is unclear and not much literature is publicly available to support the contrary. Their indirect participation through their country affiliates may perhaps be less ambiguous but in Kenya specifically, this is not so as COFEK's involvement in campaigning against the use of illegal skin whitening products is not pronounced. Only one

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<sup>134</sup> 1999.

article so far<sup>135</sup> has been published on their website regarding awareness of the dangers of the use of such products and it brings to question whether consumer protection in the cosmetic industry has been abandoned over other ‘more important’ sectors of the economy.

### **1.12. The history of consumer protection laws in Kenya**

Consumer protection laws are relatively new to Kenyan law. The old constitution, for instance, did not have any express provisions on consumer protection rights. This is in contrast to the new constitutional dispensation, which dedicates a whole article to the rights accorded to the average consumer. Article 46 states inter alia that consumers have the right to:

*“goods and services of reasonable quality; information necessary for them to gain full benefit from their goods and services; protection of their health; safety and economic interests and compensation to any loss or injury arising from defects in goods and services.”*

While this is meant to serve as a blanket provision for all goods and services, it impressively covers all the questions in contention as regards unregulated cosmetics i.e. are unregulated cosmetics of merchantable quality? Are their lists of ingredients accurate and do their merchants bring to the attention of their consumers their contents? Are these cosmetics safe to use and if not, what remedies can affected consumers seek in a court of law regarding the same? Interestingly, there was also no specific statute governing consumer protection in Kenya prior to 2012. Piece-meal provisions on the protection of the consumer were only found in legislation such as The Anti-Counterfeit Act<sup>136</sup> and the Sale of Goods Act.<sup>137</sup> With these provisions having little effect due to their shallow nature and by the spur of both local and

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<sup>135</sup> ‘Kenya’s backstreet #BleachedBeauty trade Nairobi has become a haven for toxic skin-lightening treatments such as those used by model Vera Sidika’, *COFEK*, 29 March 2015 [www.cofek.co.ke/index.php/news-and-media/1052-kenya-s-backstreet-bleachedbeauty-trade-nairobi-has-become-a-haven-for-toxic-skin-lightening-treatments-such-as-those-used-bymode-vera-sidika?showall=1&limitstart.html](http://www.cofek.co.ke/index.php/news-and-media/1052-kenya-s-backstreet-bleachedbeauty-trade-nairobi-has-become-a-haven-for-toxic-skin-lightening-treatments-such-as-those-used-bymode-vera-sidika?showall=1&limitstart.html) on 11 November 2015.

<sup>136</sup> (No. 13 of 2008).

<sup>137</sup> Chapter 31, Laws of Kenya.

international media to give due priority to properly delineated consumer rights, the Kenyan government enacted the Consumer Protection Act. Foundationally tailored to provide a thorough guideline for fair and ethical business practices, it also equips the consumer with tools to mitigate the reality of information asymmetry in business transactions. The following sections will thus focus on the salient features that it contains, which deal directly with the controls put in place to ensure that both the buyers and sellers of skin whitening products are on a level playing field when it comes to the completion of a transaction.

### **1.13. Consumer rights and provisions under various Acts**

#### **The Consumer Protection Act**

##### Quality of goods and services<sup>138</sup>

As derived from the principles guiding the law of contract, the supplier of any goods and services is deemed to warrant that the goods and services are of reasonable merchantable quality. This warranty, as well as other implied warranties provided for under the Sale of Goods Act,<sup>139</sup> are to be unconditionally applied to any consumer contract. The Act goes on to state that any provision contained in the consumer agreement that goes against any of these implied warranties should be deemed void. A good of merchantable quality, though not defined neither in the Consumer Protection Act nor the Sale of Goods Act, is deemed to be one which is of satisfactory quality and is qualitatively up to standard. The UK Sale of Goods Act<sup>140</sup>, for instance, defines goods of satisfactory quality as being those that ‘...*meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all other relevant circumstances.*’ The safety of the goods may also be, where appropriate, aspects of the quality of goods.<sup>141</sup>

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<sup>138</sup> Section 5, *Consumer Protection Act* (No. 46 of 2012).

<sup>139</sup> (Chapter 31, Laws of Kenya).

<sup>140</sup> Section 14 (2).

<sup>141</sup> The amended s. 14 (2B) (d) of the UK Sale of Goods Act (1979).

Merchantability, however, has been found to have a commercial transaction undertone to it in some jurisdictions such as the UK.<sup>142</sup> Consequently implying that all a buyer could do was to either claim damages or reject goods and claim back the purchase price paid rather than being able to seek a cure or ask for a replacement at the price paid.<sup>143</sup> This has consequently led to the replacement of the term with 'satisfactory quality', which appears to be more suited to the needs of the modern consumer.<sup>144</sup> If the consumer is deemed to have suffered an economic loss (due to the fact that the product was not worth the price paid for it) and a perhaps an additional personal injury suffered due to the defectiveness of the goods (provided the damage is foreseeable), he can sue for damages on both grounds.

To this extent, illegal skin lighteners, which do not meet the standard of merchantable quality due to their potential health hazards, can thus be the subject of personal injury and economic loss claims in a court of law. Personal injury claims would be based on the fact that the products used affected the plaintiff health-wise while claims for economic loss would be grounded on the fact that the product used was not worth its price due to its defective nature. The burden of proof would consequently be on the seller to establish that the damage caused was not foreseeable, in a bid to reduce his liability. However, it would be interesting to explore the dynamic of whether the buyer was actually aware of the contents of the products. In such a scenario, it would be reasonable to assume that this would lessen the liability of the seller for making available goods that are injurious to consumers, placing the injured consumer in a more disadvantageous position as far as obtaining damages are concerned.

### Ambiguities<sup>145</sup>

According to the Act, all ambiguities related to the construction of the consumer agreement are to be interpreted in favour of the consumer. This, in common law, is referred to as the

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<sup>142</sup> Oughton et al, *Textbook on Consumer Law*, 175; see also the 1995 amendment of s. 14 (2) of the UK Sale of Goods Act of 1979.

<sup>143</sup> Oughton et al, *Textbook on Consumer Law*, 175.

<sup>144</sup> The amendment was made to the UK Sale of Goods Act in 1995.

<sup>145</sup> Section 7, *Consumer Protection Act* (No. 46 of 2012).

*contra proferentem* rule, where if a term of the contract is intended to benefit one party to the contract, it will be construed against the person seeking to rely on it in the case of any ambiguity.<sup>146</sup> Thus, if the supplier of the goods purported to exclude liability for breach of an implied term, say satisfactory quality, this would not cover the breach of an express term of the contract as enunciated in *Andrews Brothers Ltd v Singer & Co. Ltd* [1934] 1 KB 17.<sup>147</sup> This applies to both written and oral agreements. Considering that many of the contracts of the sale of whitening products are made orally, some of the ambiguities may arise in relation to the side effects of the products, the recommended directions of use and any exclusionary clauses implied by the seller. Accordingly, in a suit brought by a consumer on the grounds of personal injury from the use of skin lightening products, the courts would likely give the consumer the benefit of doubt when it comes to the abstruseness of the express terms of the contract such as the goods are actually safe for use. This, again is a show of protection of the consumer from the problem of information asymmetry, acknowledging the fact that an average buyer may not be able to understand the implications of a contract of sale as much as the seller would. In a contract for the sale of skin whitening products, it would also be the duty of the seller to clear up any ambiguities concerning the effects of the cosmetics and any exclusion from liability.

#### False representations<sup>148</sup>

The Act lists a number of scenarios that are categorized as unfair trade practices. One of them being making false representations. Ordinarily, for any misrepresentation to occur, the statement must purport to be one of fact and not of law, opinion or future intention. Nevertheless, a statement of opinion or future intention may become one of fact if the maker of the statement at the time of the contract did not hold the opinion or have the fact in question as emphasized in *Edgington v Fitzmaurice* (1885).<sup>149</sup> These misrepresentations are thereupon categorized as either being fraudulent (reckless statements made knowingly or without belief

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<sup>146</sup> Oughton et al, *Textbook on Consumer Law*, 386.

<sup>147</sup> Oughton et al, *Textbook on Consumer Law*, 386.

<sup>148</sup> Section 12, *Consumer Protection Act* (No. 46 of 2012).

<sup>149</sup> Leder M and Shears P, *Consumer Law* (Fourth Edition), Pitman Publishing, 1996, 26-27.

in its truth; negligent (those that must be proved by the offending party as having been made upon the belief that the facts represented were true); or innocent (false statements honestly made, where the maker of the statement is able to disprove negligence). The Act, however, does not specify whether the repercussions of making a misrepresentation can only be felt by a person who acts in the course of business or by private suppliers. It is common practice to have illegal skin whitening products sold by individuals who though not doing so in their ordinary line of business, obtain regular customers for the products. Perhaps this apparent loophole should be addressed so as not to isolate potential victims of such products from seeking legal redress.

Going into more detail, one of the practices deemed to amount to making a false, misleading or deceptive representation is implying that the goods or services have approval, characteristics, ingredients or benefits they do not have. This also ties in with alleging that the goods or services are of a particular standard or quality that yet they are not. Skin whitening cosmetics containing mercury, hydroquinone and hormonal preparations have not been certified by KEBS. Their lists of ingredients, as exaggerated by innuendo or ambiguity as to a material fact, fail to include the presence of banned chemical substances, implying that the manufacturers make fraudulent representations—they were aware of the possible defect of the product but negligently did not provide a warning on the label regarding the same. To be able to prove negligence, however, the defect of the product must be one which not all consumers would be expected to know as highlighted in *Farr v Butters Brothers & Co. Ltd [1932] 2 KB 606*.<sup>150</sup> The fact that some skin lightening cosmetics contain excessive levels of controlled substances is actually not widely acknowledged by many Kenyan consumers. If it were, mayhap the market for these very goods would not be as robust as it is today.

A representation that the person who is to supply the goods or services has the necessary approval to sell the goods is also another form of false misrepresentation, directly implying that the sellers of unregulated whitening creams commit an offence for not having the approval from KEBS to sell the products.

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<sup>150</sup> Oughton et al, *Textbook on Consumer Law*, 212.

### Unconscionable representations<sup>151</sup>

These representations, also termed as unfair representations, are distinguished from misrepresentations in that they are not only geared to induce a consumer to enter into a contract but to also take advantage of the information asymmetry between the buyer and the seller. So as to prove the making of an unconscionable representation in a cosmetic contract, consideration should be given to whether the person making the representation knows that the consumer is not reasonably able to protect his interests due to ignorance, illiteracy or inability to understand the language. This again protects the consumer from the problems of information asymmetry, shielding members of the lower economic classes especially from exploitation as they purchase cosmetics. More so, an assessment should also be done on whether a statement of opinion is misleading and the consumer is likely to rely on it to his detriment. Notably, there is no duty on a consumer to verify the truth of a representation. Nevertheless, in *Redgrave v Hurd (1881) CA*,<sup>152</sup> it was deemed to be enough if the statement is believed.

In the stalls in River Road where these products are sold, many of the merchants don faces that are disproportionately lighter in colour than the rest of their bodies. Alternatively, they have 'yellow' skin with dark elbows, knees and knuckles which are tell-tale signs of unregulated skin whitening cream use. In assuring their customers of the effectiveness of the products, they use themselves as testimonies that they have suffered no side effects from the product use,<sup>153</sup> which in more cases than not, falls far from the truth as expounded on in Chapter four.

### Consumer remedies

As implied in the previous sections, the user of a defective whitening cosmetic has the right to rescind the contract and sue for damages for personal injury or economic loss (exemplary and

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<sup>151</sup> Section 13, *Consumer Protection Act* (No. 46 of 2012).

<sup>152</sup> Leder et al, *Consumer Law*, 26.

<sup>153</sup> Interview 4 with Rose, a cosmetic merchant at Mombasa House, River Road Street, Nairobi, Kenya.

punitive damages are payable in addition to any other remedy available to the consumer.)<sup>154</sup> This is specifically so where a consumer enters into an agreement, whether oral written, after or while a person has engaged in an unfair practice. The damages can be coupled with recovering an amount equivalent to the difference between what the consumer paid for the goods and their actual value. In this sense, the actual value of the goods may be difficult to determine, given that the goods are illegal in the first place and placing a market value on them may inadvertently give the goods a legal character. This is assuming that trying to determine the cost of manufacturing the goods themselves, devoid of their toxic ingredients, disregards their relevance as their cardinal purpose is to employ the use of such ingredients to change the colour of one's skin. Other peripheral benefits that they would have such as moisturizing properties would not be material as many other cosmetics can perform similar functions.

Each person who engaged in an unfair practice is also jointly and severally liable with the person who entered into the agreement with the consumer for any amount to which the consumer is entitled to.<sup>155</sup> It is, however, unclear in the Act if the consumer's principal remedies lie against the retailer of the goods or the actual manufacturers. In most cases, the former is most applicable. Reason being that generally, there is unlikely to be a relationship of privity of contract between the consumer and the manufacturer by virtue of the length of the chain of supply under which the producer supplies goods to a wholesaler who in turn supplies to the retailer.<sup>156</sup> The contract can also be terminated, which will consequently also terminate all related agreements, all guarantees issued in respect of monies payable under the agreement, all securities given by the customer or a guarantor and all loan agreements including promissory notes. It is, however, unclear whether the right to sue for damages on termination of an agreement by the consumer as indicated above would include any damages for any consequential loss which would normally be significant.<sup>157</sup>

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<sup>154</sup> Section 16 and 84, *Consumer Protection Act* (No. 46 of 2012).

<sup>155</sup> Section 16 (10), *Consumer Protection Act* (No. 46 of 2012).

<sup>156</sup> Oughton et al, *Textbook on Consumer Law*,

<sup>157</sup> Coulson Harney Advocates newsletter, 'A New Dawn for Consumer Protection in Kenya-How does it affect you?'

It is important to also note that oral evidence is admissible in determining whether there has been an unfair practice or whether an unconscionable representation has been made. This is notwithstanding the existence of a written contract. Nonetheless, there seems to be no trace of any accessible case law in the Kenya Law Reports on civil suits dealing with skin lightening cosmetics or even other counterfeit cosmetics. This could perhaps be attributed to the fact that insufficient consumer education has been carried out by relevant bodies on the rights and responsibilities of consumers under the Act. Furthermore, the existence of pauper briefs<sup>158</sup> may also not be widely recognized by those consumers who cannot afford the high cost of instituting civil proceedings.

### **The Food, Drugs and Chemical Substances Act<sup>159</sup>**

The Act, which is charged with the 'prevention and adulteration of food, drugs and chemical substances'<sup>160</sup> contains only three provisions on the regulation of cosmetics, namely prohibition of the sale of cosmetics that may be injurious to the user, compliance with the cosmetics standards set by relevant bodies and the prohibition of the sale of cosmetics prepared under unsanitary conditions. The Act, however, does not include provisions regarding the publishing of false or misleading advertisements of any food, drug or cosmetic. As it is, the Act seems to serve as a primer for understanding the standards outlined in Acts such as the Standards Act as enforced by KEBS and the Consumer Protection Act as enforced by KCPAC. It is commendable that this Act, drawing inspiration from the US Federal Food, Drug and Cosmetic Act<sup>161</sup>, has sought to recognize the importance of the cosmetic industry as a major player in the economy, though it is understood that mere acknowledgement and taking steps to apply that acknowledgement is two very different things.

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<sup>158</sup> Order 33, *Civil Procedure Rules* (2010).

<sup>159</sup> (Chapter 254, Laws of Kenya).

<sup>160</sup> See objective of the Act, 5.

<sup>161</sup> (United States Code, Title 21).

## 1.14. Key regulators

### **The Pharmacy and Poisons Board**

The Act establishes the Pharmacy and Poisons Board which together with the Ministry of Health is empowered, under section 44 (1), to make rules under which medicines may be imported, manufactured or sold in Kenya. Correspondingly, all commercial drugs and medical preparations are required to be registered with the board prior to their sale. Illicit whitening cosmetics contain substances such as mercury, hydroquinone, steroids and hormonal preparations, which are normally used (in controlled doses) for treating medical conditions such as eczema and hyperpigmentation.<sup>162</sup> They are therefore classified as drugs and should only be applied upon the prescription of a medical doctor. Their registration with the Board as products for medical use is thus paramount<sup>163</sup> and ordinarily, there should not be any problem with registering these whitening products as medicines and guiding their use according to medical prescription. The issue, however, is the fact that these products are sought to be used not as drugs but as cosmetics which are available to any consumer, without requiring any medical prescription. Moreover, the levels of their medicinal ingredients are judged to be much too high not only by cosmetic standards but also by medical standards. Hence their incompatibility with the registration standards of the Pharmacy Board and general unsafety.

### **The Kenya Bureau of Standards (KEBS)**

Established by the Standards Act, the bureau is the primary statutory body in Kenya charged with the responsibility of providing standardization and conformity assessment services for consumer products. Beginning its operations in 1974, KEBS was mandated with a number of

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<sup>162</sup> 'Hydroquinone Skin Bleaching Topical', [www.wbmd.com/drugs/2/drug-87530/hydroquinone-skin-bleacching-topical/details](http://www.wbmd.com/drugs/2/drug-87530/hydroquinone-skin-bleacching-topical/details) on 11 November 2015; see also 'Topical Corticosteroids', *National Eczema Association* <https://nationaleczema.org/eczema/treatment/topical-corticosteroids/> on November 11 2015.

<sup>163</sup> 'Banned Products', *KEBS* <http://www.kebs.org/?opt=qai&view=banned>

functions<sup>164</sup> including providing for co-operation with governmental and non-governmental actors with a view to securing the adoption and practical application of standards; providing for the testing at the request of the Cabinet Secretary for Health and on behalf of the Government, of locally manufactured and imported commodities with a view to determining whether such commodities comply with the provisions of the Standards Act or any other law dealing with standards of quality or description; and notifying the public of the existence of new standards and technical regulations by publishing them in the Kenya Gazette.

So far, the Bureau has fairly executed these functions within the cosmetic industry, by virtue of the fact that they tested various suspicious skin lightening creams between 1998 and 2000, finding that they contained mercury, hydroquinone and dangerous levels of hormonal preparations such as steroids. Following this, a ban was imposed on these products and this was publicized through gazette notices no. 4310 of 1998 and 7169 of 2000. The sanction proved effective for quite some time but has since been watered down by the ravages of time and the rapid scientific advancements in the cosmetic industry. Since the turn of the millennium, multiple whitening products have infiltrated the market; some being the same banned cosmetics, others being renamed versions of the banned cosmetics and others completely new versions of untested whitening cosmetics which are of a similar precarious nature.

The incessant presence of these creams in the country despite their ban thus sheds a spotlight on the plausible factors that could be linked to this enigma. The laxity in implementation of customs laws in the country in so far as regulating the infiltration of these products via land borders and airport luggage is concerned is one possible factor. Alternatively, KEBS can be blamed for inefficiently executing its functions with regards to conducting mock purchases and ambush raids in markets suspected of hosting the presence of unregulated whitening cosmetics. Another attributable factor is the undue delay by KEBS in updating the list of banned cosmetics, in spite of the fact that it has updated the list of other banned products such

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<sup>164</sup> Ndung'u E, 'Functioning of WTO/TBT National Enquiry Point (NEP) for Kenya, Kenya Bureau of Standards (KEBS)', WTO Technical Barriers to Trade (TBT) Special Meeting for Information Exchange, Geneva Switzerland, 2<sup>nd</sup>-4<sup>th</sup> November 2004, 2.

as dry cell batteries.<sup>165</sup> If taken as a coordination problem between relevant regulators, it can be argued that the dysfunction in cooperation between KEBS and other consumer protection enforcement bodies in monitoring the import and sale of these products in the market is the real essence of the conundrum. Whichever the case, it is determinately clear that there is a need for new measures to be put in place to tackle the problem with a fresh perspective.

### **The Kenya Consumers Protection Advisory Committee (KCPAC)**

The Committee, made up of 12 members and headed by an elected Chairperson, is established under section 89 of the Consumer Protection Act. It was formed to be the main vessel of implementation of consumer protection laws and among others, it is charged with the responsibility of <sup>166</sup>facilitating the implementation of consumer protection law; coordinating and networking consumer activities and the development of linkages with consumer organizations locally and outside Kenya; promoting consumer education programs and disseminating consumer issues with a view to proposing corrective measures; providing advice to consumers on their rights, responsibilities and interests and undertaking any study or research which may be necessary to promote consumer protection.

The functions of this Committee and that of KEBS actually serve to be complementary and as such, the two bodies should ideally collaborate in ensuring the safety of consumers who purchase whitening cosmetics. So far, the public has not been aware of any recent joint ventures that KCPAC has had with KEBS or COFEK to investigating the root of the circulation of harmful cosmetics. Nor has there been any public awareness drives initiated by KCPAC to educate consumers on the adverse health effects of specific whitening cosmetics and their legal rights and responsibilities under contracts for the purchase of the same. It is unfortunate that since its inception, KCPAC has not made substantial grounds in furthering consumer protection in the cosmetic industry, laying most of its focus on other consumer products and services. This is not to say that cosmetics should automatically be given first priority as far as

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<sup>165</sup> 'Banned Products' KEBS <http://www.kebs.org/?opt=qai&view=banned> on 15 November 2015.

<sup>166</sup> Found in section 90, *Consumer Protection Act* (No. 46 of 2012).

consumer protection implementation is concerned as it perhaps may not augur well with the developmental stage that we are in as a country. The threshold of advertence given to them should, however, be increased lest the situation reaches exponential levels that may necessitate extraneous efforts that could have otherwise been avoided.

### **The Consumer Federation of Kenya (COFEK)**

A non-governmental organization that works as a consumer lobby group, the federation is an affiliate of Consumer International and commenced its functions in 2010.<sup>167</sup> It has impressively been engaged in a number of activities geared to protect defend, promote, develop and pursue consumer rights as guided by article 46 of the Constitution, the Consumer Protection Act and the Competition Act.<sup>168</sup> These activities range from its recent campaign for the sacking of the Kenya Power CEO over an irregularly acquired tender<sup>169</sup> to opposing the controversial order for the removal of tinted car windows.<sup>170</sup> Being the founding chair of the Kenya Consumers Protection Advisory Committee, COFEK plays the role of the catalyst in the implementation of consumer protection laws, bearing the voice of the average consumer. Despite its potent position, there hasn't been much notable action by the organization in putting forward consumer interests in the cosmetic industry. There is no published trace of any campaign it has instigated to pressure bodies like KEBS and KCPAC to do more in implementing consumer laws in the cosmetic market and eradicating harmful cosmetics. Neither does it seem to have set up any public awareness mechanisms to educate consumers on the consequences of the use of these cosmetics nor facilitated the commencement of class action suits on behalf of those who have been affected by their use. It would also be reasonable if COFEK initiated campaigns to encourage consumers to embrace their natural beauty and identity as African individuals but

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<sup>167</sup> 'About us', COFEK, 20 May 2013 [www.cofek.co.ke/index.php/who-we-are/about-us](http://www.cofek.co.ke/index.php/who-we-are/about-us) on 12 November 2015.

<sup>168</sup> 'About us', COFEK, 20 May 2013 [www.cofek.co.ke/index.php/who-we-are/about-us](http://www.cofek.co.ke/index.php/who-we-are/about-us).

<sup>169</sup> Vincent Achuka, 'Cofek campaign raises questions on lobby groups', *Daily Nation*, 22 November 2015.

<sup>170</sup> 'COFEK opposes order to remove tinted car windows', COFEK, 14 May 2014 [www.m.news24.com/kenya/Natioal/News/COFEK-opposes-order-to-remove-tinted-car-windows-20140514.html](http://www.m.news24.com/kenya/Natioal/News/COFEK-opposes-order-to-remove-tinted-car-windows-20140514.html) on 1 December 2015.

it seems that either such efforts have either not been embarked on or have not been carried out on a wide scale.

### **1.15. Other regulators**

In the fight against the presence of injurious products in the consumer market, KEBS collaborates with organizations such as the KRA, the Kenya Police and the Anti-Counterfeit Agency (ACA) through a single window system. In this regard, these government agencies share information on the nature of consumer goods and work harmoniously in monitoring the process by which goods are imported into and circulated in the country. This is specifically effective at sea checkpoints where there are thorough measures put in place by all these bodies to ensure that imported products are up to standard.<sup>171</sup> The bone of contention majorly arises when it comes to land borders via which most illegal cosmetics are smuggled.

There is apparently a lack of adequate resources to increase the number of customs checkpoints along land borders as noted by Mr. Ohato. There are currently only 13 land KRA border stations over a country whose perimeter spans 3,446 km,<sup>172</sup> making patrols across borders tasking and ineffective. More so, the KRA Business and Intelligence Office, which is involved in carrying out mock purchases and raids on goods suspected to be counterfeit, has seemingly not taken enough action in seizing dubious cosmetics in the stalls in River Road or perhaps the course of action is no longer effective in driving out the merchants given that bribes have become a common staple in the country. Either way, since the cosmetics are still on sale and the media continues to propagate the beauty ideal of fair skin, consumer demand for them keeps rising given their affordability and potency.

A spanner in the works that could also be of interest is whether or not tax is paid from the profits garnered from this business. To answer out this question, however, necessitates a

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<sup>171</sup> This does not necessarily mean that loopholes do not exist in this importation means. The systems put in place there are arguably noted as being more effective than that in land and air importation checkpoints.

<sup>172</sup> 'Kenya- Geography', *African Studies Centre, University of Pennsylvania*  
[www.africa.upenn.edu/NEH/kgeography.htm](http://www.africa.upenn.edu/NEH/kgeography.htm) on 1 December 2015.

separate study altogether. To superficially comprehend the controversy behind this, one should note that section 3 of the Income Tax Act of Kenya<sup>173</sup> dictates that income upon which tax is payable includes gains or profits (among others), accrued in Kenya from any business run by a person who is a resident or non-resident of Kenya. Intriguingly, section 2 of the same Act defines a business as ‘...*any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade, but does not include employment.*’ This definition notably does not distinguish legal businesses from illegal businesses, contributing to a lengthy global debate on whether illegally acquired income is indeed taxable.

How unsuspecting consumers are shielded from these cosmetics is thus a matter of concern. The global beauty fad of skin lightening potentially blinds consumers to the side effects that some of these products have. The sellers who go as far as injecting into their customers whitening creams that are ordinarily meant to be used topically or prescribe pills of the same nature are in most cases not registered doctors or pharmacists, shedding light on the alarming state of affairs that ordinary consumers face in the quest for beauty. The irony is that the consumer laws in Kenya seem to be adequately well drafted in general and are carefully tailored to fit into virtually any industry, including the cosmetic industry. They draw a substantial similarity to those of South Africa and the USA, countries that have in their respective continents been lauded as having hale consumer protection regulatory frameworks. The difference appears to be in how Kenya as a country implements its legislations and policies.

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<sup>173</sup> (Chapter 470, Laws of Kenya), revised 2014 edition.

## **Chapter 6**

### **Conclusion and recommendations**

This study, having examined the role that the Kenyan consumer regulatory framework plays in managing the increase of toxic skin lightening products, has established its importance in assessing the local efficiency of legislation and implementation in handling a problem of such complex nature. A problem that not only ventures into matters of the self-esteem of a people but also an area where consumers have a higher propensity to prefer the lack of legislation. Whereas the general literature on this subject, particularly in the context of Kenya, is scarce and unsatisfactory, this analysis set forth to try to answer out four questions which were deemed foundational to comprehending the situation at hand:

1. What are the theories behind the historical development of skin bleaching in dark-skinned communities?
2. What is the current state of the use of illegal skin lightening creams in Kenya as assessed against the backdrop of the same in Africa and Asia?
3. What are the relevant Kenyan consumer protection laws and regulators that deal with cosmetic products?
4. What are the inefficiencies of these laws and regulators in dealing with the continued presence of unregulated skin whitening cosmetics?

Firstly, it was found that the notion of White supremacy as institutionalized in colonialism and slavery may have played a significant role in psychologically hypnotizing communities of colour to relegate their cultural identity. The association of fair skin with power and high social class as evidenced in Asian aristocracies is also posited as a credible theory. One of the manifestations of such complexes was the innovation of methods that could transform dark skin to light skin, all in a bid to experience the privileges normally reserved for white or light-skinned people. Secondly, it was established that the African and Asian continents have been particularly affected by the skin whitening obsession. Consumers in countries such as South Africa, Ivory Coast and India have gone as far as manufacturing products containing mercury,

hydroquinone and steroids, which although stimulate substantial whitening of the skin, have disastrous side effects such as kidney failure. The situation in Kenya dismally seems to be no different in spite of the impressive consumer protection laws in the country and it is evident that the real thorn in the flesh is the implementation of these very laws.

Nonetheless, the efforts made by the Kenyan government in managing the presence of hazardous whitening creams in the country cannot be overstated. They worked to ban the products in the earlier part of the millennium and also educate the average consumer on the health effects of the use of such products. These efforts, however, were only active for a short period of time, were not carried forward to subsequent years and with the immense advancement of technology, it can only be certain that the list of banned skin lightening products is now outdated. Furthermore, with the advent of far-reaching communication channels such as the social media, education of consumers and break-down of information asymmetry can be carried out on a more effective and wider scale.

Acknowledging this state of affairs, some of the new measures that can, therefore, be taken to prevent the increase of these toxic products in the Kenyan market, beginning from the most basic include:

1. KEBS should seek to regularly update the list of banned skin lightening products. This is necessary to keep up with the rapidly emerging technological advancement in the cosmetic industry and new ways that entrepreneurs use to hide information from consumers (such as mislabeling of products). The bans should also be publicized widely on all media platforms to ensure that as many consumers as possible are aware of the banned products.
2. The establishment of a robust, harmonized framework between relevant regulators such as COFEK, KEBS, KCPAC and KRA that can steer their collaborated efforts in matters such as monitoring the entry of harmful cosmetics through the porous Kenyan land borders. This would be alongside rallying for additional resources from the government to cater for the establishment of more import checkpoints along the Kenyan borders. The regulators can also collaborate in carrying out raids in areas suspected of

harbouring such products with a view to deterring their open sale. Pooled efforts in consumer education should also be carried out through radio, television advertisements, billboards and particularly social media broadcasts (which would effectively stimulate further conversation and awareness). Such education would enlighten consumers on the health effects of these products, and their right and responsibilities under the consumer protection laws as far as unregulated cosmetics are concerned. In tandem with this, a campaign should also be initiated to promote the relativity of standards of beauty, encouraging consumers to embrace their natural skin colour and identity as African individuals.

3. The establishment of a taskforce within the harmonized framework that exclusively deals with cosmetics and beauty products. This will foster efficiency and specialization in the handling of issues to do with the sale of unregulated skin whitening products.

These measures may not in isolation completely eradicate the presence of unregulated skin whitening treatments in the country, but they do count as considerable efforts. It is also important to underscore that the purpose of this paper is not to chastise the act of skin whitening, as the practice can be done for understandable reasons - such as removing skin tan or treating excessive hyperpigmentation - other than trying to assume a foreign cultural identity or to imitate a certain social class. Skin whitening can be done safely and using legitimate products but without exercising caution, consumers can be exposed to precarious skin lightening treatments that could not only affect their health but also self-esteem in the long run. Of course, the scale of this debate is multifaceted and complex and given the time limitation, a more extensive study could not sufficiently have been carried out. Nevertheless, the importance of the subject of skin whitening cannot be overstated as it weaves with the complex issues of human dignity, the philosophical underpinnings of beauty and the impact of the sale of unregulated skin whitening products on the economy.

Granted, the cosmetic industry in Kenya may not perhaps be the industry requiring the most priority in Kenya's current developmental stage. However, it is definitely not an industry to be relegated to the inefficiencies of self-regulation. Virtually everyone wants to look and feel

beautiful. It is enshrined in the virtue of goodness. The anti-climax of the tale, however, is that the most inherently ideal standard of beauty - the way that each human being was originally formed – appears to not be so obvious and the relativity of the same could potentially precipitate the undoing of beauty itself.

## **Bibliography**

### **Legislation**

1. *Civil Procedure Rules of Kenya* (2010)
2. *Consumer Protection Act of Kenya* (No. 46 of 2012)
3. *Customs and Excise Act of Kenya* (2010)
4. *Pharmacy and Poisons Board Act* (Chapter 244, Laws of Kenya)
5. *Sale of Goods Act* (Chapter 31, Laws of Kenya)
6. *Standards Act* (Cap 496, Laws of Kenya)
7. *The Constitution of Kenya* (2010)
8. *The Food, Drugs and Chemical substances Act* (Chapter 254, Laws of Kenya)
9. *UK Sale of Goods Act* (1979)

### **International Agreements**

1. *United Nations Guidelines for Consumer Protection*, 26 July 1999
2. *Universal Declaration of Human Rights*, 10 December 1948
3. *WTO General Agreement on Tariffs and Trade*, 1994

### **Books**

1. Baran S.J & Davis D.S.K, *Mass communication theory: Foundations, ferment, and future*, Wadsworth Publishing, California, 1995.
2. Bastide B, 'Color, Racism, and Christianity' in J. H. Franklin (ed) *Color and Race*, Houghton Mifflin Company, Boston, 1968.
3. Comstock G, *Public Communication and Behavior* (Vol. 1), Academic Press, Florida, 1986.

4. Davis F. J, *Who Is Black? One Nation's Definition*, Pennsylvania State University Press, University Park, 1991.
5. Edwards G. F, *The Negro Professional Class*, Praeger, New York, 1982;
6. Frazier, E. F, *Black Bourgeoisie*, The Free Press, Illinois, 1957.
7. Glenn N. E, 'Consuming Lightness' in *Shades of Difference: Why Skin Color Matters*, Glenn N. E (ed), Stanford University Press, California, 2009.
8. Hall R (ed), *The Melanin Millennium: Skin Color as 21<sup>st</sup> Century International Discourse*, Springer Science & Business Media, Netherlands, 2012.
9. Jones T, 'The Significance of Skin Color in Asian and Asian American Communities: Initial Reflections',
10. Kerr E. A, *The Paper Bag Principle: Class, Colorism and Rumour and the Case of Black*, University of Tennessee Press, Tennessee, 2006.
11. Leder M and Shears P, *Consumer Law* (Fourth Edition), Pitman Publishing, 1996.
12. Merriam S.B, Caffarella R.S & Baumgartner L.M, *Learning in adulthood: A Comprehensive Guide* (Third Edition), Jossey-Bass, 2007.
13. Nordberg F. G, Fowler A. B, Nordberg M and Friberg L, *Handbook in toxicology of metals*, (Third Edition), Academic Press, 2007.
14. Oughton D & Lowry J, *Textbook on Consumer Law* (2<sup>nd</sup> Edition), Oxford University Press, 2012.
15. Pohlmann D. M (ed), *Capitalism v Collectivism: 1945 to the Present: African American Political Thought* (Vol 4), Routledge, New York, 2003.
16. Segrave K, *Sun-tanning in 20th Century America*, McFarland & Company, McFarland, 2005.
17. Signorielli N & Morgan M (ed), *Cultivation analysis: New Directions in media effects research*, California, Sage Publishing, 1990.
18. Spade Z. S, Valentine G. C, *Kaleidoscope of Gender: Prisms, Patterns and Possibilities*, Pine Forge Press, California, 2011.
19. Vickermann M, *Crosscurrents: West Indian Immigrants and Race*, Oxford University Press, New York, 1999.

20. Willard B. G, *Aristocrats of Color: The Black Elite, 1880-1920 (Black Community Studies)*, University of Arkansas Press, Arkansas, 2000.
21. Wright D. J and Helland E, 'The Dramatic Rise of Consumer Protection Law' in Buckley F.H. (ed), *The American Illness: Essays on the Rule of Law*, Yale University Press, Connecticut, 2013.

### **Journals**

1. Barr R. D, Woodger B.M. and Rees P.H, 'Levels of mercury in urine correlated with the use of skin lightening creams' 59 *American Journal of Clinical Pathology* (1973).
2. Blay Y.A, 'Skin Bleaching and Global White supremacy: By Way of Introduction', *The Journal of Pan African Studies*, vol 4, no. 4 (June 2011).
3. Blay, Y.A, 'Editorial: Struck by Lightning: The Transdiasporan Phenomenon of Skin Bleaching', *Jenda: A Journal of Culture and African Women Studies*, vol 14.
4. CERS Working Paper, 'A Liquid Modern Analysis of Skin Bleaching in Jamaica, 2012.
5. Guy T, 'Learning who we (and they) are: Popular culture as pedagogy' in Tisdell E.J & Thompson P.M (ed), 'Popular culture and entertainment media in adult education', *New Directions for Adult and Continuing Education* 115 (2007).
6. Hunter M, 'If you're light you're alright: Light skin color as social capital for women of Color', *Gender & Society*, 16(2) (2002).
7. Hunter M, 'The Persistent Problem of Colorism: Skin Tone, Status, and Inequality', *Sociology Compass*, vol 1, issue 1 (2007).
8. International Academy of Cosmetic Dermatology (IACD), *Clinics in Dermatology*, Elsevier, United States.
9. Jin G, Luca M, Martin D, 'Is No News (Perceived As) Bad News? An Experimental Investigation of Information Disclosure', 2015.
10. Jones T, 'The Significance of Skin Colour in Asian and Asian-American Communities: Initial Reflections', *UC Irvine Law Review*, vol 3 (2013).

11. Julien N, 'Skin Bleaching in South Africa: A Result of Colonialism and Apartheid?', *Discovery: Georgia State Honors College Undergraduate Research Journal*, vol. 2 (2014).
12. Ka Ying Mak A, 'Advertising Whiteness: An Assessment of Skin Color Preferences among Urban Chinese', *Visual Communication Quarterly*, vol 14, issue 3 (2007).
13. Kivetz R and Simonson I, 'The Effects of Incomplete Information on Consumer Choice', *Journal of Marketing Research*, 37(4) 2000.
14. Ly F, Soko A, Dione D, Niang S, Kane A, Bocoum T, & Ndiaye B, 'Aesthetic problems associated with the cosmetic use of bleaching products', *International Journal of Dermatology*, 46 Suppl (2007).
15. Mahé A. M, 'Skin diseases associated with the cosmetic use of bleaching products in women from Dakar, Senegal', *British Journal of Dermatology*, 148(3) (2003).
16. Marzulli, F. N. and Brown, D. W. C., 'Potential systemic hazards of topically applied mercurials', *Society of Cosmetic Chemists* (1972).
17. Paik H & Comstock G, 'The effects of television violence in antisocial behavior', *Communication Research* 21 (1994).
18. Robinson T. L, & Ward J. V, 'African American adolescents and skin color', *Journal of Black Psychology*, 21 (1995).
19. Souza M, 'The concept of skin bleaching in Africa and its devastating health implications', *Clinics in Dermatology* (2008).
20. Tungate M, 'Branded Beauty: How Marketing Changed the Way We Look' *Philadelphia, PA: Kogan* (2011).
21. Wood W, Wong F.Y and Chachere J.G, 'Effects of media violence on viewers' aggression in unconstrained social interaction', *Psychological Bulletin*, 109 (1991).

## **Dissertations**

1. Bropleh M, 'Incongruent Premodern and Modern Beauty Ideals: A Case Study of South Korea's and India's Reconciliation of Current Beauty Trends with Foundational Religious Ideals', published B. A Senior Thesis, Claremont McKenna College, 2014.
2. Daum Lee M. C, 'Self-regulation in the cosmetic industry: Unnecessary reality or a cosmetic illusion', published 3<sup>rd</sup>-year coursework paper, Harvard Law School, 2006.
3. Malik S, 'The Domination of Fair Skin: Skin Whitening, Indian Women and Public Health', Department of Health Education, San Francisco State University, 14 May 2007.
4. Mathews J. T, 'The relationship between skin complexion and social outcomes: how colorism affects the lives of African-American women', Published M.A. thesis, Atlanta University Center, 2013.
5. Murugi Wanja Catherine, 'The Development of a Successful Anti-Dumping Regime in Kenya', published LLM thesis, University of Western Cape, 2013.
6. Pan E, 'Beautiful White: An Illumination of Asian Skin-Whitening Culture', Thesis on a Program in Visual and Media Studies & International Comparative Studies, Duke University, April 2013.
7. Robinson A. P, 'Perceptions of Beauty and Identity: The Skin Bleaching Phenomenon in Jamaica', Texas A & M University.

## **Conference papers**

1. Huffman W, 'Does Information Change Behaviour?', 3rd OECD World Forum on "Statistics, Knowledge and Policy", Busan, Korea, 27<sup>th</sup>-30<sup>th</sup> October 2009.

2. Ndung'u E, 'Functioning of WTO/TBT National Enquiry Point (NEP) for Kenya, Kenya Bureau of Standards (KEBS)', WTO Technical Barriers to Trade (TBT) Special Meeting for Information Exchange, Geneva Switzerland, 2<sup>nd</sup>-4<sup>th</sup> November 2004.
3. Sagi A and Pataki E, 'Consumer Behaviour and Asymmetric Information Theory', 10th International Symposium of Hungarian Researchers on Computational Intelligence and Informatics, Budapest, Hungary, 12<sup>th</sup>-14<sup>th</sup> November 2009.

## Reports

1. Glahder C. M, Appel P.W. U, Asmund G, 'Mercury in soap in Tanzania', Copenhagen, Ministry of Environment and Energy, National Environmental Research Institute Technical Report No. 306, 1999.
2. Minnesota Department of Health, '*Skin-lightening products found to contain mercury*', 2011.
3. New York City Department of Health and Mental Hygiene, '*Mercury in soaps and creams*', New York, 2011.
4. Roland Berger Strategy Consultants, 'Beauty and Personal Care Market in Africa: One Billion People to Care For', Think: Act Content, Fresh Thinking For Decision Makers.
5. United Nations Environment Programme (UNEP), Division of Technology, Industry and Economics, Chemical Branch, '*Mercury in products and wastes*', 2008.
6. United States Food and Drug Administration (USFDA), '*Cosmetics: ingredients prohibited & restricted by FDA regulations*', United States Department of Health and Human Services, Silver Spring, 2000,
7. Uram E, Bischofer B. P, Hagemann S, 'Market analysis of some mercury-containing products and their mercury-free alternatives in selected regions', Gesellschaft für Anlagenund Reaktorsicherheit (GRS), 2010.
8. World Health Organization (WHO), '*Preventing disease through healthy environments, Mercury in Skin Lightening Products*', 2011.

## **Newspaper articles**

1. Felistas Wangari, 'Dying for light skin', *Daily Nation*, 9 June 2012.
2. Isabella Mukumu, 'International beauty brands lured by Kenyan market', *The Business Daily*, 15 October 2015.
3. Reporter BD, 'L'Oreal beats Tiger brands in buyout of Nice & Lovely', *The Business Daily*, 14 April 2013.
4. Vincent Achuka, 'Cofek campaign raises questions on lobby groups', *Daily Nation*, 22 November 2015

## **Newsletters**

1. Coulson Harney Advocates newsletter, 'A New Dawn for Consumer Protection in Kenya-How does it affect you?'

## **Television broadcasts**

1. Friedman M, 'Who protects the consumer?', an episode of the PBS *Free to Choose* television series (1980, vol. 7 transcript).

## **Internet articles**

1. 'About the Campaign', *Beauty Beyond Colour*  
<http://darkisbeautiful.blogspot.co.uk/p/about-us.html>
2. 'About us', COFEK, 20 May 2013 [www.cofek.co.ke/index.php/who-we-are/about-us](http://www.cofek.co.ke/index.php/who-we-are/about-us)
3. 'Africa's Impressive Growth', *The Economist*  
[http://www.economist.com/blogs/dailychart/2011/01/daily\\_chart.html](http://www.economist.com/blogs/dailychart/2011/01/daily_chart.html)

4. 'Agence France-Presse: Ivory Coast bans potentially deadly skin whitening creams', *The Guardian*, 6 May 2015 <http://www.theguardian.com/world/2015/may/07/ivory-coast-bans-potentially-deadly-skin-whitening-creams>
5. 'Annabel Fenwick Elliott: Kenyan men Like women with lighter skin: The rise of wealthy Nairobi women illegally injecting themselves with skin lightening creams', *Daily Mail*, 6 June 2014 <http://www.dailymail.co.uk/femail/article-2650766/Kenyan-men-like-women-whiter-skin-The-rise-wealthy-Nairobi-women-illegally-INJECTING-skin-lightening-creams.html>
6. 'Another African nation bans popular skin-whitening creams', *The New York Times*, 12 May 2015 <http://nytlive.nytimes.com/womenintheworld/2015/05/12/another-african-nation-bans-popular-skin-whitening-creams.html>
7. 'Banned Skin Bleaching Products Containing Harmful Substances', *Meladerm* <http://www.whiterskin.com/banned-skin-bleaching.html>
8. 'Breakdown of the cosmetic market worldwide from 2011 to 2014, by product category', *The Statistics Portal* <http://www.statista.com/statistics/243967/breakdown-of-the-cosmetic-market-worldwide-by-product-category/>
9. 'Celeste Hibbert and Wil Crisp: Kenya's backstreet #BleachedBeauty trade', *Al Jazeera*, 24 June 2014 <http://www.aljazeera.com/indepth/features/2014/06/kenya-backstreet-bleachedbeauty-trade-201462313468381417.html>
10. 'COFEK opposes order to remove tinted car windows', *COFEK*, 14 May 2014 [www.m.news24.com/kenya/Natioal/News/COFEK-opposes-order-to-remove-tinted-car-windows-20140514.html](http://www.m.news24.com/kenya/Natioal/News/COFEK-opposes-order-to-remove-tinted-car-windows-20140514.html)
11. 'Corticosteroid creams should not be used to lighten skin', *Whiter Skin*, 26 January 2015, [www.whiterskin.info/corticosteroids-should-not-be-used-to-lighten-skin/](http://www.whiterskin.info/corticosteroids-should-not-be-used-to-lighten-skin/)
12. 'David Frawley: The Aryan-Dravidian Controversy' [http://www.hindunet.org/hindu\\_history/ancient/aryan/aryan\\_frawley\\_1.html](http://www.hindunet.org/hindu_history/ancient/aryan/aryan_frawley_1.html)
13. 'The Democratic Republic of the Congo', *World Vision* <http://www.worldvision.org/our-impact/country-profiles/democratic-republic-congo>

14. 'Global Cosmetic Surgery and Service Market Report 2015-2019-Analysis of the \$ 27 Billion Industry', *PR Newswire*, 20 March 2015  
<http://www.prnewswire.com/news-releases/global-cosmetic-surgery-and-service-market-report-2015-2019---analysis-of-the-27-billion-industry-300053760.html>
15. 'How Can Hydrogen Peroxide Bleach Your Skin, Lighten Dark Spots, Lips and Remove Acne Scars?' *Beauty Clue*, [www.beautyclue.com/skin-whitening/can-hydrogen-peroxide-bleach-your-skin-lighten-dark-spots-acne-scars](http://www.beautyclue.com/skin-whitening/can-hydrogen-peroxide-bleach-your-skin-lighten-dark-spots-acne-scars)
16. 'Hubert Prolongeau: India's skin-whitening creams highlight a complex over darker complexions', *The Guardian*, 24 July 2015  
<http://www.theguardian.com/world/2015/jul/24/dark-skin-india-prejudice-whitening>
17. 'Hydrogen peroxide' [www.dermnetnz.mobify.me/treatments/hydrogen-peroxide.html](http://www.dermnetnz.mobify.me/treatments/hydrogen-peroxide.html)
18. 'Hydroquinone Skin Bleaching Topical' [www.wbmd.com/drugs/2/drug-87530/hydroquinone-skin-bleaching-topical/details](http://www.wbmd.com/drugs/2/drug-87530/hydroquinone-skin-bleaching-topical/details)
19. 'India debates racist skin cream', *BBC News*, 24 July 2003  
[http://news.bbc.co.uk/2/hi/south\\_asia/3089495.stm](http://news.bbc.co.uk/2/hi/south_asia/3089495.stm)
20. 'Jones K: A Comparison between Manichean and Christian Views of Evil'  
[http://www.metareligion.com/Philosophy/Articles/Other/Mani\\_paper.htm#.VnF\\_8NJ97Mx](http://www.metareligion.com/Philosophy/Articles/Other/Mani_paper.htm#.VnF_8NJ97Mx)
21. 'Kahn T: Illegal skin lighteners on sale in SA, study shows', *Business Day*, 26 August 2015 <http://www.bdlive.co.za/national/health/2015/08/26/illegal-skin-lighteners-on-sale-in-sa-study-shows>
22. 'Kenya at a glance', *UNICEF* [http://www.unicef.org/kenya/overview\\_4616.html](http://www.unicef.org/kenya/overview_4616.html)
23. 'Kenya- Geography', *African Studies Centre, University of Pennsylvania*  
[www.africa.upenn.edu/NEH/kgeography.htm](http://www.africa.upenn.edu/NEH/kgeography.htm)
24. 'Kenya's backstreet #BleachedBeauty trade Nairobi has become a haven for toxic skin-lightening treatments such as those used by model Vera Sidika', *COFEK*, 29 March 2015 [www.cofek.co.ke/index.php/news-and-media/1052-kenya-s-backstreet-bleachedbeauty-trade-nairobi-has-become-a-haven-for-toxic-skin-lightening-treatments-such-as-those-used-by-mode-vera-sidika?showall=1&limitstart.html](http://www.cofek.co.ke/index.php/news-and-media/1052-kenya-s-backstreet-bleachedbeauty-trade-nairobi-has-become-a-haven-for-toxic-skin-lightening-treatments-such-as-those-used-by-mode-vera-sidika?showall=1&limitstart.html)

25. 'Mpume Madlala: Warnings against use of illegal cosmetics', *Daily News*, 1 June 2012  
<http://www.iol.co.za/dailynews/news/warnings-against-use-of-illegal-cosmetics-1.1309747#.VnFcGdJ97Mw>
26. 'Murali Balaji: Not Caste in Color: Dispelling Myths in Our Classrooms', *Huffington Post*, 11 November 2013 [http://www.huffingtonpost.com/murali-balaji/not-caste-in-color-dispel\\_b\\_4243013.html](http://www.huffingtonpost.com/murali-balaji/not-caste-in-color-dispel_b_4243013.html)
27. 'Obiora N. Anekwe: Global Colorism: An Ethical Issue and Challenge in Bioethics', *Voices in Bioethics*, 9 September 2014  
<http://voicesinbioethics.org/2014/09/09/global-colorism-an-ethical-issue-and-challenge-in-bioethics/>
28. 'Shantanu Guha Ray: 'India's unbearable lightness of being' *BBC News*, 23 March 2010 <http://news.bbc.co.uk/2/hi/8546183.stm>
29. 'Statistics and Facts on the Cosmetic Industry', *The Statistics Portal*  
<http://www.statista.com/topics/1008/cosmetics-industry/>
30. 'The Beauty Business', *Africa Business Pages* <http://www.africa-business.com/features/cosmetics.html>
31. 'Time for a reality check on skin lightening creams', *The Conversation*, 11 September 2012 <http://theconversation.com/time-for-a-reality-check-on-skin-lightening-creams-7770.html>
32. Diane Mapes, 'Suffering for Beauty has ancient roots' *NBC News*, 11 January 2008  
<http://www.nbcnews.com/id/22546056/ns/health/t/suffering-beauty-has-ancient-roots.html> on 3 November 2015
33. History Lesson, 'Lead, mercury and leeches were used to whiten skin complexions in the 1400s', *Whiter Skin*, 3 May 2014 <http://www.whiterskin.info/history-lesson-lead-mercury-and-leeches-were-used-to-whiten-complexions-in-the-1400s/>
34. Kenya Bureau of Standards, 'Banned products', 21 April 2009, *KEBS*  
<http://www.kebs.org/index.php?opt=qai&view=banned.html>
35. 'Topical Corticosteroids', *National Eczema Association*  
<https://nationaleczema.org/eczema/treatment/topical-corticosteroids>