

## Regulation of Misleading Advertisement and the Effect of Disclaimer of Truth in Advertisement

Michael Sunday Afolayan (PhD) and Olaide Awwal-Bolanta  
awwalbolantaolaide@gmail.com  
DOI:10.56201/jhsp.v10.no5.2024.pg38.52

---

### Abstract

*This paper delved into the multifaceted issue of regulating misleading advertising in Nigeria and examined the current landscape, challenges faced, and potential solutions. By exploring the regulatory frameworks, enforcement mechanisms, and industry practices, this paper sought to shed light on the complexities inherent in addressing deceptive advertising practices and safeguarding consumer rights. In carrying out this research, a desk-based method of research was employed and it made use of primary sources of legal research which are Advertising Practitioners Council of Nigeria Act, Standards Organisation of Nigeria Act, and Federal Competition and Consumer Protection Act, and secondary sources of legal research materials which includes textbooks, academic articles in peer-reviewed journals, newspaper publications, and online sources. It this research, it was discovered that advertising that there are statutory regulations and self-regulations implemented by public and private bodies respectively in the regulation of advertisement in Nigeria but compliance rate remains low. The paper concluded that although that there are several regulations guiding advertisement, the problem lies in compliance with the regulations and proper enforcement of the existing regulations, also, the existing laws are not in total conformity with present reality.*

**Keywords:** *Advertisement, Regulation, Misleading, Marketing, Consumer, Disclaimer.*

---

### 1.0 Introduction

In Nigeria, the advertising industry is undergoing significant reforms by way of new regulation and policies aimed at optimizing local capacity, increasing revenue, and ultimately maximizing the post-Covid reality, which to an extent, has accelerated the adoption of the digital economy. There is also the content regulation and consumer protection dimension. However, the overall regulatory objective is geared towards creating a comprehensive legal framework that is wide enough to bring all forms of advertising businesses and channels under the regulatory umbrella of Nigeria's advertisement regulator which is the Advertising Regulatory Council of Nigeria (ARCON).<sup>1</sup>

In the dynamic landscape of marketing and consumerism, advertising serves as a powerful tool for businesses to communicate with their target audience, shaping perceptions and influencing purchasing decisions. However, with the proliferation of advertisements across various platforms, concerns regarding the authenticity and truthfulness of advertising claims have become increasingly prevalent. In Nigeria, the regulation of misleading advertising poses a

---

\* Michael Sunday Afolayan (PhD), Nigeria Bank of Industry

\*\* O. L. Awwal-Bolanta, LL.B., B.L., Lecturer, Faculty of Law, Ekiti State University, Ado-Ekiti

<sup>1</sup> TEMPLARS Market Report, 'Advertising in Nigeria: A Synopsis of Recent Regulatory Developments' (2022) online at <https://www.templars-law.com> accessed 21 March 2024.

significant challenge, as it intersects with consumer protection, ethical standards, and legal frameworks.

The prevalence of misleading advertising in Nigeria underscores the need for robust regulatory measures to ensure fair competition and protect consumers from deceptive marketing tactics. Misleading advertisements can encompass a wide range of deceptive practices, including false claims, exaggerated statements, and omission of material information. Such practices not only undermine consumer trust but also pose potential health, safety, and financial risks.

At the heart of the challenge lies the effectiveness of existing regulatory frameworks in addressing deceptive advertising practices. While Nigeria boasts various laws and regulations aimed at regulating advertising, it seems that the laws and regulations are lacking in the aspect of regulating misleading advertisement, enforcement mechanisms and regulatory oversight often fall short of effectively tackling the issue. Inadequate resources, institutional capacity, and coordination among regulatory bodies further compound the challenge, allowing deceptive advertisers to evade accountability and perpetuate fraudulent practices with impunity.

Moreover, the evolving nature of advertising, particularly in the digital sphere, presents new challenges for regulators in monitoring and enforcing compliance with advertising standards. The proliferation of online platforms, social media influencers, and native advertising blurs the lines between editorial content and promotional material, making it increasingly difficult for consumers to discern the veracity of advertising claims.

Against this background, this seminar paper endeavors to explore potential solutions and best practices for enhancing the regulation of misleading advertising in Nigeria. By analyzing case studies, comparative legal frameworks, and stakeholder perspectives, this paper aims to offer insights into strategies for strengthening regulatory enforcement, promoting industry self-regulation, and raising consumer awareness.

In conclusion, the regulation of misleading advertising in Nigeria represents a complex and multifaceted challenge that requires concerted efforts from policymakers, regulators, industry stakeholders, and consumers alike. Through collaborative action and a commitment to upholding ethical standards and consumer rights, Nigeria can strive towards a more transparent, accountable, and trustworthy advertising ecosystem.

## **2.0 Conceptual Analysis**

### **2.1 Misleading Advertisement**

This is a form of advertising that conveys a false impression or there is a significant chance that confusion is caused or that information is misleading and not just an abstract risk to a reasonable person viewing the advertisement. Falsity or confusion can be either in the advertisement's literal or implied meanings. Whether the advertisement has caused any harm or injury to consumers is not necessary. Misleading Advertising includes exaggerating and overstating, expressing unrealistic attributes of the product, use of professional concepts for more effect, fake licenses, false warranties, use of cinematic tricks and misleading images, discounts, and gifts. Misleading advertisements cause viewers to misunderstand or make incorrect decisions. False advertisements are those that are inconsistent with facts and objectionable advertisement shows unsafe or dangerous acts and obscene visuals. Advertisements of products banned from advertising e.g. alcohol, and cigarettes also fall under this category.<sup>2</sup>

---

<sup>2</sup> Nikita Modi & Ramarao P., 'Misleading Advertisements', (2019) 6 (1) - International Journal of Research and Analytical Reviews, 569-576.

Type of different sources of advertisements that can be complained about are Print ad & inserts, Posters, hoarding, banners, Brochures, leaflets, e-mails, advertisements on TV, Radio, Cinemas, advertisements on the Internet, website, or social media, and advertisements on the SMS.<sup>3</sup>

According to Wright<sup>4</sup>, an advertisement is deceptive if it creates a false belief about the advertiser's or competitor's product, causes injury, or influences a purchasing decision that consumers would not have made otherwise. According to Aaker,<sup>5</sup> deceptive advertising comprises incorrect or misleading assertions, exaggerations, and claims that are not adequately supported or misrepresent the genuine meaning of professional or scientific statements.

Advertisers obviously do not disclose all relevant information that would facilitate objective choice and often deliberately withhold any vital details which may negate their purpose of securing patronage. Advertisements, by their very nature, are subjective recommendations. They mislead or deceive often through what is withheld (not said) more than through what is claimed (expressed). Advertising could also and does, in fact, offend or debase social morality and decency and there cannot be serious argument about the long term damage which a gradual erosion of social morality and sensibility portends for any society. Advertising no doubt, shares the burden of this guilt with other contents of the mass media.

If advertising is not regulated, it can lead to audio-visual blight, environmental degradation, hazardous consumption, invasion of privacy, and exploitation. Many countries regulate and control advertising and marketing communications including product claims on below-the-line platforms, like product packets, are regulated, and above-the-line marketing.

## 2.2 Advertisement and the Target Audience

Advertising, sales promotion, and public relations are mass-communication tools available to marketers. As its name suggests, mass communication uses the same message for everyone in an audience. Today, definitions of advertising abound. We might define it as communication process, a marketing process, an economic and social process, a public relations process or an information and persuasion process.<sup>6</sup>

Advertiser's primary objective is to reach Prospective customers and influence their awareness, attitudes, and buying behaviour. They spend a lot of money to keep individuals (markets) Interested in their products. To succeed, they need to understand what makes potential customers behave the way they do. The advertisers' goal is to get enough relevant market data to develop accurate profiles of buyers to find the common group (and symbols) for communications.<sup>7</sup>

## 3.0 Literature Review

Leandro and Robert<sup>8</sup> examine different ways advertising has been affecting the contemporary era in Economy, Health, and Society such that advertising is used and how advertisers are in

---

<sup>3</sup> University of Mumbai, 'Introduction to Advertising' (Vidyanagari, Mumbai 2011)

<sup>4</sup> R. Wright, *Advertising* (Harlow, Pearson UK 2000)

<sup>5</sup> L. J. Aaker, 'Dimensions of brand personality' (1997) 34 *Journal of Marketing Research*, 347-356.

<sup>6</sup> Arens, Williams F., *Contemporary Advertising* (1996) (USA: Richard D. Irwin, A. Times Mirror Higher Education Group Inc. Company)

<sup>7</sup> Zain-Ul-Abideen and Salman Saleem, 'Effective Advertising and Its Effect on Consumer Buying Behaviour' 3 (3) *European Journal of Business and Management*.

<sup>8</sup> Leandro Mateo Bolaños Melgar, & Robert J.F. Elsner 'A Review of Advertising in the 21st Century' (2016) 7 (4) *International Journal of Business Administration*.

their quest to find the best approach to reach the final customer. According to them, the focus of advertising becomes a delicate topic when channelling the intentions of the seller into a maybe unknown or much-diversified market and the effects of advertising have to be measured and controlled for the future improvement of the content and the approach.

According to Andrea and Monica<sup>9</sup> the medium of advertising was considered as a contextual cue, the author investigates the role of creativity in the new advertising formats among university students and identifies the effectiveness of non-traditional advertisements in generating consumers' favorable attitude and credibility toward the brand and the way it influences consumer behavior. They proposed that the context of advertisement should be changed creatively and conclusively found that the creative change of the context could be a solution to consumers' negative perceptions and avoidance caused by traditional media.

Adegbite and others<sup>10</sup> analysed the terms and conditions of contracts, especially for sales of goods, as provided under the law to stipulate behaviors and protect parties, the authors posited that these terms and conditions are exploited to avoid obligations under the law. They further consider the basic laws on the Advertisement of disclaimers in Nigeria and how such laws affect both Manufacturers and Consumers alike.

#### **4.0 Research Method**

This research work adopted the doctrinal approach. It relied on both primary and secondary sources of information or data. Primarily, it utilizes a legal approach using primary data such as the Advertising Practitioners Council of Nigeria Act, Standards Organisation of Nigeria Act, and Federal Competition and Consumer Protection Act. The secondary sources of data used include textbooks, online articles in learned journals, relevant materials from the Internet, Inaugural Lectures and other Lecture Series, Dissertations, Magazines, Newspapers, other Periodicals, Dictionaries and Reports. All data collected were subjected to content and contextual analysis.

#### **5.0 Analysis of Legal and Institutional Framework on Advertisement**

Regulation is required to stem the tide of deceptive advertising intended to deceive the unsuspecting public through false claims. To achieve this purpose, advertising regulation occurs at both governmental and professional levels. At the level of government, the federal, state, and local governments exercise some regulatory power over the practice of advertising. At the professional level, practitioners do exercise self-regulation through organisations such as APCON, Association of Advertising Agencies of Nigeria (AAAN) and Outdoor Advertising Association of Nigeria (OAAN); all of which subscribe to the Nigerian Advertising Code of Ethics.

The regulatory framework for advertising in Nigeria is made up of statutory legislation and self-regulatory regulations.

A statutory regulation is a legislative act that has the force of law. Its provisions are binding in the courts of the land. These enactments include the Advertising Practitioners Council of Nigeria Act, which is specifically designed to regulate advertising practices in Nigeria, as well as the Consumer Protection Council Act, Food and Drugs Act, Trade Malpractices (Miscellaneous Offences) Act, National Agency for Food and Drug Administration Act, and

---

<sup>9</sup> Andreea-Ioana Maniu and Monica-Maria Zaharie, 'Advertising Creativity- The Right Balance Between Surprise, Medium and Message Relevance' (2014) 15, *Procedia Economics and Finance*, 1165 – 1172.

<sup>10</sup> Aderonke E. Adegbite, Michael Kolawole Amusan, and Ajibola Olawale Aderemi, 'Disclaimers and Advertisement Rules on Manufacturers Products in Nigeria' (2023) *SSRN*.

other general laws relating to information dissemination such as copyright laws, defamation laws, and privacy laws.<sup>11</sup>

Self regulations, on the other hand, are meant to ensure that the standard of practice is maintained to secure the trust and confidence of the consumers for the benefit of the society. Ozoh<sup>12</sup> described self-regulation in the spirit of the European Advertising Standards Alliance as " the recognition of the advertising industry (advertiser, agencies and the media) that advertising should comply to a set ethical rules, namely that it should be legal, decent, honest, and truthful, prepared with a sense of social responsibility to consumer and society as a whole and with due respect to the rules of fair competition". The APCON code and the NBC code are among these self-regulatory measures in the advertising industry in Nigeria. They do not have the force of law but can exert a meaningful and positive influence on the practice of advertising if religiously adhered to and enforced.

Effective regulations of advertising practices would no doubt yield positive results for the consumers, the advertising industry, and society. It would help to check the growing number of quacks in the advertising industry. This would guarantee effective consumer protection and improvement in the quality of advertisements the society is exposed to. This is rightly so, as Nzeribe<sup>13</sup> observes that "advertising regulation aims at ensuring that the consumer is adequately (hopefully) protected, that the advertising practice is responsive and socially responsible".

According to Nzeribe,<sup>14</sup> " the code of advertising practice attempts a holistic exercise as it makes reference to the practice as well as the product of the practice viz: advertisements; commercials; content issues, e.g. words, visuals, nonverbal communication" With the above expositions, we are tempted to conclude that Nigeria has adequate regulatory framework for offline advertising practice but has a deep-rooted issue with the enforcement of these regulations for reasons such as lack of the will to do so. Also, Ezinwa<sup>15</sup> rightly notes that, most consumers are neither willing nor ready to pursue a case or even make a formal complaint against a perceived or deceptive or harmful advertising, even where they have suffered damages. The court system is not helping matters as justice is not quickly dispensed or is sometimes too expensive for the consumers. The enforcement of advertising regulations thus demands a deeper examination as laws are meaningless if dormant and without enforcement. There are two different types of regulatory mechanisms when it comes to regulation of advertisement, they are self-regulatory mechanisms and statutory regulatory mechanisms.

### **5.1 Self-Regulations**

In many parts of the world<sup>16</sup> Advertising is regulated by those who engage in the practice, that is, advertisers, advertising agencies, advertising media owners, etc, through collective and collaborative actions spearheaded by their respective Self-Regulatory Organisations and joint industry committees, (JIC). This mechanism is referred to as Self-regulation and relies on the self-discipline and responsible behaviour by practitioners and practice organizations. Self-regulation is based on a realization by businesses (private sector operators) that if they fail to conduct themselves responsibly and refrain from activities that are inimical to the well-being

---

<sup>11</sup> Chidiebere Anthony Ezinwa, 'Regulating Online Advertising in Nigeria: Challenges and Prospects' online at..

<sup>12</sup> Ozoh, H.C., 'Statutory Regulation and Self-Regulation: Options and Perspectives in Nigeria Advertising Scene' in Nzeribe, M.M. *Advertising ethics and regulation in Nigeria: The challenges*. (Ibadan: Feathers and Ink, 2012)

<sup>13</sup> Nzeribe, M. M. (2012). *Advertising Ethics and Regulations in Nigeria*. Ibadan: Feathers and Ink

<sup>14</sup> *Ibid*.

<sup>15</sup> Ezinwa, C. A. *Advertising Practice and Consumer Protection* (2007, Unpublished LL.B Project).

<sup>16</sup> Such as New Zealand, South Africa, Canada and many E U countries.

of society, the government, which is the custodian of public interest, would be compelled to intervene and usually, through stringent and express rules or restrictions (laws and actions) that sometimes hurt businesses.<sup>17</sup>

The industry's Self Regulatory Organization (SRO) although voluntary, uses persuasion, peer pressure, and sanctions to enforce agreed-upon rules of engagement. The SRO has the authority to impose sanctions such as fines, retraction, blacklisting, ban, or litigation on all players who have voluntarily subscribed to the code of practice.

Self-regulation would appear lofty and attractive because the mechanism is initiated and driven by businesses themselves and devoid of external (government) interference. Its success, however, depends on a large measure of ethical conviction, discipline, social responsibility, restraint, and voluntary compliance which many businesses lack. Personal ambitions or contests for supremacy may undermine the solidarity and effectiveness of the SRO. This may explain the fact that self-regulation could not thrive in Nigeria in spite of attempts made at various times by various sectoral associations, resulting in unsavoury interventions by various governments at different times in the past.<sup>18</sup>

## 5.2 Statutory Regulations

Statutory regulation represents a governmental intervention in a largely private-sector environment with the purpose of protecting public interest and wellbeing. It removes regulation from businesses (usually because businesses have proved unable to properly regulate their conduct or could not be trusted to do so) and places it in the hands of independent agencies of government. Jimi Awosika<sup>19</sup> justifies such intervention by the government as ‘the exercise of its mandate to protect society from the effects of practices that are harmful to its people and society, being the organ elected by society, to conduct its affairs’ adding that ‘only when this is for the common good that the regulator derives its legitimacy’. In the case of Nigeria, however, deliberately or unintentionally, the government engages representatives of businesses to formulate and implement its regulations, using the strength of the law to give effect to regulations that are essentially initiated by businesses themselves. This medley of statutory and self regulation mechanisms has been applauded by many commentators and criticized by many others. In the system of self regulation discussed earlier, rules of engagement (acceptable standards of advertisements and restrictions) are set out and popularized among all stakeholders who are then expected to comply. The SRO performs the function of monitoring, policing and enforcing the provisions of the Code of Practice. Though funded by the advertising industry, it operates independently of the industry and as such ensures impartiality in handling consumer, competitor, and inter sectoral complaints. The SRO provides advisory services and copies advice to operators who may require guidance in ensuring compliance and avoiding the usually severe consequences of breaches.

In the Nigerian system, the Advertising Standards Panel (ASP) exercises the power of vetting and approving advertisements before they are exposed to the media.<sup>20</sup> This is in spite of the guidelines on acceptable standards of advertisements and restrictions embodied in the Nigeria Code of Advertising which is available to all stakeholders as a reference in preparing wholesome advertisements.

---

<sup>17</sup> Joe-Eugene Onuorah, ‘Imperative of Advertising Regulation’ *International Journal of Communication* 144-150

<sup>18</sup> *Ibid.*

<sup>19</sup> Jimi Awosika ‘Regulation in the Post Digital Age’ Advertising Practice’ (2016) Paper presented at APCON Public Forum.

<sup>20</sup> Advertisement Practitioner Council Act 1992

The question of who should regulate Advertising is one which deserves to be addressed. It would appear, from the foregoing, that a regime of self-regulation would require that those who practice Advertising, namely, advertisers, ad agencies, and advert media operators, should be the ones to regulate it. Because these ‘practitioners’ of advertising are engaged in a business with the intention to make a profit and, at the same time, engaged in competition among themselves, their capacity to ‘regulate’ objectively and altruistically can be greatly impaired. It is for this reason that in countries where the self-regulation mechanism is entrenched, the self-regulatory organizations (SRO), though funded by the industry, operate independently of the industry. In essence, and practice, self-regulation implies the establishment by the industry, of a system of regulation free of government involvement and interference but independent of the industry (operators) in the conduct of its operations.<sup>21</sup>

### **5.3 Public and Private Law Responses to The Problems of Misleading Advertisements**

Misleading advertisements can deceive consumers, leading to financial loss, disappointment, and even health risks in some cases. To combat this problem, various stakeholders, including government agencies, consumer advocacy groups, and businesses themselves, have implemented a range of responses aimed at mitigating the impact of misleading advertising.

#### **5.3.1 Private Responses**

a) **ADVAN – Advertisers’ Association of Nigeria**

ADVAN is the only association in Nigeria that represents the collective interests of ‘Advertisers’ and Corporate organizations that engage in high-level marketing, it was founded in 1992, to advance the interest of the marketing Industry in Nigeria by spearheading and ensuring global best practices as well as facilitating collaborative partnerships with relevant stakeholders. It also supports APCON in the regulation of advertising in Nigeria.

ADVAN is a member and on the Executive Council of the World Federation of Advertisers (WFA), a body of global brands and marketing associations in over 60 countries of the world.<sup>22</sup>

ADVAN advocates proportionate and evidence-based policy making which recognises the importance of advertising for the economy and society. It is the standard bearer for effective advertising self-regulation in Nigeria, developing standards for its members which respond to societal concerns and putting in place effective marketing enforcement processes.<sup>23</sup>

b) **OAAN – Outdoor Advertising Association of Nigeria.**

It was first called Outdoor Advertising Contractors Association of Nigeria. It formally came into being as OAAN in 1986. It supports APCON in the regulation of outdoor in the country. Its functions in the regulation of advertisement include developing and maintaining standards for the Out-Of-Home Advertising Association Of Nigeria; regulating and controlling the practice of Outdoor Advertising in conformity with statutory and Industry guidelines; and proposing, promoting and supporting any Legislation or subsidiary Legislation deemed to be in the interest of the Outdoor Advertising Industry and Members of the Association.<sup>24</sup>

c) **BON – Broadcasting Organisations of Nigeria.**

---

<sup>21</sup> Joe-Eugene, *Op.cit*

<sup>22</sup> Advertiser’s Association of Nigeria, ‘About ADVAN’ online at <https://advertisersnigeria.com/about/> accessed on 30 March 2024

<sup>23</sup> *Ibid*

<sup>24</sup> Outdoor Advertisement Association of Nigeria, ‘Aims and Objectives of OOAN’ online at <https://oan.org/aims-objectives-2/> accessed 30 March 2024

The Broadcasting Organisations of Nigeria (BON) is a broad coalition of public and private broadcasters as the nation's umbrella Union of Terrestrial Radio Television (Tv) Direct-To-Home (DTH) Digital Terrestrial Television (DTT) Multimedia Distribution System (MMDS). BON went through many stages of its development, but it was formally established in 1988. It also supports APCON in the regulation of the broadcast media. The Broadcasting Organisation of Nigeria is an association in charge of private and public broadcasters in Nigeria. It is in charge of monitoring the activities, coordination, and management of television, radio, and all media broadcasts in Nigeria.<sup>25</sup>

The objectives of BON include to serve as an advisory body to the Federal and State Governments on broadcasting matters; encouraging and sustaining greater co-operation and collaboration among broadcasting organisations and other industry players; and to improve the quality and profitability of broadcasting.<sup>26</sup>

**d) NPAN – Newspaper Proprietors Association of Nigeria.**

It supports APCON by contributing to the regulation of advertisements for the newspapers and the print media generally.

**e) World Federation of Advertisers (WFO)**

The World Federation of Advertisers, is a global network for marketers with the goal to make marketing better by championing more effective and sustainable marketing communications.<sup>27</sup>

**5.3.2 Public Responses**

Advertising is regulated in Nigeria under both general and sector-specific laws, regulations, and guidelines, which stipulate principles and requirements for advertising. The following laws, guidelines, and regulation provide general principles and requirements for all forms of advertising in Nigeria:

**a) The Nigerian Code of Advertising Practice, Sales Promotion and Other Rights/Restrictions on Practice (“The Advertising Code”)<sup>28</sup>**

The Code of Advertising Practice is the guiding document of the Governing Council of APCON, the Advertising Standards Panel, and any other committee put in place by the Governing Council of APCON in its discharge of its regulatory oversight function over advertising practice and the advertising industry, and to every advertising practitioner being hinged on the highest ethical standards, rules, and procedures aimed at providing an efficient and effective regulation of the Nigerian Advertising Industry. It is a basic but not exclusive supplement to all Federal Advertising legislations whether sectoral or based on the principal APCON Act.<sup>29</sup> The code provides that all advertisements in Nigeria or directed at the Nigerian market shall be legal, decent, honest, truthful, respectful, and mindful of Nigeria's culture, constitutional tenets, and relevant lawful enactments.<sup>30</sup>

**b) Advertising Practitioners Council of Nigeria, Vetting Guidelines (Vetting Guidelines)<sup>31</sup>**

---

<sup>25</sup> Broadcasting Organisations of Nigeria, ‘About BON’ online at <https://bon.ng/objectives/> accessed 30 March 2024.

<sup>26</sup> *Ibid*

<sup>27</sup> World Federation of Advertisers ‘About WFO’ online at <https://wfanet.org/about-wfa/who-we-are> accessed 30 March 2024.

<sup>28</sup> The Nigerian Code of Advertising Practice, Sales Promotion and Other Rights/Restrictions on Practice LFN 2004

<sup>29</sup> *Ibid*

<sup>30</sup> *Ibid*, Rule 6

<sup>31</sup> Advertising Practitioners Vetting Guidelines, 1992.

The vetting guideline is a subsidiary legislation to the Advertising Practitioner's Registration Act of 1992 and it provides for the guidelines that advertisement and advertisers must comply with before any or such advertisement is published to the public. The Vetting Guidelines apply to all individuals registered as Advertising Practitioners, and all organisations, corporate bodies and individuals who use advertising services. These Vetting Guidelines apply to the entire contents of an advertisement, including words and numbers (spoken or written), visual presentations, music, and sound effects. The stages of such vetting include:

- a. Application is made by the advertising practitioner seeking approval to advertise attaching all the necessary requirements which include:<sup>32</sup>
  - i. A formal application letter for vetting addressed to the Registrar
  - ii. Application form filled and duly signed by a registered advertising practitioner, not below an Associate Member (ARPA), stating his/her APCON Registration number.
  - iii. The product's NAFDAC Certificate or payment advice (where necessary) must be attached.
  - iv. The Client's letter of authorization to advertise the product/service, signed by an APCON registered practitioner<sup>33</sup>
- b. The application is to be forwarded to the Registrar of APCON for approval which is done in a meeting held twice in a month, there is however provision for fast-track approval depending on the urgency of the advertisement.<sup>34</sup>
- c. No advertisement under the vetting category should be exposed unless a Certificate of Approval from the Advertisement Standard Panel, signed by the Registrar of APCON has been received by the applicant or media house<sup>35</sup>
- d. Copies of the Certificate of Approval must be attached to all media orders
- e. Where request to advertise has been refused or denied, an applicant may appeal to the Governing Council of APCON through the Registrar stating the ground(s) of appeal<sup>36</sup>
- f. Approval to advertise could be withdrawn or revoked by the ASP at any time after it has been granted if in the opinion of the ASP, any condition for such approval has been violated, altered, or changed in any way or new facts have emerged to affect the validity or authenticity of earlier data/claims submitted by the applicant.

The Advertising Practitioners Council of Nigeria endorses the guidelines as provided by the ASP stipulating that all categories of advertisements except [a] Vacancies [b] Notices [c] Financial Statements [d] Goodwill Messages [e] Obituaries [f] Immemorial are subject to the vetting procedure.

**c) Federal Competition and Consumer Protection Act (FCCPA)<sup>37</sup>**

The FCCPA's broad objectives include creating and sustaining a competitive market in Nigeria, promoting economic efficiency, defending consumer rights and welfare, preventing restrictive and unfair corporate practices, and assuring Nigerian economic progress. According to its aims, the provisions of the FCCPA take precedence over other rules dealing with competition and consumer protection in Nigeria.<sup>38</sup> The FCCPA functions to organise or undertake campaigns and other forms of activities capable of promoting increased private and public consumer

---

<sup>32</sup> Rule 7, Vetting Guideline

<sup>33</sup> *Ibid*, rule 6

<sup>34</sup> *Ibid*, rule 7 (2)

<sup>35</sup> *Ibid*, rule 7 (3) and (4)

<sup>36</sup> *Ibid*, rule 7 (5)

<sup>37</sup> Federal Competition and Consumer Protection Act 2019

<sup>38</sup> *Ibid*, section 104

awareness, it regulates and seeks ways and means of removing or eliminating from the market, hazardous goods and services, including emissions, untested, controversial, emerging or new technologies, products or devices whatsoever; and cause offenders to replace such goods or services with safer and more appropriate alternatives, it gives and receives advice from other regulatory authorities or agencies within the relevant industry or sector on consumer protection and competition matters, ensure that consumers' interests receive due consideration at appropriate fora and provide redresses to obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade associations or individuals, and collaborate with consumer protection groups and associations for consumer protection purposes.<sup>39</sup>

**d) Standards Organisation of Nigeria Act<sup>40</sup> (SONA)**

The Act provides for the establishment of a Standard Council for the regulation of products. It further provides for the function of Standard Organisation of Nigeria, which includes, but is not limited to: Certifying Products; Creating regulations for producing quality goods and services; evaluating quality assurance efforts, including certification of systems, products, and laboratories in Nigeria; setting standards for metrology, materials, commodities, structures, and processes are designated, approved, and declared; certifies commercial and industrial items in Nigeria; registering and controlling standard trademarks and specifications, etc.; investigate product quality, enforce standards, and discipline violators; Collecting inventory of products in Nigeria that require standardization; and monitoring the quality of imported and exported items, enhancing measurement accuracy, and sharing standards-related information.

In relation to advertisements, in particular misleading advertisements, the organisation is empowered to Investigate the quality of advertisements, enforce standards, and discipline violators.

## **6.0 Legal Determination of Genuine Advertisement**

Determining the genuineness of advertisements in Nigeria, as in many other jurisdictions, typically involves adherence to legal standards and regulations set forth by relevant authorities.<sup>41</sup> The regulatory body overseeing advertising practices in Nigeria is the Advertising Practitioners Council of Nigeria (APCON).<sup>42</sup>

In determining whether an advertisement is genuine and not intended to be misleading or does not have element of misrepresentations, it is essential that there are some legal considerations. This can be seen in the level of compliance with advertising regulations, advertisements must comply with the advertising regulations set by APCON. These regulations cover various aspects of advertising, including content, claims, comparative advertising, and endorsements. Advertisements must comply with all relevant laws and regulations, including but not limited to consumer protection laws, intellectual property laws, and competition<sup>43</sup>.

The truthfulness and accuracy of the advertisement must also be put to test, that is, such advertisement should not contain any false, misleading, or deceptive statements or claims, this is verifiable by advertisers who are expected to substantiate any claims made in their advertisements with evidence. Advertisements should be fair to consumers and competitors. They should not denigrate competitors or make false comparisons. Comparative advertising

---

<sup>39</sup> See generally section 17, FCCPA, 2019

<sup>40</sup> Standard Organisation of Nigeria Act, 2015

<sup>41</sup> Advertising Practitioners Council of Nigeria, Cap A7, Laws of the Federation of Nigeria

<sup>42</sup> APCON was established by the Advertising Practitioners (Registration, etc.) Act

<sup>43</sup> Compliance with the Vetting Guidelines

must be truthful and should not unfairly discredit competitors. Advertisements should respect Nigeria's cultural and social values. They should not promote content that is offensive, indecent, or obscene. The health and safety of consumers is a paramount consideration in advertising, thus, promoting products or services related to health or safety must comply with relevant regulations and should not make exaggerated claims about their benefits.<sup>44</sup>

Advertisements should be presented clearly and transparently, this implies that advertisers should not use ambiguous language or visuals that could confuse or mislead consumers. Hence, advertisements should be identified as such to avoid confusion between editorial content and advertising, thus, any attempt to disguise advertisements as unbiased editorial content or mask within daily news such that it is confusing as to the nature of the publication qualifies as misleading advertisement.<sup>45</sup>

The interest of vulnerable groups is also of utmost importance in considering the genuineness of advertisements. Hence, advertisements should not exploit the vulnerabilities of children, the elderly, or any other person or persons who are deemed to fall within the purview of vulnerable groups. Advertisers should be sensitive to the potential impact on these groups. In addition, advertisements that encourage activities that harm the environment are regarded as harmful and misleading.<sup>46</sup>

### **6.1 Effects of a Disclaimer of Truth in An Advertisement**

In a product disclaimer, sellers, marketers, and manufacturers tell consumers what to expect from their products or product reviews. Product disclaimers are a type of legal disclaimer. They are statements that appear on products or in advertisements that warn consumers about possible risks involved with using the product. Product disclaimers can be found on many consumer goods, including medicine, food, and household products. These disclaimers aim to inform the consumer about any potential risks associated with using the item in question.<sup>47</sup>

Businesses, to avoid product liability, may insert disclaimers in contracts to prevent legal issues caused by customer misuse of items, resulting in damage or harm. Disclaiming a product's potential in advertising might generate consumer expectations and legal responsibilities. This is always inserted to warn or advise users about the proper usage of the product; to limit the legal liability of the producer of the product; and to protect consumer rights. The customary disclaimer wording avoids responsibility for any errors or omissions that may occur. This stops people from filing legal action against the company due to a simple mistake.<sup>48</sup> Where an advertiser issues a product disclaimer, the following might be the effect depending on the various circumstances.

- a) If a buyer expressly or implicitly informs the seller of the purpose for which the goods are required, and the goods are of a description that the seller is in the business of supplying (whether the seller is the manufacturer or not), there is an implied condition that the goods are fit for that purpose. However, in the case of a contract for the sale of a specified article under

<sup>44</sup> García-Nieto MT, González-Vallés JE, Viñarás-Abad M., 'Social Responsibility and Misleading Advertising of Health Products on the Radio: The Opinion of the Professionals' (2021) 18 (13) *Int J Environ Res Public Health*. . doi: 10.3390/ijerph18136912. PMID: 34203153; PMCID: PMC8297168.

<sup>45</sup> Advertising Practitioners Council of Nigeria Vetting Guidelines, Rule 7 (6)

<sup>46</sup> Soraghan M, Abdulkareem TO, Jennings B, Boateng JA, Chavira García J, Chopra V, Rout BP, Ujam K, Dalglish SL. 'Harmful Marketing by Commercial Actors and Policy Ideas From Youth' (2023) 1 (38) *Health Promot Int*. doi: 10.1093/heapro/daad149. PMID: 37975743; PMCID: PMC10655631.

<sup>47</sup> Contract's Counsel, 'What is a Product A Disclaimer' online at <https://www.contracts-counsel.com/t/us/product-disclaimer>> accessed 28 March 2024.

<sup>48</sup> Aderonke E. Adegbite *et.al.*, *Op.cit*

its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.<sup>49</sup>

- b) When purchasing items by description from a seller, it is assumed that the commodities are of merchantable quality, regardless of whether the seller is the manufacturer. If the buyer has examined the products, there are no implicit conditions regarding faults that should have been identified during the inspection.<sup>50</sup>

If any of the disclaimers offend the clear provisions of the Act enunciated above, obviously, then an aggrieved party has a cause of action and he is entitled to remedy as provided by the Act. Thus, an astute businessman legal practitioner cannot use the canopy of disclaimers to escape liability

### **7.0 Challenges in the Enforcement of Advertising Regulations**

Nigeria has multiple regulatory bodies overseeing advertising, including the Advertising Practitioners Council of Nigeria (APCON), National Broadcasting Commission (NBC), and National Agency for Food and Drug Administration and Control (NAFDAC). Coordinating efforts and ensuring consistency among these bodies can be challenging.

Many advertisers may not be fully aware of the advertising regulations in Nigeria, leading to unintentional violations. Educating advertisers about the regulations and their implications is crucial but can be difficult to achieve comprehensively. Limited resources, including funding and personnel is another challenge that can hamper the enforcement efforts of regulatory bodies. Insufficient manpower and training may result in inadequate monitoring and enforcement of regulations.

Nigeria has a significant informal economy, where businesses may operate outside formal regulatory frameworks. Enforcing advertising regulations within this sector can be particularly challenging due to its decentralized and often unregulated nature. With the advent of digital advertising, enforcing regulations on cross-border advertising platforms such as social media and online marketplaces becomes complex. Regulatory bodies may struggle to monitor and regulate advertisements originating from outside Nigeria's jurisdiction.

Political influence or pressure on regulatory bodies can undermine the enforcement of advertising regulations. Advertisers with political connections may seek preferential treatment or attempt to circumvent regulations. There are also legal loopholes or ambiguities<sup>51</sup> in existing advertising laws and regulations that can be exploited by advertisers to evade compliance. Protracted legal processes may also delay or impede enforcement actions. Rapid advancements in advertising technology, such as targeted advertising and influencer marketing, present new challenges for regulators. Keeping pace with these developments and adapting regulations accordingly can be demanding.

### **8.0 Conclusion**

This study has reviewed what advertisement is, misleading advertisement and the regulations thereof, the effect of a disclaimer of truth in advertisement, and the public and private responses to the problem of misleading advertisement, the study found that there are statutory regulations and self-regulations implemented by public and private bodies respectively in the regulation of advertisement in Nigeria, the study also identified the means of legal determination of genuine

---

<sup>49</sup> Sales of Goods Act, Section 13 (1)

<sup>50</sup> *Ibid*, Section 13 (2)

<sup>51</sup> Girimaji P., 'Misleading Advertisements and Consumers' [https://consumeraffairs.nic.in/sites/default/files/file-uploads/misleading-advertisements/misleading\\_advertiesment\\_and\\_consumer%20%281%29\\_0.pdf](https://consumeraffairs.nic.in/sites/default/files/file-uploads/misleading-advertisements/misleading_advertiesment_and_consumer%20%281%29_0.pdf) accessed 10 October 2024.

advertisement and the stages of vetting of advertisement as recommended by the vetting guideline of Advertiser's Practitioners Council of Nigeria.<sup>52</sup>

Although it has been identified that there are several regulations guiding advertisement, the problem lies in compliance with the regulations and proper enforcement of the existing regulations, also, the existing laws are not in total conformity with present reality.<sup>53</sup>

## 10.0 Recommendations

The paper has identified some gaps in the regulation of advertisements and the challenges faced by regulators. In order to address effectively the gaps identified, one of the major steps will be strengthening of regulatory frameworks, enhancing existing regulations and enacting stringent laws specifically targeting misleading advertising practices is a much-needed intervention. This may include penalties for violators and mechanisms for swift enforcement. It is also imperative that consumers are aware of their rights and the appropriate enforcement mechanisms, therefore, consumer education and awareness is a necessity to empower consumers with knowledge that can help them make informed decisions and recognize deceptive marketing tactics. Similar to consumer awareness is public campaigns to highlight the importance of truthfulness and transparency in advertising, and emphasise the negative consequences of deceptive practices on consumers' well-being and the broader economy. Collaboration with industry stakeholders is highly recommended to foster partnerships between regulatory bodies, consumer advocacy groups, and industry players to develop industry-wide standards and guidelines for truthful advertising.

At the core of our recommendations is the enactment of Laws to conform to present reality. With the inflow of advertisements on social media platforms and the difficulty by the regulatory bodies to track and properly enforce the laws, it is imperative that laws be enacted to generally meet up with the present reality of digital and technological advancement specifically for social media advertisement.

In the realm of advertising, disclaimers play a crucial role in conveying additional information or clarifying certain claims made in advertisements. However, it's essential to ensure that disclaimers are used ethically and transparently to uphold truthfulness and protect consumer interests. Here are some recommendations regarding the use of disclaimers in advertisements. Disclaimers should be prominently displayed and easily readable or audible to consumers. They should not be hidden or obscured in any way, ensuring that consumers can access important information without difficulty and should not be used as a means to deceive or mislead consumers. They should accurately reflect the limitations, conditions, or risks associated with the advertised product or service, helping consumers make informed decisions. Disclaimers should be written in clear and understandable language, avoiding jargon or technical terms that may confuse consumers. The aim is to ensure that consumers can easily grasp the implications of the disclaimer in relation to the advertisement's claims and should be proportional to the claims being made in the advertisement. They should not overshadow or undermine the main message of the advertisement but rather provide necessary context or additional information to enhance consumer understanding. Advertisers should ensure that disclaimers comply with relevant laws, regulations, and industry standards governing

---

<sup>52</sup> Otun, Olalekan and Ajilore, Kolade, - Influence Of Nigerian Regulatory Procedures On Newspapers' Advertising Revenue' (2023)

[https://www.researchgate.net/publication/369913075\\_Influence\\_of\\_Nigerian\\_regulatory\\_procedures\\_on\\_newspapers'\\_advertising\\_revenue](https://www.researchgate.net/publication/369913075_Influence_of_Nigerian_regulatory_procedures_on_newspapers'_advertising_revenue) accessed 10 October 2024

<sup>53</sup> Advertising Practitioners vetting Guidelines, 1992.

advertising practices. This includes adhering to specific requirements regarding the content, placement, and format of disclaimers.

Implementation and adherence to these recommendations by advertisers can effectively enable the use of disclaimers to convey truthful and transparent information to consumers, thereby fostering trust and accountability in the advertising industry.

### References

- Aaker L. J., 'Dimensions of brand personality' (1997) 34 *Journal of Marketing Research*,
- Abideen Z, and Salman S, 'Effective Advertising and Its Effect on Consumer Buying Behaviour' 3 (3) *European Journal of Business and Management*.
- Adegbite A. E., and Others 'Disclaimers and Advertisement Rules on Manufacturers Products in Nigeria' (2023) *SSRN*.
- Advertisement Practitioner Council Act 1992
- Advertising Practitioners Council of Nigeria, Cap A7, Laws of the Federation of Nigeria
- Advertising Practitioners Council of Nigeria Vetting Guidelines
- Advertiser's Association of Nigeria, 'About ADVAN' online at <https://advertisersnigeria.com/about/>
- Advertising Practitioners Vetting Guidelines, 1992.
- Broadcasting Organisations of Nigeria, 'About BON' online at <https://bon.ng/objectives/>
- Awosika, Jimi (2016). 'Regulation in the Post Digital Age' Advertising Practice' Paper presented at APCON Public Forum.
- Ezinwa C. A., 'Regulating Online Advertising in Nigeria: Challenges and Prospects' online at..
- Ezinwa, C. A. *Advertising Practice and Consumer Protection* (2007, Unpublished LL.B Project).
- Contract's Counsel, 'What is a Product A Disclaimer' online at <https://www.contractsounsel.com/t/us/product-disclaimer>>
- Federal Competition and Consumer Protection Act 2019
- Maniu A. I. and Zaharie M. M., 'Advertising Creativity- The Right Balance Between Surprise, Medium and Message Relevance' (2014) 15, *Procedia Economics and Finance*.
- Melgar L. M. B., & Robert J. F. E. 'A Review of Advertising in the 21st Century' (2016) 7 (4) *International Journal of Business Administration*.
- Modi N. & Ramarao P., 'Misleading Advertisements', (2019) 6 (1) - *International Journal of Research and Analytical Reviews*
- Nzeribe, M. M. (2012). *Advertising Ethics and Regulations in Nigeria*. Ibadan: Feathers and Ink
- Outdoor Advertisement Association of Nigeria, 'Aims and Objectives of OOAN' online at <https://oan.org/aims-objectives-2/>
- Onuorah J. E., 'Imperative of Advertising Regulation' *International Journal of Communication*.
- Ozoh, H.C., 'Statutory Regulation and Self-Regulation: Options and Perspectives in Nigeria Advertising Scene' in Nzeribe, M.M. *Advertising ethics and regulation in Nigeria: The challenges*. (Ibadan: Feathers and Ink, 2012)
- Sales of Goods Act
- Standard Organisation of Nigeria Act, 2015
- TEMPLARS Market Report, 'Advertising in Nigeria: A Synopsis of Recent Regulatory Developments' (2022) online at <https://www.templars-law.com> accessed 21 March 2024.

The Nigerian Code of Advertising Practice, Sales Promotion and Other Rights/Restrictions on Practice LFN 2004

Williams A. F., *Contemporary Advertising* (Richard D. Irwin, A. Times Mirror Higher Education Group Inc. Company U.S.A 1996)

World Federation of Advertisers 'About WFO' online at <https://wfanet.org/about-wfa/who-we-are>

Wright R, *Advertising* (Harlow, Pearson UK 2000)