

ADVERTISING NAFDAC REGULATED PRODUCTS : UNDERSTANDING THE FRAMEWORK FOR ADVERTISING NAFDAC REGULATED PRODUCTS AND WHAT THE LAW REQUIRES OF MANUFACTURERS, IMPORTERS, DISTRIBUTORS AND RETAILERS

REGULATORY NEWSLETTER

Introduction

The National Agency for Food and Drug Administration and Control (NAFDAC) is the body that regulates and control the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals amongst other functions stipulated under the NAFDAC Act [1]. One of the functions of NAFDAC that may be overlooked by manufacturers, importers distributors and retailers of regulated products, is the power of NAFDAC to approve the advertisement of these regulated products.

The specific guidelines regulating the advertisement of NAFDAC regulated products are the Guidelines for the Advertisement of NAFDAC Regulated Products, Guidelines for Advertisement Control of Food Products in Nigeria; Guidelines For Advertisement of Medical Products, Cosmetics, Veterinary Products and Finished Chemicals ("Guidelines").

These Guidelines are aimed to closely regulate the advertisement of NAFDAC regulated products by stipulating requirements for obtaining approval as well as penalty for the advertisement of unapproved products. The purpose of this article is to examine the scope of applicability of the NAFDAC advertising guidelines and the compliance requirement for each of the listed NAFDAC advertising guidelines.

¹ Section 5 National Agency for Food and Drug Administration and Control Act (Act)

Scope Of Applicability Of The Advertising Guidelines

The Guidelines for Advertisement Control of Food Products in Nigeria defines advertisement to mean “publicity of goods and description of all food which includes any form of notices in circulars, handouts, labels, wrappers, catalogues and billboards, posters, newspapers, magazines, and any other documents) made orally or otherwise or by means of projected light”. Flowing from the definition of advertisement, all platforms carrying on advertisement of NAFDAC regulated products are within the scope of applicability, including but not limited to digital platform. A glance at the documentary requirement for the application of approval of NAFDAC regulated product is indicative that the requirement extends to adverts on social media and digital platforms. Requirements such as scripts/artwork/storyboard for online adverts. However, it is important to note that the scope of applicability does not extend to products on the Federal Government Import Prohibition List[2] and the NAFDAC ceiling list. [3]

Overview Of Compliance Requirements For Manufacturers And Importers Of Nafdac Regulated Products.

NAFDAC expects high level of compliance from manufacturers and importers considering the dangers of advertising unregistered products to the public. NAFDAC has issued three guidelines to regulate the advertising of regulated product.

The provisions of the Guidelines for the Advertisement of NAFDAC Regulated Products and Guidelines For Advertisement of Medical Products, Cosmetics, Veterinary Products and Finished Chemicals have similar provisions. Some of the key provisions are outlined as follows:

- Advertisement of Over the Counter (OTC) drugs are to include the Caveat “If Symptoms Persist after 3 Days, Consult Your Doctor/Physician”. [4]

2 <https://trade.gov.ng/en/custom-pages/prohibited-items-list-during-import>

3 <https://www.nafdac.gov.ng/wp-content/uploads/Files/Resources/UPDATED-NAFDAC-CEILING-LIST.pdf>

4 Over-the-counter drugs are medicines sold directly to a consumer without a requirement for a prescription.

- Prescription-Only-Medicines (POM) may be advertised only in Medical/Scientific Journals in a summarized format which must contain composition, indication, dosage, administration, adverse effects, drug interactions, contraindications, warnings, and precautions of the drugs being advertised.
- Advertisement materials of alcoholic beverages must include the phrases - "Drink responsibly" and 'Not for under 18 years' or "18+".
- All herbal medicinal products (without established clinical studies) and advert materials shall include the caveat, "These claims have not been evaluated by NAFDAC".

Further, The Guidelines for Advertisement Control of Food Products in Nigeria is specific to food product and has adopted a more comprehensive approach and makes provisions for broader issues as it relates to advertisement such as prohibitions, validity of approved adverts, claims and restrictions of advertisement of food products.

Advertising Regulatory Council Of Nigeria (Arcon) And NAFDAC Regulated Products

Generally, The Advertising Regulatory Council of Nigeria is the body responsible for the regulation of advertising in Nigeria. The regulation of advertising space by ARCON is effected by the provisions of the ARCON ACT, The Nigerian Code of Advertising Practice, Sales Promotion and other Rights/Restriction and the Circulars issued by ARCON. In addition to the requirement of the obtaining NAFDAC approval for advertising regulated products, manufacturers are mandated to obtain clearance from ARCON before adverts are publicly displayed. The regulation on advertising outlines the conditions that must be satisfied before an advert is publicly displayed. While the NAFDAC is concerned with safety of the products being advertised by ensuring that products being advertised are registered and safe for consumers, the ARCON regulations and circular is more concerned with content of the advert such are inscription, models, location of advert.

Interestingly, there are requirements that can be found in both the NAFDAC Guidelines on Advertisement and the Nigerian Code of Advertising Practice, Sales Promotion and other Rights/Restriction; For instance, the requirement that advertising material for alcoholic beverages must include the phrases - "Drink responsibly" and 'Not for under 18 years' or "18+"

Conclusion

The NAFDAC Regulation and ARCON Code of Conduct on Advertisement both provide for a mandatory requirement that must be complied with by manufacturers, importers, distributors of regulated products in relations to the public display for NAFDAC regulated products.

The breach of any of the advertising guidelines attracts daily penalty based on the tariff set by NAFDAC. Companies and Brands under the supervision of NAFDAC are required to obtain approval from NAFDAC before advertising any of their NAFDAC regulated product, this is to avoid being penalized which could lead to financial loss and loss of reputation. Overall, the NAFDAC advertising regulation is to protect the interest on Nigerians by ensuring that the safety of consumer while the ARCON circular on advertising is aimed at promoting our indigenous market. Although, both regulations have parallel objectives, a conjunctive compliance will go a long way in protecting the interest of consumers.

Key Contacts

For further information, kindly reach the key contacts below:



Yeye Nwidaa

Partner, Head of Regulatory,
Compliance & Governance Department.

T: +234 1 4626841/3

E: Yeye.nwidaa@jee.africa



Chukwukelo Ileka

Associate, Regulatory, Compliance &
Governance Department.

T: +234 1 4626841/3

E: chukwukelo.ileka@jee.africa



RCO Court 3-5, Sinari Daranijo Street, Victoria Island, Lagos, Nigeria.

+234 (1) 4626841/3, +234 (1) 2806989, +234 (1) 2716889

 @jeeafrica | www.jee.africa