

REGULATING THE DIGITAL FRONTIER:

**ARCON's Expanded Regulatory
Powers Cemented in Digi Bay
Limited v A.G Federation & Anor**

Technology, Media & Telecommunications Insights

Volume 1, Issue 10 | August 2025



P a g e s C O N T E N T S

2 Introduction

2 Understanding ARCON's Mandate

3 The Decision of the Honourable Justice Aluko

4 Implications of the Ruling

6 Procedure for obtaining the pre- approval from the Advertising Standards Panel (ASP)

7 Conclusion

1. Introduction

The highest regulatory authority in Nigeria for advertising, marketing communications, and associated activities is the Advertising Regulatory Council of Nigeria (ARCON), which was established pursuant to the Advertising Regulatory Council of Nigeria Act, 2022. ARCON is responsible for upholding moral principles, protecting consumers, and maintaining the general integrity of the advertising sector, among other broad statutory responsibilities.¹

In *Digi Bay Limited v Attorney General of the Federation & ARCON*,² the Federal High Court, coram the Honourable Justice Aluko, delivered a notable ruling that clarified the extent of ARCON's powers, especially its control over advertisement on all media platforms, including digital and social media. This decision provides the much-needed clarity on the scope of ARCON's jurisdiction and enforcement powers, marking a watershed moment in the development of advertising regulation in Nigeria.

2. Understanding ARCON's Mandate

Following the enactment of the Advertising Regulatory Council of Nigeria (ARCON) Bill, the Advertising Practitioners Council of Nigeria (APCON) was renamed the Advertising Regulatory Council of Nigeria (ARCON). ARCON was tasked pursuant to the ARCON Act of 2022 to regulate and control advertising in Nigeria. Its primary objectives include ensuring that all advertisements targeting Nigeria are legal, ethical, and culturally appropriate; promoting the use of local talent and resources to boost the economy; facilitating efficient advertising and marketing practices; and fostering fair competition while encouraging Nigerian ownership and participation in the industry.³

ARCON is also mandated under the Act to regulate and oversee all advertising and marketing communications targeting Nigeria, establish regulatory standards for government agencies, prevent the dissemination of harmful or offensive advertisements, and ensure that all advertising content is legal, truthful, respectful, and free from misinformation.⁴

¹ Section 2 of the ARCON Act, 2022

² *Digi Bay Limited (Trading under the name and style of Betway Nigeria) & Ors v. Attorney General of the Federation & ARCON* Suit No: FHC/L/CS/1262/2024 (unreported)

³ Section 2 of the ARCON Act 2022

⁴ Section 2 of the ARCON Act 2022

3. The Decision of the Honourable Justice Aluko

On April 30, 2025, the Honourable Justice Aluko of the Federal High Court delivered a pivotal ruling in Suit No: FHC/L/CS/1262/2024 – Digi Bay Limited & Ors v Attorney General of the Federation & Anor, affirming the authority of the Advertising Regulatory Council of Nigeria (ARCON) to regulate advertising across all media platforms, including social media. The Plaintiffs (Digi Bay Limited (Betway Nigeria), Super Group Limited, and Otunba Kunle Olamuyiwa), via an originating summons filed on July 12, 2024, sought a determination on whether ARCON's statutory powers extended to regulating advertising content published on digital platforms and by individuals not registered as advertising practitioners. The court in its ruling, held that ARCON's mandate encompasses oversight of all advertising, regardless of whether the individuals or entities involved are registered practitioners.

Some of the notable aspects of the ruling were:

1. **Regulation Across All Media Platforms:** The Court held that ARCON has the statutory authority to regulate advertising content across all media platforms, including traditional outlets (print, radio, television) and digital channels (social media, websites, and mobile applications). Despite being privately owned, the Court held that social media platforms, such as Instagram, Facebook, TikTok, and X, are public spaces for disseminating advertising content to wide audiences, thus falling under ARCON's jurisdiction.
 2. **Jurisdiction Over All Advertisers:** The ruling also clarified that ARCON's regulatory mandate extends beyond registered advertising agencies to include private individuals, organisations, and entities engaged in advertising activities, regardless of their professional registration status. The Court further added that the determining factor is the act of advertising itself, not whether the individual or entity is a certified advertising practitioner. This is reinforced in Section 2(2) of the ARCON Act, which makes the Act applicable to all persons, without any qualification.
 3. **Mandatory Pre-Approval of Advertising Content:** The Court reinforced ARCON's requirement that all advertising content, whether created by agencies, organisations, or individuals, must be vetted and approved by
-

ARCON before publication or airing. The vetting process involves submitting applications to the Advertising Standards Panel (ASP), which reviews content for compliance with existing laws, ethical, and professional standards.⁵

4. ***Enforcement and Sanctions:*** The court made it clear that although ARCON has the power to send non-compliant advertisers violation notices or letters of infraction, it lacks the power to directly levy fines or penalties. According to the ARCON Act, the Advertising Offences Tribunal is the only body with this authority.⁶

4. Implications of the Ruling

With far-reaching consequences for brands, media platforms, influencers, content producers, and advertisers, the Court's decision has seismic ramifications for Nigeria's advertising environment. Below are some of the key impacts:

1. ***Comprehensive Regulatory Oversight:*** From the ruling, the Court reiterated that ARCON is the main body in charge of regulating all advertising content in Nigeria, irrespective of the platform or the status of the advertiser. This addresses the previously unregulated area of digital advertising by establishing a single regulatory framework that encompasses both traditional and digital media.
2. ***Impact on Influencers and Content Creators:*** Sponsored content created by influencers, bloggers, skit creators, and other content producers now falls within the jurisdiction of ARCON. This includes obtaining the Advertising Standards Panel's (ASP) pre-approval for advertisements (ads), which can be logistically challenging for those accustomed to creating and publishing content quickly. Because creators must adhere to ARCON's ethical standards, the ruling may professionalize the influencer market, but it may also discourage smaller creators or stifle creativity due to the costs and bureaucratic procedures associated with compliance.
3. ***Challenges for Social Media Platforms:*** ARCON's regulatory requirements now need to be negotiated by social media platforms like YouTube, Instagram, and TikTok, which host millions of ads in Nigeria. Social media companies may be under pressure to ensure that hosted ads adhere to ARCON's guidelines, even though they are not directly responsible for content

5 Section 53 of the ARCON Act 2022

6 Section 37 of the ARCON Act 2022

creation. ARCON's intention to hold platforms responsible is demonstrated by its prior legal action against Meta Platforms Incorporated (the owners of Facebook, Instagram, and WhatsApp)⁷. Hosting unapproved advertisements could result in additional legal and operational difficulties.

4. ***Consumer Protection and Ethical Standards:*** The ruling strengthens ARCON's ability to shield customers from deceptive advertising, exaggerated claims, and unethical behaviour, especially in the digital sphere, where these problems are common. ARCON can enhance advertising trust by eliminating misleading content through pre-approval requirements. However, ARCON's ability to monitor and enforce adherence across millions of social media accounts and ads will determine the effectiveness of this measure.
5. ***Potential breach of the right to free speech:*** The Advertising Standards Panel's (ASP) mandatory pre-approval process has sparked significant debate about its compatibility with the constitutional right to freedom of expression. Section 39(1) of the 1999 Constitution of the Federal Republic of Nigeria guarantees every person the right to freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without interference. While it is widely accepted that commercial speech, such as advertising, can be subject to greater regulatory oversight than purely personal or political expression, concerns have emerged about the broad reach of ARCON's mandate, particularly where its enforcement extends to online platforms, social media content, and unlicensed individuals. In doing so, ARCON may inadvertently capture non-commercial or hybrid speech, for example, personal commentary that references a brand, parody, satire, or user-generated content with no formal advertising intent.

Furthermore, because the ASP's review process is *ex ante* (pre-publication), it operates as a form of prior restraint, which is subject to especially rigorous scrutiny under constitutional law. While prior restraint may be justified in limited contexts, such as national security or public order, it is generally disfavored when applied to expression, particularly if it lacks a clearly defined legal boundary or mechanism for appeal.

⁷ Suit No: FHC/ABJ/CS/1701/2022 – ARCON v Meta Platforms Incorporated & AT3 Resources Limited. The suit was struck out following the Notice of Discontinuance filed by ARCON

5 Procedure for obtaining the pre-approval from the Advertising Standards Panel (ASP)

Obtaining pre-approval for advertisements from the Advertising Standards Panel (ASP), as mandated by ARCON, is a compulsory process for all advertisers seeking to legally advertise within Nigeria. This pre-vetting process is designed to ensure that all advertisements comply with ethical, cultural, and regulatory standards before they are released to the public. Below is an outline of the key procedural steps involved:

1. ***Submission of Application:*** A formal application letter, addressed to the Director General of ARCON, must be submitted by the advertising practitioner with the following documents:
 - a. Completed ASP Form 001 (signed by a registered advertising practitioner)
 - b. Advertiser's authorization letter
 - c. The advertisement material
 - d. And any required regulatory approvals.
2. ***ASP Vetting and Review Process:*** Once received, the ASP conducts a detailed evaluation of the advertisement (ad) to determine compliance with the Nigerian Code of Advertising Practice, Relevant sectoral guidelines, Cultural and religious sensitivities, truthfulness, decency, and clarity standards, etc. Vetting is typically conducted on a monthly schedule, but advertisers may request accelerated vetting when time sensitivity is a concern. Accelerated options include 16-hour, 8-hour, or 4-hour review windows—each attracting additional fees.
3. ***Outcome – Approval or Rejection:*** Following the ASP's review, ads that meet all regulatory and ethical standards are granted a Certificate of Approval to Advertise, indicating official clearance for public release. If the ad does not meet the required criteria, it is rejected, and the advertiser will receive written feedback detailing the reasons for non-approval. The advertiser may either revise the content in line with the ASP's observations and resubmit it for further consideration or appeal to the Director General of ARCON.
4. ***Post-Approval Compliance and Usage:*** Once approved, the ad must be used exactly as vetted and approved, without any alterations to its visual,

textual, or audio elements. Any modification, no matter how minor, requires a new round of vetting and approval. The Certificate of Approval must be retained by the advertiser or media agency, as it is often required when placing media orders or during regulatory compliance checks.

5. Conclusion

The court's decision in the Digi Bay's case marks an important turning point in Nigeria's advertising industry. By upholding ARCON's jurisdiction to regulate all types of advertising on both traditional and digital media, ARCON is positioned to transform the advertising landscape by expanding its mandate to encompass private individuals, social media platforms, and all advertising activities, prioritizing ethical standards and consumer protection. However, ARCON's ability to resolve capacity issues, expedite compliance procedures, and strike a balance between innovation and regulation will determine the effectiveness of this regulatory framework. Additionally, with potential cross-border breaches online, there are real concerns about how effectively the regulator can implement its mandate. In order to maintain a sustainable and ethical advertising ecosystem, advertisers, influencers, and platforms will need to engage with ARCON and comply proactively with this new era of oversight.

AUTHORS



Qudus Adeoye
TMT Practice Unit



Ujunwa Agbanelo
TMT Practice Unit



Contact

LAGOS

Kenna Place
8, Ogunyemi Road, Palace Way, Oniru
PO Box 73002, Victoria Island, Lagos

ABUJA

1st Floor, Novare Central
Plot 502 Dalaba Street,
Wuse Zone 5, FCT 900285, Abuja

ENUGU

3 Emmanuel Ngwu Street,
Thinkers' Corner,
Enugu, 400001

+234 811 395 1052, +234 811 395 1053
counsel@kennapartners.com

