

## ADVERTISING IN NIGERIA: THE LEGAL, REGULATORY AND COMMERCIAL FRAMEWORK



### INTRODUCTION

Advertising is a means of communication with the users of a product or service. It entails producing advertisements for commercial products or services which are targeted at the end users. Advertising can either be audio or visual and its main aim is to influence consumers when making decisions on products and services. It is a vital aspect of the business sector and has contributed towards its economic growth. There is an expectation that when people engage in business, they would want to advertise their products and services in order to create an image of how they would prefer their product(s) to be perceived and accepted by consumers. It is important to stress that although advertising products and services is acceptable and open to all, having the right to engage in advertising practice does not guarantee unlimited freedom to advertise products and services. This is because there are regulations that govern its content and its impact on consumers.

### Legal Structure of Advertising in Nigeria

The Advertising industry in Nigeria is currently regulated by several bodies. Some of these agencies include; Advertising Practitioners' Council of Nigeria (APCON) which is the apex regulatory body regulating advertising, National Broadcasting Commission (NBC), The Association of Advertising Agencies of Nigeria (AAAN), Advertising Association of Nigeria (ADVAN), Media Independent Practitioners Association of Nigeria (MIPAN), Newspaper Proprietors Association of Nigeria (NPAN), Outdoor Advertising Association of Nigeria (OAAN), Broadcasting Organisation of Nigeria (BON) and in Lagos state there is the Lagos State Signage and Advertisement Agency (LASAA). These agencies all have various functions which they are to carry out, for example, one of the functions of the Advertising Practitioners Council of Nigeria (APCON) is to regulate and control advertising, subject to the approval of



the Minister of Health, where the advertisement relates to food, cosmetic, beverages and drugs.

The advertising industry in Nigeria is governed by Codes and Regulations at both the Federal and State levels. Some of the Federal Codes and Regulations include: Advertising Practitioners Council of Nigeria (APCON) Code of Advertising and Promotional guidelines, Code of Ethics of the Outdoor Advertising Association of Nigeria (OAAAN), Cosmetics and Medical Devices (Advertisement) Regulations, Food Products (Advertisement) Regulations to name a few. At the state level, Lagos State established the Code of Ethics by Lagos State Signage and Advertisement Agency (LASAA).

Some sectors also provide guidelines for advertising products and services within their specific sector. For example, the Nigerian Communications Commission has guidelines to set minimum requirements and standards for advertisements and promotions by licensed telecommunications operators in Nigeria. In addition, the National Agency for Food and Drug Administration and Control (NAFDAC) has the mandate through NAFDAC Act CapN1 LFN 2004 to regulate and control the manufacture, importation, exportation, advertisement, distribution, sale and use of foods, drugs, cosmetics, medical devices, bottled water and chemicals. The responsibility for the regulation and control of advertisement of these products stated under the control of NAFDAC is vested in the Advertisement Control Division in the Directorate of Registration and Regulatory Affairs. Advertising is regulated under this sector by issuing advertisement permits after careful evaluation of the claims made and monitoring of the advertisement to ensure that exposed materials

correspond to the approvals given.

Though various sectors have guidelines regulating the advertisement of products under their sector, the Advertising Practitioners Council of Nigeria (APCON) Code of Advertising and Promotional guidelines is the apex regulation on advertising products in Nigeria. All other Regulations and Codes on advertising in Nigeria must be in line with the provision of the Advertising Practitioners Council of Nigeria (APCON) Code of Advertising and Promotional guidelines.

#### Recent Developments in the Advertising industry in Nigeria

There is no doubt that the advertising in Nigeria has a larger platform because of the advancements in modern technology. Today, majority of the commercial advertisements are placed through easily accessible platforms like; television, mobile advertising, billboards, printed flyers, radio, cinema, web popups etc. The best platforms are the television, internet and mobile platforms because they can be easily accessed by consumers. As a result of this, there are more institutions and agencies in place governing advertising practices as the industry is growing at a very fast pace. It is quite interesting to note that in addition to the mandatory application of the standard Laws and Codes which are not negotiable, some of these institutions and agencies are also subject to institution or agency specific self-regulation.

Advertising agencies have been able to curb some illegal and unapproved advertisements by regulating and ensuring that service providers do not engage in unapproved activities that breach any Advertising Code and

guidelines. On regulating advertising in Nigeria, Advertisement Practitioners Council of Nigeria (APCON) once banned all alcohol advertisements from Guinness Nigeria Plc. APCON stated that Guinness had breached Article 39 of APCON's Code. The Article provides that "advertisements for alcohol beverages shall not be aired between 6.00am and 8.00pm on radio and between 6.00am and 10.00pm on television. Also, Article 34 of the Outdoor Advertising Code provides that advertisements for alcohol beverages shall not be sited within a radius of 200 meters from nearest perimeter fence of any place of worship, hospital, school, or motor parks. Prior to this, corporations had continually breached the provision. APCON in exercising its power banned all alcohol advertisements of Guinness Nigeria from television as a sanction for breach of advertising Codes and Regulations. This obviously made others sit up and become more careful and diligent.

As mentioned earlier, the Lagos state government also established the Lagos State Signage and Advertisement Agency. The agency has its own Law as enacted in 2006 and has been able to control advertising activities within the state and sanction offenders accordingly. In a case between the UAC of Nigeria Plc & Ors v. AG Lagos & Ors (2010) LPELR-CA/L/928/2008, UAC filed an action challenging the Lagos State Signage and Advertisement Agency Law 2006 (LASAA Law). The Court of Appeal held in favour of Lagos State Government by stating 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) of the 1999 Constitution to legislate on residual matters.

### The Effect of Contents Communicated Through Advertising Platforms on Consumers

The mode by which a product is advertised and communicated has an effect on the consumers depending on how they perceived or received such information from the advert. It is therefore necessary that statements and illustration used in advertising a product or service is not misleading in any way either directly or by impliedly. Some sectors through regulations have been able to provide for regulations of advertising products under their sector and regulation of the advertising content of these products. Some of the sectors include:

**Food, Drugs and Health:** By Regulation 3 of Food Products (Advertisement) Regulation, food not pre-cleared and approved by the National Agency for Food and Drug Administration and Control (NAFDAC) cannot advertise on

any platform.

Also, by the provision of Regulation 3 of the Drug Product Advertisements Regulations, the nature of advertising any drug in Nigeria shall be accurate, complete, clear, and designed to promote credibility and trust by the general public and health practitioners. Therefore, Food, Drugs and Health Contents advertised should in no manner mislead a consumer to use the product or require the service of the service provider.

**Telecommunications:** One of the guidelines on advertising as provided by the Nigerian Communications Commission in the telecommunications sector is that; advertisements must not unfairly discredit, disparage or attack other products, services, advertisements or companies, or exaggerate the nature or importance of competitive differences. By this provision the content of an advertisement by a telecommunication service provider is not allowed to misrepresent to consumers the products of other service provider in the sector. Also, a service provider who has a license in this sector is not allowed to imitate the slogans or illustrations of another advertiser in such a manner as to mislead the consumer.

**Social Responsibility:** In addition to Food and Drugs Regulations, the National Agency for Food and Drug Administration and Control Act 1993 (As Amended) provided the Spirit Drinks Regulations 2005. Regulation 5(b) of the Spirits Drinks Regulations provides that radio, television or print media, advertisements of spirit drink shall not be permitted in children's programmes nor shall children, sportsmen or expectant mothers be used as models. This Regulation sets out to protect the health of vulnerable persons like children, sportsmen and expectant mothers who may not necessarily be consumers but may be affected by the content of advertisement that contains spirit drink.

**Intellectual property:** Some sectors' guidelines provide that the content of an advertisement should not in any manner imitate the slogan and visual presentation of another service provider's advertisement. For example, the guidelines on telecommunications by the Nigerian Communications Commission provides for this. This is to ensure that a consumer and the general public are not misled as to who the actual service provider is. Misleading a consumer as to who the actual service provider is may affect the consumer's interest in such a product.

### The Ethical and Legal Restrictions on Advertising and Its Overall Impact on the Economy

Advertising laws in Nigeria have restrictions which may

either be ethical or legal. These restrictions guide service providers where they intend to advertise their products and also regulate the contents of their advertisement. Service providers must therefore be aware of these ethical and legal restrictions in advertising, in order to ensure adherence with the proper regulations. It is very obvious that the restrictions have to an extent been able to prevent service providers from advertising illegal and unapproved products to consumers. Some of the aforementioned ethical and legal restrictions are as follows;

#### Ethical Restrictions

Ethical restrictions entail the limitations in the manner in which the content is being delivered to the consumers. The ethical restriction is different from the legal restriction because no Code or Regulation may provide for it but they are ethical because of the moral effect they may have on consumers and also to protect the interest of the public in general. The effect of disregarding these ethical restrictions on advertising can have a negative effect on consumers. Some ethical restrictions include;

- i. Service providers are not allowed to advertise a product that is harmful to consumers.
- ii. Children should not be exposed to indecent and harmful contents of advertisement.
- iii. Tobacco companies should not advertise their products by any means either through television, radio or newspapers.
- iv. Statements and illustrations in the content of an advertisement should not be contrary to public policy
- v. Caveats should be placed on products that are harmful to persons below a certain age. For example, some products have a phrase on them that indicate that such product should not to be sold to minors (Persons below 18).

- vi. Contents in advertising a product that is intended to insult or diminish a religion or race should not be advertised.

#### Legal Restrictions

The legal restrictions are those restrictions that either a Law, Code or Regulation have provided for. Service providers are bound by this Law, Code or Regulation when advertising their products to consumers and breach of their provisions would attract sanctions which may either be in the form of fine(s) or a ban from advertising the product. Some legal restrictions as provided by some Codes and Regulations include;

- i. The National Agency for Food and Drug Administration and Control (NAFDAC) has been able to provide for some restrictions in advertising products regulated by its sector. It provides that Advertisement of Over-the-Counter (OTC) medicines should include the Caveat "If Symptoms Persists after 3 Days, Consult Your Doctor/Physician"
- ii. NAFDAC also states that advertising materials of alcoholic beverages must include the phrases "18+" and "Drink responsibly".
- iii. Also NAFDAC 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".
- iv. Regulation 2(b) of the Cosmetics and Medical Devices (Advertisement) Regulations provides that advertisement regarding Food and Drugs must be approved by National Agency for Food and Drug Administration and Control (NAFDAC)



- v. The Advertising Practitioners Council of Nigeria (APCON) Code of Advertising and Promotional guidelines states that when advertising alcoholic beverages it should not be aired on television and on radio between certain hours of the day.
- vi. Regulation 5 (a) of the National Agency for Food and Drug Administration and Control Act 1993 (As Amended), Spirit Drinks Regulations 2005, provides that the content of advertisements of spirit drink shall not be misleading and shall be free of health claims.
- vii. Also, Regulation 5 (b) of the National Agency For Food And Drug Administration And Control Act 1993 (As Amended), Spirit Drinks Regulations 2005 provides that radio, television or print media, advertisements of spirit drink shall not be permitted in children's programmes nor shall children, sportsmen or expectant mothers be used as models. Article 34 of Outdoor Advertising Code provides that advertisements for alcohol beverages shall not be sited within a radius of 200 meters from nearest perimeter fence of any place of worship, hospital, school, or motor parks.

In Nigeria, advertising has been able to contribute positively to the economy in various ways especially through business, Companies and organisations. Most business owners are now aware of the impact of advertising on their business and the benefit it brings by attracting potential consumers to use their products. It has however, become the practice of Companies, Organisations and other entities to advertise and promote their products through any possible and effective means as it informs consumers on the availability and authenticity of their products and also increases the growth of their business which in turn is a boost to the country's economy. The Chairman of the Association of Advertising Agencies of Nigeria (AAAN), once stated that the advertising industry contributed over N300 billion to Nigeria's economy.

Advertising can be used as a tool to boost the Nigerian economy by encouraging competition between service providers of a particular product or service. By increasing competition between service providers advertising reduces monopoly by a service provider. Also advertising can be used to create a platform for business opportunities, employment as well investments in Nigeria.

Advertising products in some other developed countries has assisted the growth of their economy, in America for example, Companies that engage in advertising have been able to gain additional profits and make larger contributions to US Gross Domestic Product (GDP). It is however,

expedient that proper advertising of products and services by service providers be encouraged and used as a means to increase competitiveness between service providers for better economic growth in Nigeria.

#### Recent Actions Being Taken By Government to Regulate Advertising Contents in Nigeria

The government has set up agencies that act as regulatory bodies to govern advertising in Nigeria. These agencies have able to regulate advertising and advertising contents. In Lagos state for example; the Lagos state government has been able to establish the Lagos State Signage and Advertisement Agency (LASAA). The Lagos state government has through the Lagos State Signage and Advertisement Agency (LASAA) been able to regulate outdoor advertising by ensuring proper control of outdoor structures to be used for signage and advertisements. The government has also been able to control the pasting and display of posters on public structures and highways and in other beneficial ways to the State.

As a means to regulate advertising products, the Nigerian Tobacco Control Bill was proposed in 2012 by a member of the National Assembly to repeal the Tobacco Control Act 1990. The Bill also sought to prohibit the promotion of Tobacco, Tobacco products and endorsements of Tobacco Companies. The Bill passed through the first and second reading and was sent to the Committee on Health and Justice for its review. The Bill has since then not been passed into Law.

#### The Need for Adequate Regulation of Advertising in Nigeria and Recommendations

There is need for adequate regulation of advertising products and services in Nigeria especially as mobile and internet advertising has become a major platform for advertising. There is minimum or no proper Law or Regulation governing advertising on these trending platforms which will continue to permit offensive, deceptive, and illegal contents under the auspices of advertising. Therefore, to set and ensure improved standards of advertising in Nigeria the following would be recommended;

- i. Advertising contents should be scrutinised by legal agencies in order to eliminate contents that are deceptive, illegal and offensive. In the United States of America, adequate measures are taken to properly scrutinise advertising content. For example, in a case involving the National Advertising Division (NAD) charged with monitoring and evaluating truth and accuracy in national advertising and a service provider;

NAD found that the consumer's testimonials on the advertiser's product which states "Your Baby Can Read" conveyed that the product will teach babies to read words not specifically taught in the program. The National Advertising Division (NAD) contended that the consumer's testimonials were not adequate, competent and reliable. As there was no scientific evidence to support either claim. The advertising agencies in Nigeria should however be more effective in examining the authenticity of an advertising content and where such contents are found to be deceptive, illegal and offensive such content should be prohibited from display and promotion and the service provider should be penalised.

- ii. Service providers should ensure that they do not imitate or copy the statements, illustrations and visuals of another service provider in order not to mislead consumers and the public in general. 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 authorship of such content.
- iii. Lagos State government has been able to establish the Lagos State Signage & Advertisement Agency (LASAA), to regulate Outdoor Advertising practices in Lagos. There is also the Lagos State Structure for Signage and Advertisement Agency, Law 2006 (as amended), that provides for the Rules and Regulations regulating advertising in Lagos State. Also in Oyo State there is the Oyo State Signage & Advertising Agency (OYSAA). While some states still do not have such agencies they only rely on regulations from federal agencies. It is however necessary that other States in Nigeria establish advertising agencies in their respective States to regulate advertisement.
- iv. Advertising is a means to grow a country's economy and some developed countries like the USA have been

able to tap into this. Nigeria can also use advertising as a means to boost our economy by encouraging investments and providing for proper regulations in advertising.

- v. Some countries 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. Nigeria should also create Laws that would ensure proper and adequate Regulations to govern the advertising of products and contents that should not be easily accessible to consumers' like Alcohol, Tobacco and others. Also, the endorsements of companies engaging such products should be properly accessed before they can be allowed to engage in such business.

## Conclusion

In Nigeria, today where consumers are information driven; advertising should be used as a means to boost the social, economic and political aspects of the country. Advertising requires adequate Laws, Regulations and also functioning Agencies to regulate the actions of service providers and content they advertise to avoid the advertisement of illegal and unapproved products. Nigeria is one of the Countries that do not have a comprehensive Law regulating a product like Tobacco even though it is a party to the World Health Organisation's Convention on Tobacco Control (FCTC). There is however a need for Law makers to implement a Law that will regulate this product. . Also, areas like the social aspect and other sectors without adequate regulation on advertising, need proper Regulations and Codes for regulation of contents disseminated to consumers and also for regulating the activities of advertising in those sectors. Current advertising Regulations and Codes in Nigeria also requires effective enforcement which should be done by approved advertising agencies.