Dispute Resolution

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Who Regulates Outdoor Advertising in Nigeria? A Review of *Massilia Motors Ltd v. Advertising Regulatory Council of Nigeria* and *Godec Power Nigeria Ltd v. Attorney General of the Federation & Advertising Regulatory Council of Nigeria*

1. INTRODUCTION

The enactment of the *Advertising Regulatory Council of Nigeria Act*[2] (the ARCON Act) marked a significant expansion of federal involvement in the regulation of advertising in Nigeria. Replacing the Advertising Practitioners Council of Nigeria (APCON), ARCON was vested with wide-ranging powers to regulate advertising practice, standards, and dissemination across all media platforms in Nigeria.[3] Almost immediately, the scope of these powers – particularly as they relate to outdoor advertising – became the subject of constitutional controversy.

Outdoor advertising has historically been regulated by State Governments and Local Government Councils, primarily through signage, billboard, and environmental control laws. The constitutional anchor for this position is paragraph 1(k)(i) of the Fourth Schedule to the *Constitution of the Federal Republic of Nigeria ("the Constitution")*,[4] which assigns to Local Governments the responsibility for the "control and regulation of outdoor advertising and hoardings."

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2 2022
3 See, Suit No. FHC/L/CS/1262/2024 – *Digi Bay Limited & 2 Others -v- Attorney General of the Federation & Anor*.
4 The *Constitution of the Federal Republic of Nigeria*, 1999 (as amended).

This apparent overlap between federal statutory regulation and constitutionally assigned local government functions culminated in two conflicting decisions of the Federal High Court in 2025: *Massilia Motors Limited v. Advertising Regulatory Council of Nigeria*[5] and *Godec Power Nigeria Ltd v. Attorney General of the Federation & Advertising Regulatory Council of Nigeria*.[6] Both cases interrogated the same constitutional question yet reached diametrically opposed conclusions.

This article examines both decisions in some detail – briefly highlighting the facts, the arguments of the parties, and the reasoning of the courts – and attempts to compare and contrast both decisions.

2. MASSILIA MOTORS LIMITED V. ADVERTISING REGULATORY COUNCIL OF NIGERIA

2.1 Facts of the Case

Massilia Motors Limited ("the Plaintiff") is a company engaged in the business of automobile sales and distribution. In the course of its business, the Plaintiff displayed what ARCON considered to be outdoor advertisements – outdoor signages, including lamp-poleposts and billboard advertisements, promoting its products and services. ARCON issued a *Notice of Violation* to the Plaintiff on the ground that the advertisements had not received prior approval from the Advertising Standards Panel as required by section 54 of the ARCON Act.

Following the notice, ARCON took further enforcement steps, including initiating proceedings before the Advertising Offences Tribunal vide a Criminal Summons it issued to the Plaintiff. The Plaintiff challenged these actions before the Federal High Court, Lagos Division, contending that ARCON lacked the constitutional authority to regulate outdoor advertising and to sanction it for the alleged infractions.

2.2 Arguments of the Plaintiff

The Plaintiff's case was anchored on constitutional competence. Massilia Motors argued that by virtue of paragraph 1(k)(i) of the Fourth Schedule to the Constitution, the control and regulation of outdoor advertising and hoarding is exclusively vested in Local Government Councils. Therefore, to the extent that section 54 of the ARCON Act purports to regulate outdoor advertising by issuing notices of violation and imposing sanctions in respect thereof, it is inconsistent with the Constitution and consequently null and void under section 1(3) of the Constitution.

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5 Suit No: FHC/L/CS/1044/2025.
6 Suit No: FHC/LKJ/CS/20/2024.

2.3 **Arguments of the Defendant**

ARCON contended that:

a. The ARCON Act was validly enacted by the National Assembly pursuant to its powers under the Exclusive Legislative List.

b. Advertising, as an economic and professional activity, falls within federal legislative competence, particularly under trade and commerce and incidental powers.

c. The Fourth Schedule does not oust federal legislative authority but merely assigns administrative responsibilities to Local Governments.

d. ARCON's regulation was directed at advertising standards and content, not at physical structures as such.

2.4 **Decision of the Court**

The Federal High Court (per Aluko J.) found in favour of Massilia Motors. The Court held that:

a. The Constitution clearly assigns the control and regulation of outdoor advertising to Local Government Councils.

b. The National Assembly lacked the competence to legislate in a manner that encroaches on this constitutionally allocated function.

c. By the provisions of section 1(3) of the Constitution and paragraph 1(k)(i) of the Fourth Schedule to the Constitution, the Local Government Council is the only constitutional and lawful arm of government vested with the powers of control and regulation of out-door advertising and hoarding in Nigeria to the exclusion of all other entities or agencies, including the Advertising Regulatory Council of Nigeria.

d. The provisions of section 54 of the ARCON Act were unconstitutional to the extent that they purported to regulate outdoor advertising, a function constitutionally reserved for Local Government Councils.

e. The notice of violation and the proceedings before the Advertising Offences Tribunal were null and void.

The Court, therefore, set aside ARCON's enforcement actions and granted declaratory and injunctive reliefs in favour of the claimant.

3. GODEC POWER NIGERIA LTD V. ATTORNEY GENERAL OF THE FEDERATION & ADVERTISING REGULATORY COUNCIL OF NIGERIA

3.1 Facts of the Case

Godec Power Nigeria Ltd (the Plaintiff) displayed outdoor advertising materials in the course of promoting its business. ARCON issued regulatory directives and notices alleging non-compliance with the ARCON Act, including failure to obtain prior approval for the advertisements. Godec Power challenged ARCON's actions before the Federal High Court, Lokoja Division, raising substantially similar constitutional questions to those raised in *Massilia Motors*.

3.2 Arguments of the Plaintiff

Godec Power argued that:

a. Regulation of outdoor advertising is constitutionally reserved for Local Governments.

b. The ARCON Act unlawfully extends federal power into a residual matter.

c. ARCON's actions violated the Plaintiff's right to freedom of expression.

d. The National Assembly exceeded its legislative competence in enacting the ARCON Act insofar as it applies to outdoor advertising.

3.3 Arguments of the Defendant

ARCON maintained that:

a. Advertising regulation is a matter of national economic and professional importance.

b. The National Assembly, under paras. 49, 62, and 68 of the Second Schedule to the Constitution (the Exclusive Legislative List), has the power to regulate advertising.

c. Local Government functions under the Fourth Schedule relate to physical structures and environmental control, not advertising standards/content or professional regulation.

d. The ARCON Act does not conflict with the Constitution.

3.4 Decision of the Court

The Federal High Court (per Dashen J.) dismissed the Plaintiff's suit in its entirety. The Court held that:

a. Advertising regulation falls within the legislative competence of the National Assembly.

b. The Fourth Schedule does not confer exclusive control and regulatory authority over outdoor advertising on Local Governments.

c. ARCON's authority extends to the content, standards, ethics, and professional regulation of advertising.

d. Local Government powers are limited to physical advertising structures (e.g., control of signboard locations) and do not conflict with ARCON's role in regulating the practice and professionalism of advertising.

e. ARCON's requirement for prior approval does not amount to an unconstitutional restriction on freedom of expression.

f. The ARCON Act was validly enacted and constitutional.

The Court upheld ARCON's regulatory authority and enforcement actions.

4. COMMENTARY

The divergence between *Massilia Motors* and *Godec Power* illustrates a fundamental disagreement by courts of co-ordinate jurisdiction on constitutional interpretation.

4.1 Approach to the Fourth Schedule

In *Massilia Motors*, the Court treated the Fourth Schedule as conferring exclusive regulatory authority on Local Governments over outdoor advertising. In contrast, *Godec Power* viewed the Schedule as allocating administrative responsibilities to Local Governments without negating federal legislative competence. The unavoidable question that the appellate courts would have to answer is whether the Fourth Schedule confers exclusivity on Local Government Councils over the listed functions. Can this be answered in the affirmative to nullify section 54 of the ARCON Act, as was done by the court in *Massilia Motors*, in view of the exclusive legislative authority of the National Assembly on matters of trade and commerce and matters incidental thereto, including advertising? To what extent can the principle of statutory interpretation, "g*eneralia specialibus non derogant*", apply in the interpretation of paras. 49, 62, and 68 of the Second Schedule to the Constitution and para. 1(k)(i) of the Fourth Schedule to the Constitution? Will a distinction between the content and medium of advertising in order to restrict the regulatory authority of the Local Government Councils to physical structures used in advertisement as against the

content of advertisement (as was done by the court in *Godec Power*) amount to judicial legislation and reading words into the Constitution?

4.2 Distinction Between Content and Medium of Advertising

Godec Power drew a conceptual distinction between advertising as a communicative and professional activity and the physical structures used to display advertisements, that is, content and medium of advertising, thereby allowing concurrent applicability of the relevant provisions. *Massilia Motors*, on the other hand, collapsed this distinction, equating advertising entirely with signboards and hoardings.

4.3 Implications of both Decisions

As both decisions emanate from courts of coordinate jurisdiction, neither decision binds the other. The resulting uncertainty underscores the need for appellate clarification to harmonise the law.

5. CONCLUSION

The question of who regulates outdoor advertising in Nigeria remains unsettled. *Massilia Motors* represents a restrictive, local-government-centric interpretation of the Constitution, while *Godec Power* supports a broader federal regulatory role for ARCON over advertising in Nigeria. Both decisions are industry-shaking, as all stakeholders eagerly wait for the appellate courts to provide authoritative guidance and clarification.

For further information on this article and area of law,
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