

THE ADVERTISING REGULATORY ACT 2022 AND GOOD GOVERNANCE IN ADVERTISING INDUSTRY IN NIGERIA

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Abstract

This growth in advertising has involved a gradual revolution from the simplest operations in the early days to the very complex nowadays. Today, because of the importance of advertisement to the society, it has evolved to be one of the focal concerns of the government. In the circumstances, it is safe to include advertising as a cardinal part of the broad term 'Media', while attributing to it the very many qualities media that makes the media pivotal to a democracy. The resonating issues that inform the burden of the paper is neither about the media nor advertisement it itself. Over the years there has been a legalistic struggle to harmonize the legal regime of advertisement which has birthed a lot of pressure groups and Media Trade Unions. Some of these bodies include: Advertising Association of Nigeria (ADVAN); Association of Advertising Practitioners of Nigeria (AAPN); Broadcasting Organization of Nigeria (BON) Newspapers Proprietors Association of Nigeria (NPAN); and Outdoor Advertising Association of Nigeria (OAAN). Principally, the Advertising Practitioners Council of Nigeria (APCON) established by the Advertising Practitioners Act No. 55 of 1988, as amended by Act No. 93 of 1992 and Act No. 116 of 1993 which was later Advertising Practitioners Registration Act Cap A7 of 2004 maintained as the legal framework that regulated advertising. With the repeal of this APCON Cap A7 LFN 2004, which has been replaced with ACON 2022. The paper seeks to appreciate the regulations of the advertisement, examine the underpinnings of advertisement especially as it relates to guaranteeing good governance, holistically examine the new APCON and render some recommendations.

1.0 Introduction

Advertising is a vital marketing tool utilized by businesses to promote their products and services. Businesses engage in advertising for various reasons, some of which include: to inform the public or their target audience about a new product or service, draw attention to

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additional features of a product or service, acquire recognition and goodwill in the marketplace, and promote their brand.¹

Works on the nature of law often begins with a definition of law; and if a definition is not proposed, it is usually presupposed as the necessary starting point.² Thus, a definition of important terms as they tend to reoccur in this discourse is provided herein as a way of conceptual framework.

2.0 Conceptual Clarification

Advertising is defined by the Oxford Learners dictionary as the activity or profession of producing advertisements for commercial products or services.³ It is further defined as a means of communication with the users of a product or service.⁴ Adam Augustyn defines it as the techniques and practices used to bring products, services, opinions, or causes to public notice for the purpose of persuading the public to respond in a certain way toward what is advertised.⁵ To buttress this point further, the media stands at the forefront, acting as the nexus between the governed and the government, holding the later accountable to the former. Least wonder, O. S. Omoera noted categorically: The media being described as a watchdog is in recognition of its watchful and critical role against the bad practices of the government and private individuals...

The media have been irrepressible in holding the citizenry, particularly the political leaders accountable in Nigeria.⁶ Media on the other hand, is the plural form of medium, which (broadly speaking) describes any channel of communication.⁷ The description of the media does not just represent the press alone, it includes the main means of mass communication (broadcasting, publishing, and the internet) regarded collectively.⁸ This can include anything from printed paper to digital data, and encompasses art, news, educational content and numerous other forms of information. Anything that can reach or influence people, including phones, television, and the Internet can be considered a form of media.⁹ In other words, when it is said that the media oils the wheels of good governance and democracy; the word 'Media' can easily be interchanged with the word 'Advertising'. Consequently, the erudite authors described this unique relationship thus: 'Fourth Estate of the Realm' after the Executive, Legislature and

¹ Adarmymin, *The Importance of Advertising for a Company* <<https://www.spinpro.com/post/the-importance-of-advertising-for-a-company>> Accessed on 12th December 2019.

² L. E. Mitee, *Nigerian Legal System: A Fundamental Approach*, (Vol. II, Ebenezer Printing and Publishing House Ltd, 2002), P. 71.

³ Oxford English Learning Dictionary, 'Advertising', Oxford-Learning, <<https://www.oxfordlearning.org/dictionary/advertising>> accessed 5th October, 2022.

⁴ The Economic Times, 'Marketing: What is advertising', <<https://economictimes.indiatimes.com/definition/advertising>> accessed 5th October, 2022.

⁵ Adam Augustyn, Britannica, 'Advertising: Communication' <<https://www.britannica.com/topic/Better-Business-Bureau>> accessed 5th October, 2022.

⁶ O. S. Omoera, 'The Import of the Media in an Emerging Democracy: an Evaluation of the Nigerian Situation' (2010) [22] [1], *Journal of Social Science*, 33-38.

⁷ Chinyere S. Okunna, *Introduction to Mass Communication* (2nd ed., New Generation Books, 1999).

⁸ Oxford English Learning Dictionary, 'Media', Oxford-Learning, <<https://www.oxfordlearning.org/dictionary/media>> accessed 5th October, 2022.

⁹ Justin Stoltzfus, 'Media' <<https://www.techopedia.com/definition/1098/media>> accessed 5th October, 2022.

Judicial arms of government, and the ‘society watch dog’ the media function as organs of information circulation which makes them key in the relationship between the government and the citizens.¹⁰

Good Governance, as the phrase implies is a combination of two words ‘good’ and ‘governance’. The term ‘good’ need not be over flogged as it enjoys common knowledge as anything desirable or admirable. Governance on the other hand is not entirely a new concept. It is said to be as old as human civilization. Simply put ‘governance’ means the process of decision-making and the process by which decisions are implemented (or not implemented).¹¹ In a broader sense, Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance. A careful read of both words: ‘good governance’ would reveal a desirable process of decision-making and the process by which decisions are implemented devoid of corruptions and where due process is entrenched. On the contrary, Bad governance is seen as something to be abhorred. It is being increasingly regarded as one of the root causes of all evil within our societies. Major donors and international financial institutions are increasingly basing their aid and loans on the condition that reforms that ensure "good governance" are undertaken. Even so, within the advertising industry, there is a need for good governance practice.

3.0 Legal Regimes of Advertising Regulation in Nigeria

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”),¹² b. Advertising Practitioners Council of Nigeria (APCON) Vetting Guidelines (Vetting Guidelines) 2018, c. Standards Organisation of Nigeria Act, 2015 (SONA)¹³

The major administrative body responsible for regulating advertising in Nigeria is the Advertising Practitioners Council of Nigeria (hereinafter referred to as APCON) is the crux and forms the focal concern of this paper, not maligning other regulations. Other regulatory bodies include the National Agency for Food, Drug Administration and Control (NAFDAC), Nigerian Communications Commission (NCC), Central Bank of Nigeria (CBN), the National Broadcasting Commission (NBC) and Federal Competition and Consumer Protection Commission (FCCPC), among others. These bodies regulate advertising of specific products and services in Nigeria, such as food and drugs, telecommunication services, cosmetics, etc.

¹⁰ K.A., Omenugha, & C.E., Uzuegbunam, ‘Media, Government and Good governance in Nigeria: arch foes or potential allies?’ (2012) *The Humanities and Good Governance*, <<https://www.researchgate.net/publication/339271118>> accessed 5th October, 2022.

¹¹ United Nations: Economic and Social Commission for Asia and the Pacific, ‘What is Good Governance’, <<https://www.unescap.org/pdd>

¹² Effective 1st March 2017.

¹³ Para. 0.6, Preamble to the Code, p. B1730.

According to the Advertising Code, “all advertisement 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.”¹⁴ Therefore, all forms of advertisement must be legal i.e., must not be contrary to any law in Nigeria. It must also be honest and true, respectful and cognizant of Nigeria’s culture and the provisions of the constitution and local laws. Models used in advertisements to promote products or services must be Nigerians except where the concept specifically requires non-Nigerians to act in this capacity.¹⁵ Where the concept and business objective of the advertisement requires non-Nigerians, the sum of ₦500, 000 is required to be paid to the Advertising Standards Panel (ASP) for each content or version of the advertisement.¹⁶ Due to this requirement, the ASP may also require substantial reasons for using non-Nigerians as models from the applicant.

According to Section 123 (1) of FCCPA¹⁷, a producer, importer, distributor, retailer, trader or service provider shall not make any false representation to a consumer in a manner that is likely to imply any false or incorrect representation concerning those goods. Similarly, Article 84 of the Advertising Code provides that the product advertised must conform to the descriptions as provided in the advertisement. It must be an exact replication of the descriptions and features as mentioned in the pages referred to above. The descriptions, claims or illustration in an advertisement shall be subject to empirical proof or capable of substantiation.¹⁸ The ASP may require that advertisement content be substantiated and the evidence of claims be provided for testing. This is to ensure and confirm that the claims and illustration(s) stipulated in the advertisement are true and verifiable.

Advertisements should not exploit, depict, or suggest sexual behaviour either in obvious or implied context.¹⁹ Advertisements must be decent and should not contain statements, pictures or illustrations which either suggest or imply sexual behaviours. The Advertising Code provides that the content of an advertisement including, statements and pictures used, must not breach any Nigerian copyright or international copyright laws or intellectual property rights. If a Company has or intends to use a third party’s copyrighted works or intellectual property rights, adequate permission should be obtained from the owner of such right or referenced in the advertisement content.²⁰

Advertisements should provide the price for each product in the currency of the Federal Republic of Nigeria (i.e., Naira). Section 115(1) of FCCPA stipulates that “An undertaking

¹⁴ Article 125 Advertising Code.

¹⁵ Section 9 Vetting Guidelines. The ASP is responsible for vetting advertisement before it is published and is charged with the duty of ensuring that advertisements conform to the prevailing laws of the Federation as well as the code of advertising ethics of the advertising profession.

¹⁶ Article 23 Advertising Code

¹⁷ Federal Competition and Consumer Protection Act, 2018

¹⁸ Article 4 Advertising Code

¹⁹ Article 10 Advertising Code.

²⁰ Section 115(2) FCCPA 2018

shall not display any goods or services for sale without adequately displaying to the consumer a price of those goods or services.²¹ Also, majority of the advertisement content should be Nigerian, and predominantly rendered in the English language as this is the applicable language in Nigeria.²² Product specifications are required to comply with the Nigerian Industrial Standards provided by the Standards Organisation of Nigeria (SON). The SON provides standards and quality assurance services for all products, services and processes in Nigeria in line with international best practices. Some products require certification by the SON to verify that they conform to the applicable National Industrial Standards or approved equivalents, and technical regulations.

In addition to any specific sanction provided in the Advertisement Code, Article 141(b) of the Advertising Code provides a list of sanctions which the Council of APCON shall apply where provisions in the APCON Act, the Advertising Code, other regulations have been breached. These sanctions include reprimand, warning, fine, reduction of scope of licence, temporary suspension of registration or licence, removal from the register of practice, among others.

4.0 Advertising Codes as a Viable denominator in Advertising Regulation

Article 21 of the Advertising Code stipulates that all advertisements except those for public service announcements, goodwill messages, obituaries and vacancies shall be presented for vetting and approval by the Advertising Standards Panel (ASP) before exposure to the public. All media houses are required to demand an ASP Certificate of Approval, before placing any advertisements on their platform.²³ This is also reiterated in the Vetting Guidelines.²⁴ Any media house that exposes an advertisement without the ASP Certificate of Approval will be liable to a minimum penalty of N500,000.²⁵

The requirements for pre-approval of advertising materials are contained in the Vetting Guidelines. According to the Vetting Guidelines, an application must be made by an APCON registered practitioner, which would be forwarded to the Registrar of APCON together with all the required documents.²⁶ The ASP recognizes that certain forms of advertisements may require submission to relevant self-regulatory organizations for clearance before they are presented to it for vetting. Examples of such organizations include; CBN, NAFDAC, NBC and FCCPC.

²¹ Section 8.1 Vetting Guidelines

²² Article 21, Advertising Code

²³ Para. 7.4, vetting Guidelines

²⁴ Para. 14(a) Vetting Guidelines

²⁵ Para. 7.1 Vetting Guidelines

²⁶ Para. 6.1 – 7.8 Vetting Guidelines.

5.0 The requirements for pre-approval of advertising materials are stipulated below:²⁷

- a. A formal application letter for vetting addressed to the Registrar/CEO APCON.
- b. ASP form 001 filled and duly signed by a registered advertising practitioner not below an Associate Member (ARPA), stating his/her APCON Registration number.
- c. Product's NAFDAC Certificate or payment advice (where necessary) must be attached.
- d. The Client's letter of authorization to advertise the product/service, signed by an APCON registered practitioner.
- e. The material concept/version; professionally produced copy/layout, in color must be submitted for approval before the issuance of the ASP's Certificate.
- f. Product samples of not less than 12 (twelve) units must be supplied.
- g. Evidence of the product registration with the appropriate government agency.
- h. Demonstrations might be necessary in some cases and advertisers or their agencies must be prepared to provide the demonstration.

The advertisement material being vetted should not be exposed unless a Certificate of Approval from the ASP, signed by the Registrar of APCON has been received by the applicant.²⁸ An Agency which creates and/or places for publication or exposure of an advertisement without the ASP Certificate of Approval will be liable to a minimum penalty of N500, 000.²⁹

The approval to advertise could be withdrawn or revoked by the ASP 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.³⁰ The approvals from the ASP contain identification codes which must be reflected in all advertising materials.³¹

In a recent directive released by the ASP, the ASP stated that all communication materials regardless of the medium to be exposed must be duly vetted by APCON before exposure to the public. These materials include internet-based advertisements and should be produced for

²⁷ Para. 7.4 Vetting Guidelines

²⁸ Para. 14(b) Vetting Guidelines

²⁹ Para. 14(c) Vetting Guidelines

³⁰ Para. 7.8 Vetting Guidelines

³¹ Techpoint.africa, APCON wants to charge a ₦25,000 fee on all online advertising in Nigeria, available at <<https://techpoint.africa/2019/09/03/apcon-online-ads-approval/>> accessed on 27th December 2019.

approval before exposure on any social media platform. It was also mentioned that the provisions of the Advertising code should be adhered to when considering exposing internet-based advertisements and related marketing communications.³²

In monitoring the compliance of advertisements with laws and regulations, APCON's Monitoring Unit, in addition to other services, utilize the services of media monitoring agencies. Members of the ASP and APCON also provide monitoring information. The public also report cases of unwholesome advertisements to APCON.³³ APCON has also been able to curb some illegal and unapproved advertisements by monitoring advertisements. For instance, in 2013, APCON banned all alcohol advertisements on television from Guinness Nigeria Plc. Guinness aired an advertisement outside the prescribed periods allowed by article 39 of the APCON Code of Advertising and Promotion guidelines, which 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.³⁴ APCON also withdrew all certificates of approval issued to Guinness for advertisement of alcoholic beverages from 2012. The ban was later lifted after compliance by Guinness.

*The Court of Appeal in APCON v. the Registered Trustees of International Covenant Ministerial Council (ICMC) & Ors*³⁵ held that religious organizations are excluded from APCON's oversight. In this case, the Plaintiffs/Respondents filed an action against Defendant/Appellant based on a letter from the Appellant requesting the Respondents to submit their religious advertisements for vetting. The Respondents contested the power of the Appellant to review advertising material of a religious nature and argued that it constituted an infraction of their Constitutional rights based on sections 10, 28, 39, 40 and 42 of the 1999 Constitution. The Federal High Court upheld the contentions of the Respondents on the ground that the Advertising Practitioners Registration Act, Cap. 7, Laws of the Federation of Nigeria 1990 as amended by Decree No. 93 of 1992 imposed no limitations on the right to freedom of worship as guaranteed under section 38 of the 1999 Constitution. The Appellants thereafter appealed to the Court of Appeal which affirmed the judgment of the lower court and held that the APCON Act imposes a restriction on the right of freedom of worship as guaranteed under section 38 of the Constitution, and APCON has no right to compel religious organizations to produce religious materials for vetting before being displayed, broadcast or aired. The Court also held that APCON does not possess expert knowledge of Islamic matters, traditional

³² Para. 15.1 Vetting Guidelines.

³³ Brand News, APCON, Guinness Go To War Over Breach of Advertising Laws, available at

<<https://www.brandessencenigeria.com/apcon-guinness-go-to-war-over-breach-of-advertising-laws/>> accessed on 23rd December, 2019

³⁴ FinIntell, APCON Lift Ban on Guinness Ad Material, available at <<http://www.myfinancialintelligence.com/business-news-brief/apcon-lifts-ban-guinness-ad-materials>> accessed on 23rd December 2019

³⁵ (2010) LPELR-3630 (CA).

religion or biblical teachings as contained in the Holy Bible to be able to regulate the practice of the various religions.³⁶

5.1 The Repeal of Advertising Practitioners (Registration, etc.) Act, 2004 and the Enactment of Advertising Regulatory Council of Nigeria Act, 2022

The Advertising Practitioners Council of Nigeria (APCON) was established by the Advertising Practitioners Act No. 55 of 1988, as amended by Act No. 93 of 1992 and Act No. 116 of 1993 (now Advertising Practitioners Registration Act Cap A7 of 2004). This will also help to retune the frequency of advertisement to a fairer and regulated practice.³⁷

The adoption of a broad national mass communication policy by the National Council of Ministers in January 1988 was a milestone in the establishment of the Advertising Practitioners Council of Nigeria (APCON). The various discussions that followed the adoption of the national mass communication policy articulated the relevance and the leadership role of advertising to the nation's social, political and economic development as well as the need for official recognition and regulation of the practice.

The Advertising Practitioners Council of Nigeria (APCON) was subsequently established by the Act number 55 of 1988 as a logical outcome of these discussions. The Act accorded deserved state legislative recognition of advertising as a profession in Nigeria and vested APCON with powers to control and regulate practice of advertising in Nigeria, in all its aspects and ramifications. APCON maintains a strong focus on its vision of promoting responsible and ethical advertising practice, acts as the conscience of society in matters of commercial communications and as a watchdog for consumers. It also manages the need and interests of stakeholders in Nigeria's advertising industry.

APCON cooperates with these Sectorial associations in regulating the conduct of their member organization to ensure a socially responsible practice. By insisting on pre-exposure clearance of all advertisements, APCON strives to check all forms of abuses such as misleading statements, spurious testimonials, visual and verbal exaggerations, misleading offers, suggestion or pictures offensive to public decency, etc.

President Muhammadu Buhari assented to the Advertising Regulatory Council of Nigeria bill passed by the National Assembly. This new Act repeals the Advertising Practitioners Registration Act, Cap. A7, Laws of the Federation of Nigeria 2004 and enacts the Advertising Regulatory Council of Nigeria Act, 2022 to establish a Council for advertising, advertisements and marketing communications as the apex regulatory authority for the Nigerian advertising

³⁶ 32 Nigerian Law Intellectual Property Watch, APCON v. The Registered Trustees of International Covenant Ministerial Council (ICMC) & Ors, available at <<https://nlipw.com/cases-principles/advertising-practitioners-council-nigeria-apcon-v-registered-trustees-international-ministerial-council-icmc-ors/>> accessed on 27th December 2019

³⁷ Okemdi C. Nnubia, 'Retuning the frequency of advertisement to save the innocent public: A legal Appraisal' Journal of Public Law Rivers State University (Volume 8[1] (Zubic Infinity Concept Owerri, 2021 Imo State) p. 51

industry. It also makes provision for the regulation and control of advertising, ensure the protection of the general public and consumers, promote local content and entrench the best international practices.

6.0 The Advertising Regulatory Council of Nigeria (ARCON) Act, 2022

Notwithstanding the provisions in any other Act, ARCON has exclusive power to determine, pronounce upon, administer, monitor, and enforce compliance by persons and organizations on matters relating to advertisements, advertising, and marketing communication in Nigeria, whether of a general or specific nature. The legislation makes provision for the regulation and control of advertising, ensures the protection of the general public and consumers, promotes local content, and entrenches best international practices. Tech-economy recalls that the Advertising Regulatory Council of Nigeria, ARCON, had before now announced a ban on the use of foreign voice-over artists and models with effect from October, 2022. The new law repealing the Advertising Practitioners (Registration, etc) Act, Cap A7, Laws of the Federation of Nigeria, 2004 and bringing into force the Advertising Regulatory Council of Nigeria (ARCON) Act, 2022 will determine, administer, monitor and enforce compliance by persons and organisations on matters relating to advertisements, advertising and marketing communication in Nigeria, whether of a general or specific nature.

Speaking at a recent forum organised by ARCON³⁸, the Director General, Dr. Olalekan Fadolapo, said new Act is important considering that the Independent National Electoral Commission (INEC) will soon permit political parties and candidates to flag off campaign for the 2023 General Election. He further said the new Act was enacted with the sole purpose of establishing a council for advertisements and marketing communications as the apex regulatory authority for the Nigerian advertising industry, the new law makes provision for the regulation and control of advertising, ensure the protection of general public and consumers, as well as, promote local content and entrench the best international practices and others.³⁹

7.0 Highlights of ARCON Act 2022

Highlights of the new law includes:

- a. A Preamble, which talks about the milestones of advertising in Nigeria as a business and a profession;
- b. Remit of the law, which simply repeals the advertising practitioners (registration ACT, Cap. A7, laws of the Federal Republic of Nigeria 2004, application of the act, states the people and departments the law applies to.

³⁸ On 30 August 2022

³⁹“Advertising-Practitioners-Council-of-Nigeria”, <<http://www.williamsdabogroup.com/advertising-practitioners-council-of-nigeria/>> accessed November 6, 2022

- c. Interpretation of terminologies, defines the departments the law applies to, why establishment lists all the stakeholders involved in governing the council,
- d. Functions of the council, are also clearly stated as well as its powers.

The privileges of registered persons and offences by unregistered persons are clearly stated, part of which is simply not been entitled to hold any appointment in the public service of the federation or state or any public service among others. Statutory committees and bodies comprise of the different panels of disciplinary tribunals and miscellaneous provisions deals with offenders as well.

Political advertising in the country has been amorphous in nature with politicians, political parties and their consultants throwing caution to the wind in exposing their advertising materials to the electorate. Over the years, advertising has become fundamental tools in the hands of politicians and political parties before, during and after elections, in order to influence the electorate to support, accept, or reject any political party and its ideologies. It is also obvious that political advertising in the country is more propagandist in nature with positive and negative political advertising, employing descent and foul language respectively to sell political parties and their ideas and ideologies.

Invariably, most political advertisements, year in, year out, are usually informed of hate speeches which Nigerians have said portend danger for the unity of the country as the nation starts its political journey to usher in a new administration to pilot the affairs of the country.

Also, many Nigerians believe that if hate speech is not properly addressed it is capable of setting the country on fire especially now when the country is going through a turbulent period. Setting the tone to address the issue of hate speech in political advertising, Mr. Akin Orebiyi, the guest speaker at a recent forum, said: “The Advertising Regulatory Council of Nigeria (ARCON), the Independent National Electoral Commission (INEC) and other agencies whose functions are directly or otherwise connected with the forthcoming elections have been given responsibilities to address hate speech.” He further said: “These agencies, in fulfilment of their functions under the Constitution of the Federal Republic of Nigeria, have also put in place guidelines to enable them perform their functions appropriately.”⁴⁰

He added: “These particular guidelines or enabling laws are to ensure a smooth democratic process culminating in the successful conduct of the country’s general elections. “With the references from ARCON’s Nigeria’s Advertising Code and INEC’s Electoral Act, it is obvious that these laws have been instituted for the peaceful, smooth, seamless and orderly conduct of the election processes. To have a commendable electioneering process in 2023, experts have

⁴⁰“Advertising Regulatory Act 2022” <<http://google.com/search?q=advertising+regulatory+act+2022&client=ms-android-xiaomi..>> accessed October 17, 2022

unanimously agreed that all political parties should comply with electoral laws as outlined by INEC and ARCON. They hold that ARCON should sensitise political parties, advertising practitioners and general public on law guiding electoral campaigns, and that all campaigns should be issue based and devoid of attacks and hate speeches.

They advised regulatory bodies and media houses to provide level playing field for all political parties and politicians, adding that Nigerians must also inculcate the attitude of rendering selfless services to the country whether in positions of authority or not.

The Advertising Regulatory Council of Nigeria (ARCON) has sued Meta Platforms Incorporated-the parent company of Facebook, Instagram and WhatsApp and its local advertising partner, AT3 Resources. According to a statement seen by the Foundation of Investigative Journalism, ARCON queried the company for illegal publication and exposure of various advertisements directed at the Nigerian market through Facebook and Instagram without ensuring that they were vetted and approved.

In the suit which was filled at the Federal High Court, Abuja Judicial Division, ARCON is seeking ₦30 billion in sanction for the violation of the advertising laws and for loss of revenue as a result of Meta's continued exposure of unapproved adverts on its platforms.

As of July 2022, there were nearly 37 million Facebook users in Nigeria, accounting for 16.8% of the population, according to Statista. Meanwhile, over ten million Instagram users are in Nigeria. Following a directive by the Nigerian government in 2021, Facebook announced that all advertisers from Nigeria would pay an additional 7.5% VAT on ad placement from January 1, 2022—this has since been implemented.

ARCON added that it is not regulating digital media. However, "it would not permit unethical and irresponsible advertising on Nigeria's advertising space." Per the Advertising Regulatory Council of Nigeria Act No. 23 of 2022 signed into law in August 2022, ARCON is the apex advertising, advertisement and marketing communications regulatory agency of the Federal Government. The Advertisers' Association of Nigeria (ADVAN) has previously accused ARCON of reaching beyond its regulatory powers, stating the association should focus on creating structures for ease of doing business in an already chaotic advertising environment and be the catalyst for peaceful co-existence among stakeholders.

In August, ARCON placed a ban on the use of foreign voice-over artists and models with effect from October 1, 2022, as a policy to develop local talent and inclusive economic growth for sectors of the country, including advertising. The ban was protested by ADVAN.

According to the Association, "Nigeria, as a country in the global economy, has an expatriate policy which allows for non-Nigerians to be gainfully and legally employed by Nigerian organisations, in adherence to the stipulations of the law."⁴¹

8.0 Conclusion: Good Governance in the Advertising Industry in Nigeria

Good governance is a complex concept which exact meaning has apparently defied consensus among scholars. Definitions of various dimensions – political, generic and academic – have been given by various sources, each definition tending towards a particular bias. The United Nations Development Programme (UNDP) comprehensive policy document (1997) sees good governance as ‘characterised by participation, the rule of law, effectiveness and efficiency, transparency (built on the free flow of information), responsiveness, consensus orientation, equity, accountability, and strategic vision.’⁴² United Nations Economic and Social Commission for Asia and the Pacific, UNESCAP (2009) states that ‘Good governance is an indeterminate term used in development literature to describe how public institutions conduct public affairs and manage public resources in order to guarantee the realization of human rights.’⁴³ While there may not have been a generally accepted definition of the concept of good governance, what may have become clear from the foregoing is that good governance is governance that enhances individual and common development in all relevant dimensions.

The UN publication on Good Governance highlight further that good governance has 8 major characteristics including participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law:

Participation entails the inclusivity of a diverse workforce, working for a specific goal. It is the participation by both men and women as a key cornerstone in ensuring good governance. Participation could be either direct or through legitimate intermediate institutions or representatives.⁴⁴

Consensus Oriented in line with good governance requires mediation of the different interests in society to reach a broad consensus in society on what is in the best interest of the whole community and how this can be achieved.

Accountability on the part of media practitioners or better put, advertising practitioners are of utmost importance. Accountability is a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organizations must be accountable to the public and to their institutional stakeholders.

⁴¹ <<http://www.google.com/amp/sbusinessday.ng/amp/news/article/arcon/-institutes-n30-b-suit-against-meta-platforms>> accessed October 23, 2022

⁴² Kate Omenugha, Nelson Omenugha and Chikezie E. Uzuegbunam, ‘Good Governance and Media Ownership in Nigeria: Dilemmatic Practices, Stoic Challenges’ <<https://www.researchgate.net/publication/269868587>> accessed 5th October, 2022.

⁴³ (United Nations, n. 11)

⁴⁴ (United Nations, n. 11)

Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It further means that enough information is provided and that it is provided in easily understandable forms and media.

Responsiveness in terms of good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe.

Effectiveness and Efficiency in good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.

Equity and Inclusiveness provides that a society's well-being depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. This requires all groups, but particularly the most vulnerable, have opportunities to improve or maintain their well-being.

Lastly, Rule of Law in terms of good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force.

From the foregoing, it demonstrates that the full attainment of good governance may prove utopian but it must never dissuade our quest for its realization. In the words of Yap Kioe Sheng, the Chief, Poverty Reduction Section, UNESCAP, who wrote thus:

it should be clear that good governance is an ideal which is difficult to achieve in its totality. Very few countries and societies have come close to achieving good governance in its totality. However, to ensure sustainable human development, actions must be taken to work towards this ideal with the aim of making it a reality.⁴⁵

In a discourse on the Good Governance in Advertising Industry in Nigeria, it is pertinent we consider the legal and legislative framework within the advertising industry. In this case, reference is heavily placed on the Advertising Regulatory Council Act 2022.⁴⁶ This Act repeals the Advertising Practitioners (Registration, etc.) Act, Cap. A7, Laws of the Federation of Nigeria, 2004 and enacts the Advertising Regulatory Council of Nigeria (ARCON) Act, 2022

⁴⁵ Yap Kioe Sheng, 'United Nations: Economic and Social Commission for Asia and the Pacific', 'What is Good Governance', <<https://www.unescap.org/pdd>> accessed 6th October, 2022.

⁴⁶ Hereinafter referred to as 'Act'.

which establish a Council for advertising, advertisements and marketing communications as the apex regulatory authority for the Nigerian advertising industry. As Brand Communicator says, this development heralds a new dawn in advertising regulation as it makes provision for the regulation and control of advertising in all its ramifications, creates the Advertising Offences Tribunal among other powers.⁴⁷

Additionally, the piece of legislation makes provisions for the regulation and control of advertising, ensures the protection of the general public and consumers, promotes local content, and entrenches best international practices.⁴⁸ All these innovations introduced under the Act sets the groundwork for the effective and efficient governance of the advertising industry. Although, the enactment of would not thrive without criticism, just as some see the unveiling of another set of legislation, not too long after the unbundling of Advertising Industry Standards of Practice (AISOP), over which a sector of the industry is still at daggers drawn with the agency, as over-regulation of the nation's advertising ecosystem; not a few are, however, of the belief that the industry is in dire need of such new legislation for it to be properly regulated.⁴⁹ The new law considering its core guiding principles, which are to determine, pronounce upon, administer, monitor, and enforce compliance by persons and organizations on matters relating to advertisements, advertising, and marketing communication in Nigeria, whether of a general or specific nature. The legislation makes provision for the regulation and control of advertising, ensures the protection of the general public and consumers, promotes local content, and entrenches best international practices.

⁴⁷ Brand Communicator, Just In: New Dawn for Advertising Regulation as Buhari Signs New ARCON Bill to Law, <<https://brandcom.ng/2022/07/just-in-fg-signs-new-arcon-bill-to-law/>> accessed 6th October, 2022.

⁴⁸ Akin Adewakun, "Issues-as-Arcon-Unveils-New-Name-Fresh-Laws", The Tribune Online, <<https://tribuneonlineng.com/issues-as-arcon-unveils-new-name-fresh-laws/>> published august 29, 2022, accessed 5th October, 2022.

⁴⁹ *Ibid*