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**NATIONAL AGENCY FOR FOOD AND DRUG
ADMINISTRATION AND CONTROL ACT (CAP. N1 LFN), 2004
FOOD PRODUCTS ADVERTISEMENT REGULATIONS, 2021**



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S. I. No. 70 of 2021

**NATIONAL AGENCY FOR FOOD AND DRUG
ADMINISTRATION AND CONTROL ACT (CAP. N1, LFN), 2004**

FOOD PRODUCTS ADVERTISEMENT REGULATIONS, 2021

[7th Day of July, 2021]

Commence-
ment.

In exercise of the powers conferred on it by sections 5 and 30 of the National Agency for Food and Drug Administration and Control Act (Cap N1 LFN) 2004 and section 12 of the Food, Drug and Related Products (Registration, Etc.) Act Cap F33 LFN 2004 and all other powers enabling it in that behalf, the Governing Council of the National Agency for Food and Drug Administration and Control with the approval of the Minister of Health makes the following Regulations—

1. These Regulations shall apply to all advertisements of food products, manufactured, imported distributed, sold or used in Nigeria.

Scope of
application.

2.—(1) A person shall not advertise a—

Prohibition.

(a) food product unless it has been registered by the Agency ;

(b) food product unless it has been approved by the Agency ;

(c) breast milk substitute and infant or young children food and descriptive matter appearing on or attached to, or supplied with the package, carrying information on the promotion or advertisement of another product.

(2) A person shall not—

(a) display on a screen or otherwise, or present an advertisement of a food product unless in accordance with the provisions of these Regulations ;

(b) make any claim to assert, imply or convey the impression as to the suitability of a food product for use in the prevention, alleviation, management, treatment or cure of a disease, disorder or physiological condition ;

(c) make a claim that a food product contains a particular value, when that value is not wholly contributed by the food product, but is partially contributed by other food products with which it may be consumed ;

(d) describe a food product as “healthy” or represent it in a manner that implies that the food will impact health ; and

(e) make health claims that encourage or condone excessive consumption of any food or disparage good dietary practice.

3. Advertisements of food products shall be accurate, complete, clear and designed to promote credibility and trust by the general public and health care practitioners and such statements or illustrations contained on the package shall not mislead directly, indirectly or by implication.

Nature of
advertisement.

4.—An advertisement of a food product shall not—

(a) imitate the general layout, text, slogan or visual presentation or devices

Non-
referential
advertisement.

of other food products in a way that is likely to mislead or confuse the consumer ; or

(b) be framed in such a manner as to make reference directly or indirectly to the medical or any of its allied professions, except such reference is scientifically proven.

Application
for the
approval of
advertisement.

5.—(1) Advertisement materials including scripts, story-boards, artwork, radio scripts and any other advertisement material shall be submitted along with an application in a manner as may be prescribed by the Agency.

(2) Material submitted under these Regulations shall be authenticated by the Chief Executive or appropriate technical person of the food product company sponsoring the advertisement.

Particulars
of
application.

6. An application submitted by an advertising agent, distributor, manufacturer or the sponsor of an advert shall contain the following—

- (a) the brand name of the food product, if any ;
- (b) place of importation or local manufacture ;
- (c) the name and address of the manufacturer ;
- (d) the name and address of the local distributor ;
- (e) the name and address of the advertising company ;
- (f) the date of first introduction of the food product to the Nigerian market, for new products ;
- (g) information about any previous advertisement of the food product in Nigeria, where necessary ;
- (h) the proposed media for the advertisement ;
- (i) evidence of current product registration ;
- (j) a justification for any special claims on the food product ;
- (k) scripts and recordings ; and
- (l) such other materials as may be required by the Agency from time to time.

Validity of
approval.

7.—(1) The approval of an advertisement shall be valid for a period of 1 year from the date of approval.

(2) Subsequent advertisement applications shall be valid for 2 years provided no alteration is made and conditions of renewal of approval remain the same.

(3) Notwithstanding the provisions of sub-regulation (1) of this regulation, consumer promotions shall have validity of 15 weeks.

8. The Agency may withdraw the approval for an advertisement, where—

Withdrawal
of an
approval.

(a) the grounds on which the approval was granted was later found to be false or incomplete ;

(b) any of the conditions under which the approval was granted has been contravened ;

(c) there is new scientific evidence against claims contained in the advertisement ; or

(d) there is an order of the court’.

9. Advertisement shall not make reference directly or indirectly to any—

Prohibition
of reference
to health
care
profession.

(a) individual member of the healthcare profession, hospitals, clinic and health centers ; or

(b) professional body or any organisation without the approval from the Agency.

10. A person shall not advertise a food product in a manner that brings the food industry to disrepute or prejudice public confidence in food.

Advertisement
not to
prejudice
public
confidence.

11. Advertisement shall not unfairly disparage any company of its competitive products either directly, indirectly or by implication.

Unfairly
disparage
competition.

12.—(1) Advertisement shall not contain—

Restriction.

(a) any false or misleading information ;

(b) inadequate qualification and limitation regarding the safety or effectiveness of the food product ; and

(c) vague or unsubstantiated statement or suggestion of superiority over competing product.

(2) Advertisement shall contain information that is reliable, accurate, truthful, informative, balanced and can be substantiated.

(3) Advertisement shall not by implication, omission, ambiguity or exaggeration, mislead or deceive or likely to abuse the trust of or exploit the lack of knowledge, experience, the myth or fear in the consumer.

13.—(1) A comparison in an advertisement shall not mislead the public either directly or indirectly where there is comparison it shall be supported by reliable current scientific data.

Prohibition
of misleading
comparison.

(2) A reference to a competitive manufacturer or its specialties in an advertisement shall be restricted to factual comparison without the use of identifiable regulated product or brand name.

(3) Data illustrations including charts and graphs, tables extracted from reference studies or other sources or reproduced by artwork, presented in an advertisement, shall—

(a) be accurate, complete and clear, with their source specifically identified; and

(b) not be misleading or ambiguous or distort the original intended meaning or interpretation either directly or by implication.

Accurate interpretation of research findings.

14.—(1) All advertisement materials including scripts, story-boards, art work, radio scripts and any other advertisement material for food products shall be so written as to accurately interpret valid and representative research findings.

(2) Statistics in an advertisement of food products shall be so written as to reflect only their true validity and significance.

(3) Any claim or quotation from a scientific literature concerning the efficacy, safety and adverse reaction, use in children or during pregnancy or any such precautionary statements with the constraints of the accepted products monograph, shall specify the scientific source of the claim or quotation.

(4) Copy of any reference cited by an applicant, or in the advertisement of food products shall be provided to the Agency for verification.

Scientific articles and literatures to contain both positive features and negative findings.

15.—(1) A claim or quotation shall contain both the negative and positive findings and shall be readily verifiable by the Agency.

(2) A claim based on, or quotation that has been selected from a scientific article or series of articles which emphasise only the positive features while ignoring negative findings, shall not be acceptable.

Product launch and press release.

16. All product launch materials or press release of food products shall be as approved by the Agency for the product advertising materials.

Claims.

17.—(1) Claims for food products shall be substantiated before approval.

(2) Superiority claims may be used only when a product proves to be superior to an identified comparator or to all products in same category.

(3) Top parity claims and 'Natural claims' may be permitted provided they are adequately substantiated.

(4) Advertisement for food products shall not state or imply in absolute terms or by quotations that the food product has guaranteed effectiveness.

(5) Any statement claiming or implying a superlative function such as "the product of choice", or any such statements, for a food product shall not be used unless it can be adequately substantiated.

(6) "Best-selling" claims shall not be allowed in food advertisement.

(7) Nutrition claims in food product advertisements shall be allowed provided such claims can be adequately substantiated.

(8) Any statement relating to content such as 'contains x' shall be substantiated.

(9) All nutritional claims shall comply with the Agency's Pre-packaged Food (Labeling) Regulations.

18.—(1) A food advertisement may state that a food product is—

Energy
intake in
food
product.

(a) a "source" or "dietary source" of energy, where a Nutrient Reference Value (NRV) of the food product by the person would result in the daily intake of not less than 450 kilo calories of energy ;

(b) a "good source" or "good dietary source" of energy if a reasonable daily intake of that food product by a person would result in the daily intake of not less than 1,200 kilo calories of energy ; or

(c) an "excellent source" or "an excellent dietary source" of energy, where a NRV of the food product by the person would result in the daily intake of not less than 2,500 kilo calories of energy.

(2) A person shall not sell a food product for which an energy claim is made and represented as being solely for use in the feeding of children under two years of age, unless a reasonable daily intake of that food product by a child under two years of age would result in the total daily intake of not less than 1,360 kilo calories of energy.

19. A person shall not advertise for sale or have in his possession for sale, any food product that describe in a manner either by name or words, directly or indirectly as having tonic properties by reason only that such food contains—

Ambiguous
inference to
tonic
properties.

(a) alcohol ;

(b) protein or substances prepared from the hydrolysis of protein ; or

(c) caffeine or purine derivatives.

20. Advertisement, which describes a food, shall not include the word "nutritious" or any other words of the same significance unless the food contains—

Use of the
term
"nutritious"
in advertise-
ment.

(a) a range of nutrients including carbohydrate, fat, protein, vitamin and mineral ;

(b) a substantial amount of energy of more than 40 kcal/ 100 g or 20 kcal/100 ml ;

(c) source of protein not less than 5 g/100 g or 2.5g/100ml ; and

(d) at least four vitamins of an amount that meets the criteria for claim as source and two minerals (excluding sodium), of an amount that meets the criteria for claim as source ; and

(e) the amount of the nutrients mentioned under these Regulations is declared.

Advertisement aimed at children.

21. Advertisement for food that is directed at children shall not—

(a) exploit illustrations that may result in their physical, emotional or moral harm ;

(b) try to sell by appealing to emotions such as pity, fear, loyalty or self-confidence ; exploit children's natural tendency to play by advertising food accompanied by games or toys ;

(c) actively encourage children to undermine parental authority, including guiding diet and lifestyle choices ;

(d) portray images or events, which depict unsafe uses of the product ;

(e) condone unsafe situations, which may encourage children to engage in activities which may endanger them physically, emotionally or morally ;

(f) create an unrealistic impression in the minds of children or their parents or caregivers about safety ;

(g) condone or encourage the consumption of food items that are detrimental to children's health ;

(h) require a purchase to participate in a promotion or include a direct exhortation to make a purchase to participate in a promotion ;

(i) feature ingredients or premiums unless they are an integral element of the food item being sold.

Protein intake in food product.

22. A food advertisement may state that the food is—

(a) "a source" or "a dietary source" of protein, where NRV of the food product for a person would result in not less than 9 grams of protein ;

(b) "a good source" or "a good dietary source" of protein, where NRV of the food product for a would result in not less than 24 grams of protein ;
or

(c) "an excellent source" or "an excellent dietary source" of protein where NRV of the food product for a person would result in not less than 45 grams of protein.

Offences and Penalties.

23.—(1) Any person who contravenes any of the provisions of these Regulations commits an offence and is liable on conviction, in the case of—

(a) an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding N800,000.00 or to both ; and

(b) a body corporate, to a fine not exceeding N5,000,000.00.

(2) Where an offence under these Regulations is committed by a body corporate, firm or other association of individuals every—

(a) director, manager, secretary or other similar officer of the body corporate ;

(b) partner or officer of the firm ;

(c) trustee of the body concerned ;

(d) person concerned in the management of the affairs of the association ;
or

(e) person who purports to act in a capacity referred to in paragraphs (a) to (d) of this sub-regulation;

is liable to be proceeded against and punished for the offence in the same manner as if the person committed the offence, unless the person proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

24. A person convicted of an offence under these Regulations shall forfeit to the Federal Government—

Forfeiture
after
conviction.

(a) any asset or property constituting proceeds derived from or obtained, directly or indirectly, as a result of the offence ; and

(b) any of the person's property or instrumentalities used in any manner to commit or to facilitate the commission of the offence.

25.—(1) The Food Advertisement Regulation 2005 is revoked.

Revocation.

(2) The revocation of the Regulations Specified in sub regulation (1) of this regulation shall not affect anything done or purported to have been done under the revoked Regulations.

26. The Agency shall be responsible for the enforcement of these Regulations.

Enforcement
of these
Regulations.

27. In these Regulations—

Interpretation.

“*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 ;

“*Agency*” means the National Agency for Food and Drug Administration and Control ;

“*Claim*” means any representation which states, suggests or implies that the cosmetic product has particular qualities relating to its origin, nature, processing, composition or any other quality ;

"Food" means any substance, whether processed, semi-processed or raw, which is intended for human consumption, which includes drinks, chewing gum and any substance which has been used in the manufacture, preparation or treatment of "food" but does not include cosmetics or tobacco or substances used only as drugs ;

"Justification" means written explanation in respect of any claim, which shall be in the light of current knowledge acceptable to the Agency ;

"Label" means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, embossed or impressed on, or attached to a package or container of food ;

"Media" means newspaper, magazine, medical journal, television, radio, the internet ; Out of home, vehicle branding, posters, handbills, cinema, point of sale material ; online, digital and social media, any form of projected light and sound recordings or any of such means of communication ;

"Nutrient Reference Value" means a set of numerical values that are based on scientific data for purposes of nutrition labeling and relevant claims ;

"Proceeds" means any property derived or obtained, directly or indirectly, through the commission of the offence ; and

"Top Parity" means claim in an advertisement that the food products are in the same category, equal efficacy and that none of the product is superior to the other.

Citation.

28. These Regulations may be cited as the Food Products Advertisement Regulations, 2021.

MADE at Abuja this 7th day of July, 2021.

DR. OSAGIE E. EHANIRE, MD, FWACS
Honourable Minister of Health