



# COASTS: LEGAL REGULATORY ISSUES IN ADVERTISING IN NIGERIA

THOUGHT LEADERSHIP BY:

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“  
HAVING THE  
RIGHT TO ENGAGE  
IN ADVERTISING  
PRACTICE DOES NOT  
GUARANTEE  
UNLIMITED FREEDOM  
TO ADVERTISE  
PRODUCTS AND  
SERVICES.  
”

*“It takes a big idea to attract the attention of consumers and get them to buy your product. Unless your advertising contains a big idea, it will pass like a ship in the night. I doubt if more than one campaign in a hundred contains a big idea.”*

*- David Ogilvy (Founder, Ogilvy and Mather)*

Advertising in Nigeria is regulated by a combination of federal laws, state laws, subsidiary legislation and guidelines. According to reports, advertising expenditure in 2017 amounted to ₦88.1 billion compared to ₦90.9 billion in 2016.<sup>1</sup> Advertisement (advert) plays a strong role in the economy of Nigeria through the provision of useful information to consumers that tells them about product and service choices, as well as comparing features, benefits, and prices. With more complete information, consumers and businesses often choose to purchase additional products and services.



<sup>1</sup> Princewill Ekwujuru, 'Advertisement Expenditure Drops by 3.3% to 8.8bn in 2017', Vanguard, 21.11.2018: <http://www.vanguardngr.com> (accessed 18.03.2019)

Advertising is a means of marketing communication used by relevant persons/groups to promote or sell their idea, product or service. It could be done in visual or audio forms; it is not directed at just an individual, rather it targets a groups or community of people. Businesses today utilize different types and forms of advertising to achieve different goals. Advertising today is communicated through different media such as magazines, newspapers, radio, television, billboards, social media, websites etc. Advertising is so important that most businesses incur significant advert spend every year: for example, MTN Nigeria spent about ₦7 billion in 2017.<sup>2</sup>

Although advertising products and services are acceptable and open to all, having the right to engage in advertising practice

does not guarantee unlimited freedom to advertise products and services. For example, services which involve prostitution cannot be advertised. This is because there are regulations that govern its content and its impact on consumers. Also lawyers are prohibited from advertising according to **Rule 39 Rules of Professional Conducts for Legal Practitioners 2007 (RPC)**.<sup>3</sup>

With advertising, millions of people can be reached easily to build an audience of loyal customers and brand advocates. Notably, different regulations guide advertised products; for example, advertisement of processed food products or drugs, are regulated by the **National Agency for Food Drug Administration and Control (NAFDAC)**. This article reviews the legal regulatory aspects of advertisements in Nigeria and

what individuals or businesses should be mindful of, regarding advertising.

### A. Regulatory Bodies and Legal Provisions for Advertising in Nigeria

Some of the regulatory bodies involved in regulating advertisement in Nigeria include the **Advertising Practitioners Council of Nigeria (APCON)** which is saddled with the responsibility of regulating and controlling the practice of advertising subject to the approval of the Minister of Health, where the advertisement relates to matters of foods, cosmetics, beverages and drugs: **section 1(d) APCON Act**.<sup>4</sup>

By **section 5(a) NAFDAC Act**,<sup>5</sup> **NAFDAC** has the responsibility of regulating and controlling the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water, chemicals and detergents.

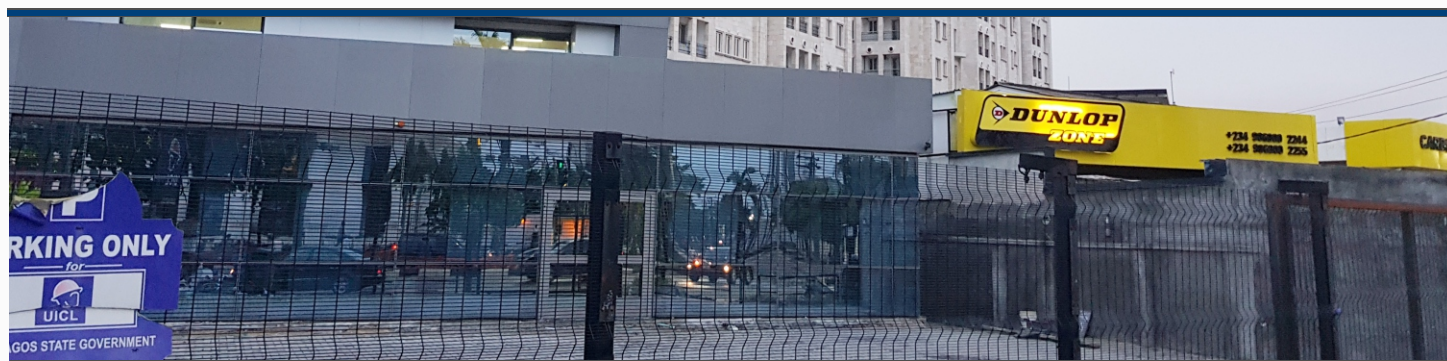


<sup>2</sup> David Audu, 'Telcos Dominate Ad Expenditure in 2017-Report', *Independent*, 25.10.2018: <<https://www.independent.ng/telcos-dominate-ad-expenditure-in-2017-report/amp/>> (accessed 18.03.2019)

<sup>3</sup> RPC is made pursuant to **section 12(4) Legal Practitioners Act, Cap. L11 LFN 2004**, with a mandate to guide lawyers in Nigeria as to what is or is not unprofessional. However, given the inception of new technological innovations and the resultant opportunities from their functionalities, it has been argued that the rules on professional advertising may require some relaxation to accommodate more modern media platforms and avenues for lawyers to advertise their services in new and more creative ways. See Joseph Onyekwere, 'Rules on Professional Advertising are too Rigid and Formalistic' *The Guardian*, 01. 01 2019 :<<https://guardian.ng/features/law/rules-on-professional-advertising-are-too-rigid-and-formalistic/>> (accessed 14.03.2019)

<sup>4</sup> **Cap A7, Laws of the Federation of Nigeria (LFN) 2004.**

<sup>5</sup> **Cap.N1, LFN 2004.**



There is also the **National Broadcasting Corporation (NBC)** mandated to foster the monitoring, broadcasting for harmful emission, interference and illegal broadcasting pursuant to **section 2(1)(m) NBC Act**.<sup>6</sup>

The **Lagos State Signage and Advertisement Agency (LASAA)** established pursuant to the **LASAA Law 2006**<sup>7</sup> is responsible for the management, regulation and control of the signage and outdoor advertising environment in Lagos State. Thus, they manage all forms of signage and outdoor branding opportunities in Lagos State.<sup>8</sup>

Other regulators include **Advertisers Association of Nigeria (ADVAN)**<sup>9</sup> which *inter alia* provides forum for advertisers to discuss issues of common interest and influence developmental changes within the Industry; initiating and encouraging the compilation of reliable statistics to aid effective marketing planning and value realization and lastly creating a value based relationships with government, relevant

associations, and stakeholders.

**Paragraph (1)(b) Nigerian Communications Commission Guidelines on Advertisements and Promotions 2011 (NCCGAP)** states that the **Nigerian Communications Commission (NCC)** has been given powers under the **Nigerian Communications Act**<sup>10</sup> and the **Nigeria Communications (Enforcement Processes, etc) Regulations 2005** respectively to *inter alia*: publish guidelines specifying minimum standards and requirements in respect of advertisements and promotions of products and services by licensees for the purposes of protecting consumers and ensuring ethical marketing and promotional standards by licensees. There are other regulators which includes the **Association of Advertising Agencies of Nigeria (AAAN)** and the **Outdoor Advertising Association of Nigeria (OAN)** etc.

But even with most of these regulators, the internet has whittled down some of the regulatory impact as some legal

issues in being able to do self-advertisement using the internet are either not provided for; or self-advertisement can only be addressed after the fact, not before. An example includes people who advertise various products on Facebook and Instagram but are not regulated.

## B. Advertising 'Oversight' of Sectoral Regulators

In carrying out its regulatory functions in Nigeria, APCON once banned all alcohol advertisements from Guinness Nigeria Plc. APCON stated that Guinness had breached **Article 39 APCON Code 2013** which provides that “advertisements for alcohol beverages shall not be aired between 6.00 a.m. and 8.00 p.m. on radio and between 6.00am and 10.00 p.m. on television.”<sup>11</sup>

It should be noted that there are product specific regulations that apply to specific products. For example, if you are advertising alcoholic beverages, there are certain standards that must be met as laid out by NAFDAC.<sup>12</sup> This does not necessarily show what happens in practice as many people hardly adhere to the legal requirements, especially those who advertise online. We will illustrate with the Food and Drug sector, as well as the telecoms sector.

<sup>6</sup> Cap. N11, LFN 2004.

<sup>7</sup> Law No. 9 of 2006.

<sup>8</sup> Information about LASAA is available on their website at: [www.LASAA.com](http://www.LASAA.com) (accessed on 27.03.2019).

<sup>9</sup> Information about ADVAN is available on their website at: <https://advertisersnigeria.com/about> (accessed on 27.03.2019).

<sup>10</sup> Cap. N97, LFN 2004.

<sup>11</sup> Princewill Ekwujuru, 'Fresh Trouble for Guinness Over Unapproved Advertisement', Vanguard, 11.11. 2018: < <https://www.vanguardngr.com/2011/fresh-trouble-guinness-unapproved-advertisement/> > (accessed 27.03.2019).

<sup>12</sup> See **Guidelines For Advertisement Of NAFDAC Regulated Products In Nigeria (GARP)** which provides that alcoholic drinks should contain the clause which states that only persons who are 18 years and above may purchase and consume them.

### Food and Drug Sector

Advertisers in the food industry face a distinct set of ethical challenges, since food advertising can have deep psychological impact on consumers, clearly affecting consumer behaviour.

The sensual appeals mentioned earlier can connect with consumers on an emotional level, causing them to associate food products with feelings of peace, relaxation or reward. This can boost sales revenue, but it can also trigger addiction.<sup>13</sup>

Food businesses have to be careful not to misuse their influence in a way that harms the public. Children are especially susceptible to irresponsible food advertising.<sup>14</sup> **Paragraph 23(f) NAFDAC Food Products (Advertisement) Regulations 2018 (NFR)** states that food advert should not “condone or encourage the consumption of food items that are detrimental to children’s health.” In the UK, the government banned the online advertisement of junk food for children.<sup>15</sup> NAFDAC should create a body that will be responsible for regulating the advert of junk food in Nigeria as this will help reduce the burden on them.

One of the shortcomings in the food/pharmaceutical sector is the illegal advertisement of food/pharmaceutical products which is against **paragraph 2(1) NFR**.<sup>16</sup> This provision has been reportedly observed more in breach by pharmaceutical entities. In 2016 NAFDAC banned the advert of a listed herbal aphrodisiac medicine (*Libigal* and *univasur* herbal capsule) manufactured by Kolaq Herbs

Limited, Ogun State after discovering that the listing approval of the product had expired in 2006.<sup>17</sup> From this example, NAFDAC should ensure strict adherence to the regulation as such adverts not only influence economic decisions, they also has a negative effect on the consumers.

Interestingly, the **Pharmacists’ Council of Nigeria Act<sup>18</sup> (PCNA)** does not have any advertisement restraint provision whether with respect to drugs or the pharmacy profession. In addition, the **National Drug Formulating and Essential Drug List Act<sup>19</sup> (NDFELA)** in **section 2** established a NDFEL which prohibits the advertisement, sale, display for sale and manufacture or importation of any drug which is not contained in the

List. Another issue is that the list has to be updated regularly which is not the case in reality. NAFDAC should champion the regular update of the List.

**The Food and Drugs Act<sup>20</sup> (FDA)** prohibits the advertisement of drugs represented for the treatment or prevention of the diseases specified in its **First Schedule. Section 5** prohibits advertisement of drugs in any manner that is false or misleading or is likely to create a wrong impression as to its quality, character, value, quality or safety. However, the reality is that the contrary is rampant in Lagos where individuals can be seen advertising their locally manufactured drugs which drugs in many cases, do not even have NAFDAC approval.



<sup>13</sup> Eze Amaka, 'A Review of the Advertisement Restraint Provisions in Nigerian Drug Laws', *International Journal of Business and Law Research* 4(1): 1-8, January-March. 2016: <<https://sehipaj.org/journals-a/mar-2016/IJBLR/full/IJBLR-M-1-2016.pdf>> (accessed 13.03.2019).

<sup>14</sup> According to the Centers for Disease Control and Prevention (America's "health protection agency", that "saves lives and protects people from health threats,"; "In the United States, the percentage of children and adolescents affected by obesity has more than tripled since the 1970s." See <https://www.cdc.gov/about/organization/mission.htm> and <https://www.cdc.gov/healthyschools/obesity/facts.htm> (both accessed 29.03.2019). According to the CDC, 17% of America's youth are obese as of 2011, and 33% of adults. Food advertisers have a responsibility to encourage physical activity, nutrition education and self-control rather than stimulating impulse and encouraging addiction.

<sup>15</sup> See 'Children Bombarded by Junk Food Ads on Family Shows' BBC (News feature), 28.11.2017: (accessed 28.03.2019).

<sup>16</sup> It should be noted that under the NFR, pharmaceutical products or drugs was not mentioned in **paragraph 2(1)** but according to NAFDAC in its ACT, Regulated products was defined to include drugs hence its inclusion.

<sup>17</sup> Adaku Onyenuchey, 'NAFDAC Cautions Media Against Illegal Advertisement of Pharmaceutical Products', *Guardian*, 22. 02. 2018: <<https://guardian.ng/features/nafdac-cautions-media-against-illegal-advertisement-of-pharmaceutical-products/>> (accessed 19.03.2019).

<sup>18</sup> Cap. P17, LFN 2004.

<sup>19</sup> Cap. N29, LFN 2004.

<sup>20</sup> Cap. F32, LFN 2004.

Even though the **NFRR** lists some financial penalties for default as seen in **sec 25(1)(a-b)**,<sup>21</sup> stiffer penalties should be meted out to manufacturers of fake and counterfeit drugs who take a step further to advertise such deadly substances to the consumers.

### I. Telecommunication Sector

The telecom industry is a significant contributor to the advertising sector in Nigeria, hence the need for the regulation of its adverts. **Paragraph 3(b) NCAP** makes clear that:

*“The licensee must communicate all prices and financial implications clearly and have no hidden or disguised price adjustments, discounts, unrealistic price comparisons or exaggerated claims as to worth or value. Advertising with complicated price structures and information shall not only appear in transient types of media such as radio and television but must be accompanied with detailed print media explanations, and on the licensee’s website. The transient media must specifically instruct consumers to see the print mediums for details.”*

Though this is a laudable provision, some telecom networks still breach this requirement. An example can be



seen in adverts where network providers claim that an individual can make calls at very low rates which may sometimes not be the case. For example in 2015, two GSM operators were castigated for respectively making misleading adverts on their 11 kobo per second tariff.<sup>22</sup> Such defaults should attract sanctions.

Meanwhile, **Section 20 Consumer Protection Council Act**<sup>23</sup> states that “a publisher or any advertiser shall not be liable under this section by reason of the dissemination by him of any false advertisement, unless he refuses at the request of the Council to furnish the Council with the name and address of the manufacturer, packer, distributor, seller, or advertising agency requiring him to disseminate or cause such advertisement to be made.” This provision definitely will not apply to the telecom

sectors as the main body in charge of telecoms adverts is the NCC.

Also **Para. 3(d)(i)(ii) NCAP** provides: “advertisements must not unfairly discredit, disparage or attack other products, services, advertisements or companies, or exaggerate the nature or importance of competitive differences. ii. No licensee shall imitate the slogans or illustrations of another advertiser in such a manner as to mislead the consumer.” An illustration can be seen in the rivalry between Coke and Pepsi in which their respective bottlers call out each product directly<sup>24</sup> but this is not the case in Nigeria as telecom companies do not directly call out its competitors name but may make reference to their colour.<sup>25</sup>

21 By **Paragraph 25(1)(a) & (b)**: “Any person who contravenes any of the provisions of these Regulations shall be guilty of an offence and liable on conviction. In case of: (a) an individual, to imprisonment for a term not exceeding one year or to a fine not exceeding ₦50,000 or to both such imprisonment and fine; and (b) a body corporate, to a fine not exceeding ₦100,000.”

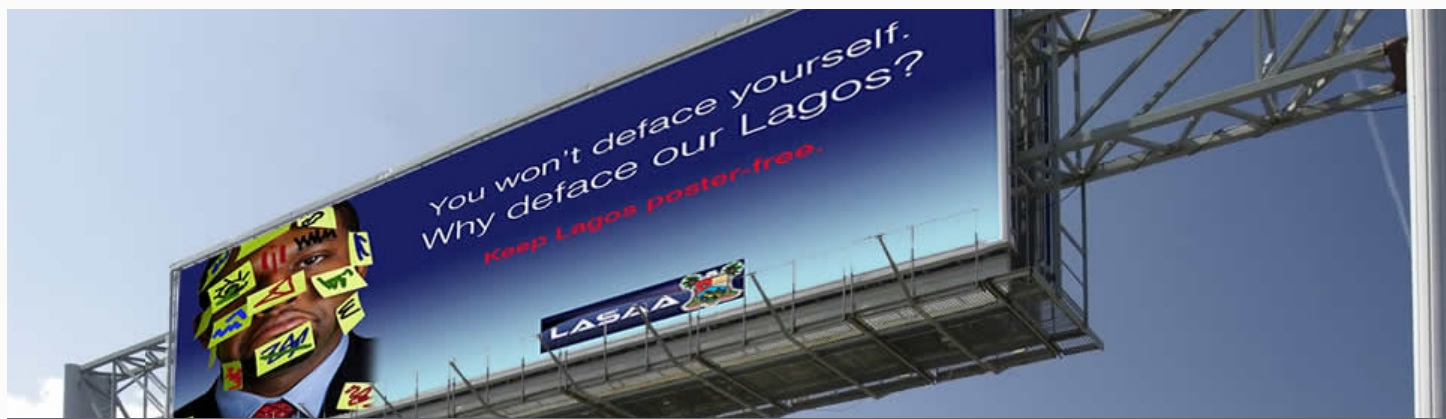
22 Both service providers were not fined in 2015 for that advert but there was a public outburst. Although in 2017, 9mobile got a total fine of ₦4m for two different promotions – **My 9mobile App** and **ZTE MF910 4 G Mi-Fi promotions** – both of which were unapproved by the NCC. Likewise, Globacom was also fined ₦2m for an unapproved advert tagged **'Enjoy non-stop browsing this season of love.'** For its **'E-Top-Up 8X Bonus'** promo, the NCC, noting that it was not approved and violated the floor price, fined the company a total of ₦4m for the two infractions. See Bankole Orija, **'NCC Slams Telcos With ₦74m Fines for Violating Regulations'**, *The Guardian*, 15.02.2019; <https://guardian.ng/technology/ncc-slams-telcos-with-n74m-fines-for-violating-regulations/> (accessed 18.03.2019)

23 **Cap.C25, LFN 2004.**

24 Michael Saponara, **'Cardi B and Monet X Change Star in New Pepsi Commercial'**, *Billboard*, 07.02. 2019; <<https://www.billboard.com/articles/columns/hip-hop/8497110/cardi-secondpepsicommercial/>>(accessed 27.03.2019).

There was an advert a man with a yellow briefcase and a yellow phone (symbolizing a prominent network provider in Nigeria) was trying to make a call. The man threw the phone out of frustration since the call could not connect. Suddenly, the bag grew a pair of legs and started running. The man kept on chasing his bag until the bag ran into an office. At the office, the man was welcomed with a red phone (symbolizing another prominent network provider) and his yellow briefcase turned red as it was returned back to him.

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### C. APCON: the Over-all Watch Dog of Advertising?

Most times, the issue of who an advertising practitioner is always brings with it contrasting views. **Section 1 APCON Act** emphasises on the establishment of APCON and their duties which covers determining who an advertising practitioners is and the fact that they also help with the regulation and control of the practice of advertising subject to the approval of the Minister of Health when such adverts include foods, cosmetics, beverages and drugs. Additionally they help conduct examinations and also award certificates to successful candidates.

For instance, if an individual advertises hair product for women (maybe Brazilian hair) on an online platform (such as Instagram) and such an individual (not being a “regulated person” does not seek approval from APCON or other regulator, which body has the right to discipline

such a person? Apparently, the **APCON Act** did not specifically describe who an advertising practitioner should be. This is a massive loophole because any individual can decide to advertise any product and with the current standing of the law, APCON will not be legally bound to carry out enforcement actions against such individual.

Therefore if a person or company is not covered by the **APCON Act**, the penalties for unprofessional conduct (in **section 25**) will not be applicable to such a person. Consequently, **section 1 APCON Act** should be amended to state that APCON will be responsible for the regulation of all advert activities, including online adverts. Such inclusion will boost APCON's statutory (enforcement) powers and its 'stature', ending credibility to any oversight it may then exercise in that regard.

Currently, **section 1(d) APCON Act** empowers APCON to regulate and control “the practice of advertising subject to the approval of the Minister of Health, where the advertising relates to matters of foods, cosmetics, beverages and drugs.”<sup>26</sup> From the above provision, it is arguable that APCON is only empowered to “the practice of advertising” where such relate to

the specified items and not generally, a result that would be absurd, considering that the APCON Act was enacted in part to “make provisions for the control of the practice of the profession of advertising.”<sup>27</sup> Consequently, it means that an online marketer using online platform like *Jumia* or *Konga* does not even need to follow APCON's requirements for his advert to be legal, because such a person is outside APCON oversight, except such a product is listed in **section 1(d) APCON Act**.

There have been recent litigation on the above subject. In the recent case of **MIC Royal Limited v. APCON**<sup>28</sup> the Court of Appeal (CA) considered the appropriateness and purview of **APCON Act** to persons/entities who are not members of the advertising profession. APCON had, through a Violation Notice, imposed a penalty of ₦500,000 on MIC Royal Limited, a company engaged in the business of funeral homes, carpentry, joinery trade and manufacturing, for procuring the relevant advertisement of their products without its approval. The CA held that APCON's powers did not extend to persons, including MIC who are not advertising practitioners. The CA ultimately invalidated the Violation Notice issued to MIC.

<sup>26</sup> In *MIC Royal Limited v. APCON* (*supra*), Abubakar, JCA stated that “**Section 1(d)** relied upon by the Respondent is clear and plain to the effect that in matters under the scope of the Act bordering on advertisement relating to food, cosmetics, beverages and drugs, the approval of the Minister of Health must be obtained.”

<sup>27</sup> See the long title to the **APCON Act**.  
<sup>28</sup> (2018) LPELR-45314(CA)

This judgment reinforces the earlier decision of the CA in **APCON v. The Registered Trustees of International Covenant Ministerial Council & Ors**,<sup>29</sup> where APCON had directed the Respondents to submit their advertisements for vetting prior to publication. The Respondent challenged APCON's request. The CA upheld the lower court's decision that the Respondents are not advertising practitioners as contemplated by the **APCON Act** and consequently, APCON cannot compel the Respondent to seek APCON's approval prior to placing an advertisement.

From the above case, even online entrepreneurs who advertise on those platforms cannot be regulated by APCON anymore. With the advent of social media, the advertising landscape has changed dramatically over the years. The reality is that social media's collaborative, interactive and user-generated characteristics have endeared themselves to ordinary users, advertisers and consumers to communicate their shared interests on social media platforms such as Facebook, Twitter and Instagram.

Serving as a contrast to the above cases is **UAC of Nigeria Plc & Ors v. A-G Lagos State & Ors**<sup>30</sup> where UAC filed an action challenging the **LASAA Law 2006**. The CA unanimously held in favour of Lagos State Government that the **LASAA Law** is meant to control and regulate outdoor structures in the State and thereby valid and

constitutional as an enactment of the Lagos State House of Assembly, pursuant to its powers under **section 4(7) 1999 Constitution** to legislate on residual matters.

It can be seen that the difference between the **LASAA case** and **APCON case** is totally simple and clear: whilst **para. 3 LASAA Law** clearly stated LASAA's functions **APCON Act** was not specific enough in stating APCON's functions.

#### **D. Legal Consideration When Advertising**

There are legal restrictions which either legislation or regulatory requirements have imposed on service providers when advertising their products to consumers. Any breach of such provisions would attract sanctions which may be in the form of fines or a ban from advertising the product whether temporarily or permanently. Some legal restrictions include:

i. **NAFDAC's** ability to provide for some restrictions in advertising products regulated by its sector. **Para. 1.5, Guidelines For Advertisement Of NAFDAC Regulated Products In Nigeria (GARP)** provides that Advertisement of Over-the-Counter (OTC) medicines should include the Caveat "*If Symptoms Persists after 3 Days, Consult Your Doctor/Physician*".

ii. **Para. 1.8 GARP** encapsulates the fact that advertisement materials for Prescription-only-Medicines (POM) must contain abridged prescribing information including composition, indication, dosage,

administration, adverse effects, drug interactions, contraindications, warnings and precautions.

iii. **Para. 1.9 GARP** also states that advertising materials of alcoholic beverages must include the phrases "18+" and "*Drink responsibly.*" This is often complied with in advertisements of leading and well known alcoholic brands.

iv. In some instances **NAFDAC** also states that all herbal medicinal products (without established clinical studies) labels and advert materials shall include the caveat, "*These claims have not been evaluated by NAFDAC*": **Para. 1.10 GARP**.

#### **E. Adequate Regulation of Advertising in Nigeria: Need and Recommendations**

Due to some of the loopholes in the **APCON Act**, there is need for adequate regulation of products and services' advertisement in Nigeria especially as mobile and internet advertising has become a major platform for advertising. Consequently, in order to set and ensure improved cross-sectoral standards of advertising in Nigeria, the following recommendations may be considered:

i. The decision to use, influence the use or otherwise of a particular drug should be exclusively left in hands of physicians and medical professionals and not the manufacturers of drug and the mass media.<sup>31</sup> Every information

<sup>29</sup> (2010) LPELR-3630 (CA)

<sup>30</sup> (Unreported) CA/L/928/2008, judgement of Monday, 25.01 2010 (coram Dongban-Mensem (Presided), Rhodes-Vivour and Galinje JJCA).

<sup>31</sup> This may be unrealistic in the case of OTC drugs.

and persuasion with regards to the quality, potency or otherwise of a particular drug product should be directed to qualified physicians and medical professionals who are in a position to scientifically assess the authenticity of drug advertisement claims.<sup>32</sup>

ii. Advertising content should be scrutinised by 'legal eyes' in order to eliminate contents that are deceptive, illegal and offensive. For example, Facebook has a provision for thorough scrutiny of such contents before advertising, as can be seen in **Facebook Advertising Policies**. Its **paragraph 2** states that: “Adverts must not constitute, facilitate or promote illegal products, services or activities. Adverts targeted to minors must not promote products, services or content that are inappropriate, illegal or unsafe, or that exploit, mislead or exert undue pressure on the age groups targeted”.<sup>33</sup>

Therefore advertising agencies in Nigeria should be more effective

<sup>32</sup> However there is the risk that this may lead to some ethical issues medical professionals could have 'incentive' to use/recommend a less effective drug or drug with more side effects to their patients because they are on the 'payroll' of the manufacturer of that drug rather than of the more efficacious or beneficial drug. In such cases, it is not the patient or consumer's health considerations that is uppermost in their minds but to 'push' the sales/use of the drug in which they have 'economic interest'. This information is available at <https://web.facebook.com/policies/ads/prohibited-contents/illegal-products-or-services?-rdc=18&-rdc>

<sup>33</sup> Recently, Cardi B (a popular US Rapper) trademarked the phrase 'Okurrrr' which was used in a recent Pepsi advert and has gained wave all over the world. Mark Savage, 'Cardi B Applies to Trademark Okurrrr', BBC.com, 22.03. 2019: <https://www.bbc.com/news/entertainment-arts-47665949> (accessed 25.03.2019)

<sup>34</sup> Section 9, National Tobacco Act No. 9 of 2015

in examining the authenticity of an advertising content and where such contents are found to be deceptive or such content should be prohibited from display and promotion and the service provider should be penalised.

iii. Service providers should ensure that they do not imitate or copy the statements, illustrations and visuals of other service providers in order not to mislead consumers and the general public. However, it is necessary that originators of such advertising contents obtain a copyright for their ideas, so that in the event that there is an imitation of their content they can bring legal action for copyright violations of such content.<sup>34</sup>

iv. Some countries like the US have very strict regulations regarding the use and consumption of products like tobacco and alcohol not just for the actual product, but in making sure that consumers are fully aware of its negative effect. While Nigeria has its equivalent provisions for example, regulating the advertisement and use of tobacco, the challenge appears to be more of enforcement. A notorious example is the disregard for the ban on smoking in public places.<sup>35</sup>

### Conclusion:

The advertising landscape is experiencing perhaps the most dynamic revolution and technological disruptions, as most businesses who are not necessarily advertising practitioners have



found a goldmine of fresh air. Advertising has become so important that businesses actively create adverts almost on a daily basis hence the need for a proper overhaul of the **APCON Act** to help accommodate those who also advertise online, given that online marketers are not currently regulated by the **Act**.

It is prescient for 'advertisers' to be aware of the potential legal ramifications of their 'advertising' initiatives especially with respect to regulated products, in order to obviate legal exposure and liability. Such need becomes more compelling where the 'audience' of the advertising is, courtesy of technology and online platforms, almost global.

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