

REGULATION OF SOCIAL MEDIA ADVERTISEMENTS BY NAFDAC: DO I NEED A NAFDAC APPROVAL FOR MY SOCIAL MEDIA ADVERTISEMENTS?

The National Agency for Food and Drug Administration and Control (NAFDAC) regulates the importation, sale, distribution and use of food and drink products, drugs, cosmetics, devices, packaged water, detergents and chemicals (“**Regulated Products**”).¹ NAFDAC is also empowered to regulate the advertisement of Regulated Products and in furtherance of this, has issued a number of Guidelines and Regulations on advertisement of products. This includes the Guidelines for the advertisement of NAFDAC Regulated Products issued in 2018 (the “**Guidelines**”), The Food Products Advertisement Regulations 2019 (“**Food Regulations**”), Cosmetic Advertisement Regulations 2018 (“**Cosmetic Regulations**”) etc.

The Guidelines² state that “*All Certificate of Registration Holders are advised to obtain Advertisement approval before production or airing of all commercials*”. While the letters of this provision seem suggestive, the Food Regulations explicitly state that “*No person shall advertise any food product unless it has been approved by the Agency*”. The Cosmetics Regulations also state that “*No person shall advertise any cosmetic products in Nigeria unless the advertisement has been approved by NAFDAC*”.

Under the Food Regulations, Advertisement means the “*publicity of goods and description of all food which includes any form of notices in circulars, handouts, labels, wrappers, catalogues and bill boards, posters, newspapers, magazines, and any other documents) made orally or otherwise or by means of projected light*”.³

A cursory look at the definition of advertising under the Food Regulations shows that, all forms of publicity by any means are considered advertising. Also, the Guidelines expressly state that applications for online advertisement are to be accompanied with scripts, artwork and story boards for approval.⁴ This means that brands that advertise their products through social media are required to obtain the approval of NAFDAC before such adverts are placed on a social media platform in Nigeria.



1. All Regulated Products must be registered at NAFDAC before they are imported, distributed or sold in Nigeria.
2. 1.3 of the Guidelines
3. 25(1) Food Advertising Regulations.
4. 3.2.5 of the Guidelines

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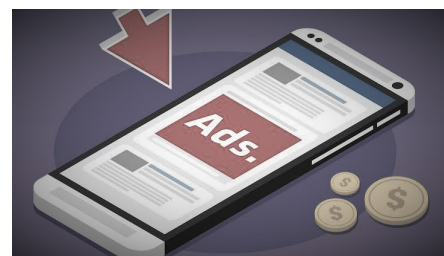
Social media sites are web-based application platforms that enable users to create or share content interactively and responsively.⁵ This includes image and video sharing platforms such as YouTube and TikTok, and microblogs like Twitter and Instagram. There are about 33 (thirty-three) million social media users in Nigeria⁶ and in recent times, social media has evolved as a machinery for building reputation, generating revenue and gaining customers' confidence. Globally, top brands are increasingly employing social media strategies to bolster productivity and financial gains.

Strategies employed by these companies include the engagement of Social Media Influencers (individuals who have significant online following and presence). Social Media Influencers have the power to affect consumer behavior as a result of their status, knowledge or relationship with their audience. High profile influencers could earn significant revenues for their services. In Nigeria, some high-profile social media influencers earn as much as ₦500,000 per post for advertising a brand on their platforms. Many small brands also utilize social media advertising due to its cost effectiveness and wide reach compared to traditional forms of advertising.

Whilst NAFDAC seeks to curtail the advertisement of Regulated Products that are unfit for consumption and do not satisfy the required standards, it raises the question of how extant NAFDAC regulations would

apply to social media marketing, in light of how most social media platforms operate.

Any individual/entity may create an account on a social media platform and use same for any purpose, in so far as it satisfies the terms and conditions of the platform. Social Media Influencers simply have to upload an advert, post, write-up or video promoting brands which may or may not pay them and in few minutes, these posts go viral reaching over a million people depending on the reach of the social media influencer.



The rationale for regulation of adverts by NAFDAC is to ensure the health and safety of consumers, which is the primary mandate of NAFDAC. The approval process ensures that all claims in an advert are substantiated before they are released. This is necessary because while social media advertising has proven to be a tool for generation of revenue for businesses, there is a glaring need to check unscrupulous businesses and individuals who advertise sub-par products to consumers and, in turn, endanger the health and safety of consumers.

⁵ <https://www.ncc.gov.ng/docman-main/internet-governance/871-igov-technical-framework-social-media/file>

⁶ <https://datareportal.com/reports/digital-2021-nigeria>

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There are not many cases of social media adverts being pulled down for failure to obtain NAFDAC's prior approval, however, in 2020, a pharmaceutical company was fined by NAFDAC and made to pull down an advert on social media for failure to obtain NAFDAC's approval. This is notwithstanding the excuse that the relevant officials of the company did not approve of the advert. Also, in December 2019, an online business uploaded a disturbing video advertising a chemical peel procedure, where women who want to bleach their skin are immersed in a bath with chemical mixtures that lightens the skin. The video went viral and caught the attention of NAFDAC officials who reportedly raided the building and seized the unauthorized products. These cases are however outliers as a plethora of potentially harmful products are routinely advertised online without any restrictions.



While NAFDAC's initiative to regulate advertising is commendable, enforcement of the provisions of the law is difficult, especially where there is no engagement between the owners of these platforms and the government.

Millions of adverts on social media are churned out on a daily basis and with the challenge of inadequate

infrastructure, it is virtually impossible for NAFDAC to manage the number of adverts released without impeding the progress of businesses due to bureaucracy. The Regulations prescribe 20 (twenty) working days as the timeline for obtaining an approval; however it is not feasible to expect approval of the millions of adverts released each day on social media platforms within such a timeframe.⁷

The penalty for failure to comply with NAFDAC's Guidelines is a meagre sum of not less than ₦100,000 or imprisonment. Sadly, this penalty is not commensurate with the damage that could result from false advertising or the financial gains accruable therefrom.

While the regulation of social media advertisement by NAFDAC is laudable, it seems inadequate for addressing the risks posed by the digital age. The public is in need of regulations which will strike a balance between checking the excesses of brands who use social media as an advertising tool and ensuring the ease of doing business. The need to create awareness and enlighten the public on the requirements of the Advertising Regulations by NAFDAC seems like a great start. It is also expedient that NAFDAC collaborates with stakeholder agencies, such as the Nigerian Communication Commission and the Federal Competition and Consumer Protection Commission, to ensure effective regulation and enforcement of adverts on social media platforms.

⁷ 5.3 of the Guidelines

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DISCLAIMER: This article is intended to provide a general guide to the subject matter and does not by itself constitute a legal advice to readers. Specialist advice should be sought about readers' specific circumstances.

For further information on the regulation of social media advertisements by NAFDAC, kindly contact our **Intellectual Property and Technology Practice Group** at ipgroup@banwo-ighodalo.com

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