



**A GLANCE AT THE ADVERTISING  
REGULATORY COUNCIL OF NIGERIA ACT:  
IS THE SCOPE WIDE ENOUGH TO REGULATE  
CONTENT CREATORS AND NON-ADVERTISING  
PRACTITIONERS IN NIGERIA?**

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## Introduction

In recent years, Nigeria has experienced a dramatic rise in social media usage and digital content creation. According to Statista, as of January 2023, Nigeria had 31.6 million active social media users.<sup>1</sup> This growing influence underscores the evolving marketing landscape in Nigeria, where user-generated content and authentic connections increasingly influence consumer decision-making. There has also been a shift from traditional methods of content creation such as print media, radio jingles, billboards, TV commercials, and telemarketing to leveraging the popularity of content creators (bloggers, comedians, influencers, skit makers and vloggers), brand owners, digital agencies and secondary digital media space owners.<sup>2</sup> A 2023 report by Qlear Insight revealed that a staggering 82% of Nigerian social media users place significant trust in product recommendations made by the influencers they follow.<sup>3</sup> This high level of trust, coupled with the creators' ability to forge genuine connections with their audiences has made them highly desirable partners for brands seeking to reach consumers. Within the realm of regulation of advertising, the Nigerian Government plays a crucial role, through the Advertising Regulatory Council of Nigeria ("ARCON"), formerly, the Advertising Practitioners Council of Nigeria ("APCON")<sup>4</sup> established under the Advertising Regulatory Council of Nigeria Act ("The Act").<sup>5</sup> Formerly, the scope of APCON's regulatory powers and the applicability of the repealed Advertising

Practitioners (Registration, etc.) Act ("the Old Act"), was largely limited to advertising practitioners. This was judicially confirmed in the landmark case of *APCON v. The Registered Trustees of International Covenant Ministerial Council*,<sup>6</sup> where the Court of Appeal addressed the applicability of the Old Act to non-members of the advertising profession. The Court determined that the Respondents, a religious body did not qualify as "advertising practitioners"<sup>7</sup> as defined by the now repealed APCON Code (5th Edition), and therefore, APCON lacked the legal authority to compel the Respondents to seek pre-approval for their advertising materials. This limitation was reaffirmed in the case of *Mic Royal Limited v. APCON*.<sup>8</sup> This necessitated the enactment of the 2022 Act which abolished the Old Act. However, in recent times, we have seen a growth in the use of content creators in advertising products to consumers. These content creators are usually seen advertising energy drinks, sports betting platforms, herbal medicines, beauty products and a diverse range of services to the public through social media. This new trend now raises the question as to whether content creators fall under the definition of advertising practitioners and hence come under the regulatory purview of ARCON. This article seeks to take a glance at the provisions of the Act and its applicability to content creators and makes recommendations for reevaluation of the provisions of the Act to cover these content creators.

<sup>1</sup> Statista, (May 23, 2023) Number of active social media users in Nigeria 2017-2023 <https://www.statista.com/statistics/1176096/number-of-social-media-users-nigeria/> Accessed on 24th July 2024.

<sup>2</sup> Content creators such as bloggers, comedians, influencers, skit makers and vloggers etc can be classified as secondary digital media space owners.

<sup>3</sup> Qlear Insight, (2023, May 18), The State of Influencer Marketing in Nigeria 2023. <https://qclearinsight.com/press-releases/how-aktivate-is-unlocking-the-power-of-influencer-marketing-in-nigeria/> Accessed on 24th July 2024.

<sup>4</sup> The agency was established under the old Advertising Practitioners (Registration, Etc.) Act, Cap. A7, Laws of The Federation of Nigeria, 2004 which has now been repealed by the Advertising Regulatory Council of Nigeria Act 2022.

<sup>5</sup> The Advertising Regulatory Council of Nigeria Act 2022.

<sup>6</sup> [2019] LPELR (CA) 3630.

<sup>7</sup> Under the now repealed Nigerian Code of Advertising 5th Edition, an advertising practitioner is defined as a person registered by APCON to practice advertising in Nigeria. Section 43 of the ARCON Act 2022 defines an "advertising practitioner" as a person registered by APCON to practice advertisement, advertising and marketing communications in Nigeria. This definition which references the now-dissolved APCON raises concerns about its relevance and applicability.

<sup>8</sup> [2018] LCN/11854(CA).



## The Role of the Advertising Regulatory Council of Nigeria (ARCON) Under the Advertising Regulatory Council of Nigeria (ARCON) Act 2022.

The Act serves as the cornerstone for regulating advertising practices within the Nigerian market. Under the Act, the definition of advertisement simply put is defined to include any sponsored message intended to influence someone's opinion or action towards a product, service, idea, or person, regardless of the format or platform used.<sup>9</sup>

Also, the Act empowers ARCON to oversee and control all forms of advertising, advertisements, and marketing communications directed at or exposed to the Nigerian audience.<sup>10</sup> This includes traditional media channels like television, radio, and print publications, as well as the rapidly growing realm of digital advertising on social media platforms and online platforms.<sup>11</sup> The Act grants ARCON comprehensive regulatory authority over all facets of advertising and communications aimed at or visible in the Nigerian market.<sup>12</sup> ARCON is tasked with the duty of ensuring that all advertisements and marketing communications targeting the Nigerian market are lawful, decent, truthful, and free from any form of misinformation or disinformation.<sup>13</sup> The Act aims to ensure responsible and ethical advertising practices, protect consumers from misleading claims, and promote fair competition within the advertising industry.

The Act also empowers the ARCON amongst the

powers, above to do the following:

- a. Register individuals or organizations who operate or intend to operate, or who practice or plan to practice, or who carry on an advertising or market communications business or professional activities in Nigeria.<sup>14</sup>
- b. Issue a Certificate of Registration or license to any individual or organization (Foreign<sup>15</sup> and national) upon registration.<sup>16</sup>
- c. Promotion of local content by banning the use of foreign voice-over artists and models in advertisements.<sup>17</sup>
- d. Establish the Advertising Standards Panel (the "ASP") to vet and approve advertisements, with limited exceptions before public exposure.<sup>18</sup>

In line with the statutory powers of the Minister for information and culture provided under the Old Law,<sup>19</sup> the Minister released the Nigerian Code on Advertising Practice Sales, Promotion, and Other Rights/Restrictions on Practice (**6th Edition**)<sup>20</sup> ("The Code", "The Nigerian Code of Advertising") as a subsidiary legislation to the Act.

<sup>9</sup> Section 43 of the Act, advertisement is defined to mean "a notice, announcement, exposure, publication, broadcast, statement, announcement, infomercial, commercial, hype, display, town cry, show, event, logo, payoff or trademark to promote, advocate, solicit, showcase, endorse, vote or support a product, service, cause, idea, person or organisation to influence, sway, actuate, impress, arouse, patronise, entice or attract a person, people or organisation by an identified sponsor irrespective of media, medium or platform"

<sup>10</sup> Section 1 (a) ARCON Act 2022

<sup>11</sup> Section 2 ARCON Act 2022

<sup>12</sup> Section 8 ARCON Act 2022

<sup>13</sup> Section 8 ARCON Act 2022

<sup>14</sup> Section 21 ARCON Act 2022

<sup>15</sup> Section 21 (a) ARCON Act 2022

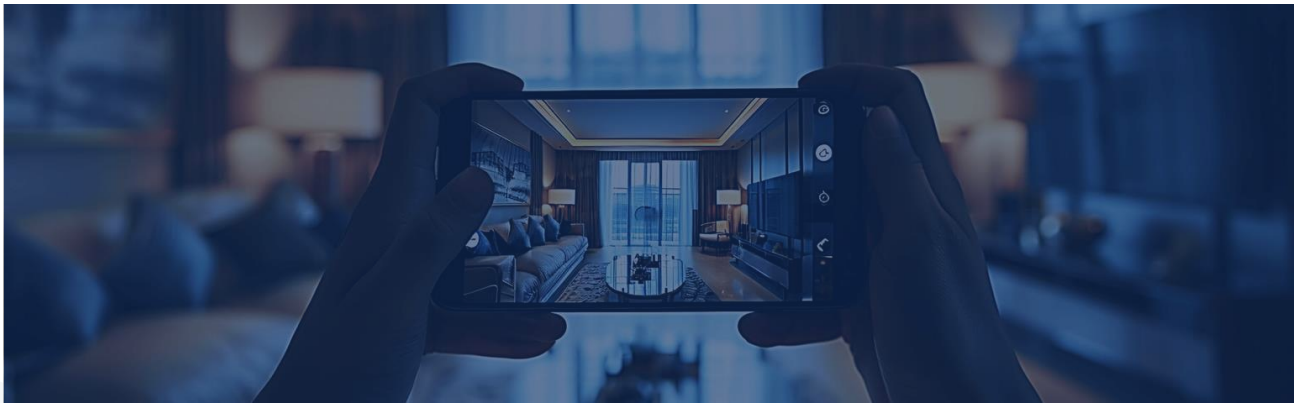
<sup>16</sup> Section 21 (b) ARCON Act 2022

<sup>17</sup> Section 2 of ARCON Act 2022

<sup>18</sup> Article 24 Nigerian Code of Advertising and Section 54 of the ARCON Act 2022.

<sup>19</sup> Section 29 of the Advertising Practitioners (Registration, Etc.) Act, Cap. A7, Laws of The Federation of Nigeria, 2004.

<sup>20</sup> The 6th Edition of the Nigerian Code on Advertising was introduced to repeal the 5th Edition of the Nigerian Code on Advertising.



## Regulations Applicable to Content Creators and Non-advertising Practitioners: Key Provisions Under the Nigerian Code of Advertising Practice 2021.

The Act governs advertising across all forms and platforms, extending its regulation to digital content. This means that online content created by content creators, brand owners, digital agencies and secondary digital media space owners under ARCON's jurisdiction. To explicitly regulate content creators and other non-advertising professionals, the Nigeria Code of Advertising (6th Edition) was issued, effective from December 1, 2021, with the same scope of applicability as the Act.

A crucial provision of the Code mandates that all advertisements, excluding public service announcements, goodwill messages, obituaries, and vacancy announcements, must be vetted and approved by the Advertising Standards Panel (ASP)<sup>21</sup> before exposure.<sup>22</sup> This requirement includes advertisements created by content creators, digital agencies, and other non-advertising professionals.

The Code provides that advertisers<sup>23</sup> and agencies must obtain an ASP Certificate of Approval before exposing such content. Media houses must also request that the Advertisers or agencies submit this certificate before they place advertisements in cases of direct media buying.<sup>24</sup>

Regarding the process for obtaining this Certificate of Approval, the Code specifies that only

advertising practitioners within licensed advertising firms or organizations can present advertisements for vetting.<sup>25</sup> An exception allows practitioners in media organizations to present advertisements for ASP vetting, but only for their internal media house contents.<sup>26</sup>

Thus, we can deduce the following from the provisions of Article 24 (a), (b), (c), and (d) that:

- a. All advertisements<sup>27</sup> and marketing communications must obtain pre-exposure approval from the ASP;
- b. Advertisers must obtain the Certificate of Approval for all advertisements before publication of same.
- c. Media houses in cases of direct media buying should demand ASP's Certificate of Approval from advertisers before placing such advertisements on their platforms.
- d. Only Advertising practitioners in licensed advertising firms and organisations can present advertisements and marketing communications to the ASP for vetting.
- e. Advertising practitioners in media organisations can on behalf of their media organisation present advertisements and marketing communications to the ASP for vetting.

<sup>21</sup> Section 53 of the ARCON Act establishes the ASP charged with the responsibility of ensuring that advertising and all advertisements conform with the prevailing laws of the Federation and the code of ethics of the advertising profession.

<sup>22</sup> Article 24(a) Nigerian Code of Advertising 2021

<sup>23</sup> Note that the definitions under the ARCON Act 2022 and the Nigerian Code of Advertising are the same.

<sup>24</sup> Section 43 defines an "advertiser" to mean a person, private or public, organisation that causes, requests, directs, or pays for an advertisement, advertising or marketing communications ideas to be created, developed, produced, executed, expose or that takes benefit of advertisement, advertising, and marketing communication services.

<sup>25</sup> Article 24(b) Nigerian Code of Advertising 2021. Generally, media buying is the process of purchasing ad space and time on digital and offline platforms, such as websites, social media platforms such as YouTube, radio, and Television.

<sup>26</sup> Article 24(c) Nigerian Code of Advertising 2021

<sup>27</sup> Article 24(d) Nigerian Code of Advertising 2021

<sup>28</sup> Excluding public service announcements, goodwill messages, obituaries, and vacancy announcements.



## What Is the Implication of Article 24 of the Nigerian Code of Advertising on Content Creators and Non-professional Advertising Practitioners?

The foregoing thus raises a question regarding how digital agencies, secondary digital media space owners, content creators, and other advertising stakeholders in the digital/online media space can ensure all advertisements and marketing communications they publish have been approved.

A reading of the provision of Article 24 of the Code reveals that the responsibility of obtaining pre-exposure approval on advertisements falls on the advertisers (sponsors or beneficiaries) of the advertisements and not necessarily the creators of the advertisement or marketing communication. Media houses engaged in direct media buying are also mandated to demand for ASP's Certificate of Approval from these sponsors before placing such advertising, advertisement, or marketing communication on their platforms.

Thus, digital agencies, secondary digital media space owners, content creators and other advertising stakeholders in the digital/online media space who practice advertising within the meaning of the Act, have the responsibility to ensure that all advertisements and marketing communication they publish have all been approved by the ASP.

In the same vein, if they practice for or under a licensed advertising firm or organisation, a registered advertising practitioner in that firm

must obtain a pre-exposure Certificate of Approval for such advertisement.

Similarly, if the content is to be published by a media organisation, the organisation can also through an advertising practitioner obtain ASP's vetting for such advertising, advertisement, or marketing communication pre-exposure. Furthermore, these content creators, secondary digital media space owners, and other advertising stakeholders in the digital/online media space are authorized to independently obtain the necessary pre-exposure Certificate of Approval from the ASP only in instances where they are advertising practitioners under the Act.

Therefore, to prevent violations of the Act and the Code,<sup>28</sup> non-advertising practitioners like content creators (including vloggers, influencers, comedians, and skit makers) in the digital/online media space must ensure that they do not publish advertisements that have not been vetted by the ASP. Failure to comply with these pre-exposure approval provisions would attract penalties.<sup>29</sup>

Furthermore, to enforce the provisions of the Code, a minimum fine of N500,000 (Five Hundred Thousand Naira) is imposed on violators including agencies, advertisers, media houses, advertising practitioners, and advertising practitioners in media houses who publish an advertisement without an ASP Certificate of Approval.<sup>30</sup>

Interestingly, on 12th December 2022, ARCON released a Notice titled "**Advertisement by Bloggers, Skit Makers, Influencers Etc: Need to Ensure Compliance with the Code of Advertising Practice**"<sup>31</sup>. In that Notice, ARCON advised brand owners, content creators, digital agencies, secondary digital media space owners (bloggers, vloggers, influencers, comedians, skit makers), and other advertising stakeholders in the digital/online media space to obtain pre-exposure approval of all advertisements, advertising, and marketing communications following the provisions of the Act and the Code. In the Notice, the Council restated the importance of online content creators to avoid publishing unvetted content as non-compliance shall attract sanctions and prosecution of violators.

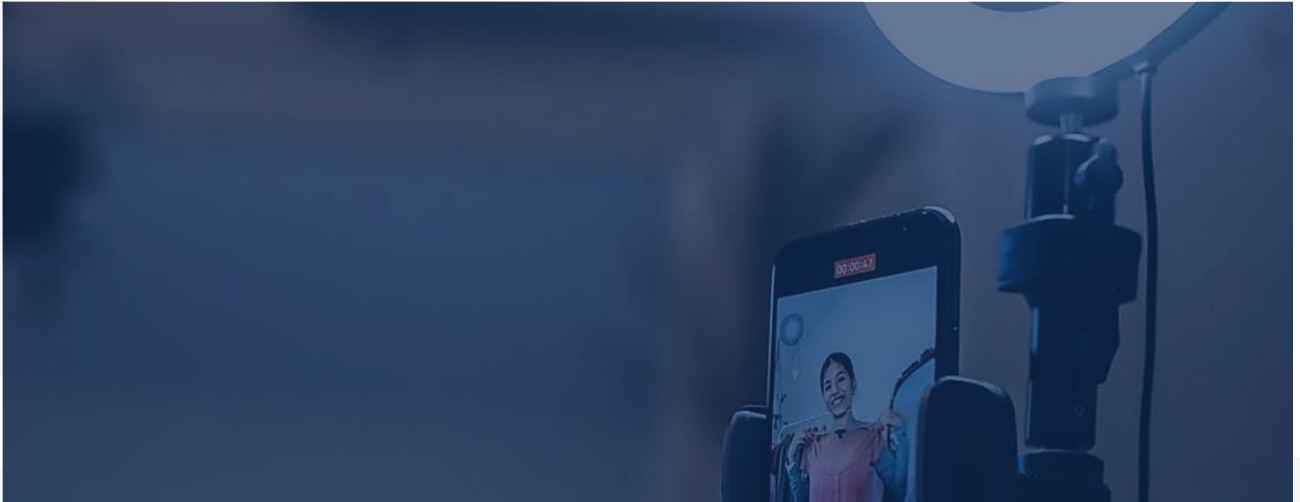
<sup>28</sup> Section 54 of the ARCON Act 2022 and Article 145 of the Nigerian Code of Advertising 2021.

<sup>29</sup> Section 54 of the ARCON Act 2022 and Article 145 of the Nigerian Code of Advertising 2021.

<sup>30</sup> Article 145 Nigerian Code of Advertising 2021

<sup>31</sup> The notice was released in response to complaints received by ARCON of the failure of stakeholder in abiding by their standards as provided under the Act and the Code.

Moreso, in pursuit of the enforcement of the provisions of the Act, ARCON had in 2023, instituted an action at the **Federal High Court (FHC) against Meta Corporations (owners of Facebook, Instagram, and WhatsApp)** concerning non-compliance with the provisions of the Act and the provision on vetting of Ads in Nigeria.<sup>32</sup> In the Suit, ARCON sought a declaration among others that the continued publication and exposure of various advertisements directed at the Nigerian market through Facebook and Instagram platforms by Meta Platforms Incorporated without ensuring the same is vetted and approved by ARCON before exposure is illegal, unlawful and a violation of the extant advertising Law in Nigeria. This Suit was however struck out after ARCON applied for a discontinuance of the suit.<sup>33</sup>



## Conclusion

Undoubtedly, the Act and the Code have significantly expanded the scope of regulation of advertising in Nigeria. However, it is necessary to re-evaluate some of the policies and regulations enacted under the Act to be explicit and direct to clear ambiguities. For instance, the lack of definitions for a key term such as media houses, the lack of a classification of brand owners, digital agencies, secondary digital media space owners (bloggers, vloggers, influencers, comedians, skit makers), and other advertising stakeholders in the digital/online media space and the limitation in the definition of advertising practitioners under the Act raises some ambiguities. Similarly, the requirement for registration under the Act should

be reviewed as by the definition of practice under the Act, even an entity that delivers a single advertisement targeting the Nigerian market would need to register. Regardless, it is advised that brand owners, digital agencies, secondary digital media space owners (bloggers, vloggers, influencers, comedians, skit makers), and other advertising stakeholders in the digital/online media space should ensure that the necessary persons or organisations obtain or obtained pre-exposure Certificate of Approval from the ASP for all advertisements, advertising, and marketing communications they create before same is published.

<sup>32</sup> Section 53 of the ARCON Act establishes the ASP charged with the responsibility of ensuring that advertising and all advertisements conform with the prevailing laws of the Federation and the code of ethics of the advertising profession.

<sup>33</sup> Article 24(a) Nigerian Code of Advertising 2021

<sup>34</sup> Note that the definitions under the ARCON Act 2022 and the Nigerian Code of Advertising are the same.

<sup>35</sup> Section 43 defines an "advertiser" to mean a person, private or public organisation that causes, requests, directs, or pays for an advertisement, advertising or marketing communications ideas to be created, developed, produced, executed, expose or that takes benefit of advertisement, advertising, and marketing communication services.

<sup>36</sup> Article 24(b) Nigerian Code of Advertising 2021. Generally, media buying is the process of purchasing ad space and time on digital and offline platforms, such as websites, social media platforms such as YouTube, radio, and Television.

<sup>37</sup> Article 24(c) Nigerian Code of Advertising 2021

<sup>38</sup> Article 24(d) Nigerian Code of Advertising 2021

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