

IAB objects to Department of Health's attempt to limit commercial speech

The Interactive Advertising Bureau South Africa (IAB) has made its submissions to the Department of Health regarding the draft Regulations and Guidelines relating to the Labelling and Advertising of Foods (r. 429).



Andrew Allison

It joins other industry bodies in taking issue with the Department's attempts to regulate the marketing activities of the South African food and beverage industry. "Unfortunately, the Regulations are unduly onerous and flawed," says Andrew Allison, the IAB's Head of Regulatory. "However we have made it clear in our submissions that the IAB is open to working with the Department of Health to find viable alternatives to set reasonable limits and exacting standards for self- or co-regulation."

In the voluminous draft, the Department of Health has set out its intentions to strictly regulate - amongst many other things - the advertising and marketing of unhealthy foods to school-going South African children.

The IAB South Africa makes it clear that it fully endorses the Department of Health's aims to prevent childhood obesity and to reduce the incidences of non-communicable diseases in South African children.

Limitation on Constitution

However, amongst other pertinent over-arching concerns, Allison points out the proposed Regulations amount to an unlawful limitation on the Constitutional freedom of commercial speech afforded to all the affected parties, which includes the entire IAB membership base.

"The Regulations just do not meet the criteria set out under Section 36 of our Constitution which puts forward that there must be a reasonable relation between the limitation and its purpose, as well as proper consideration given to less restrictive means to achieve its purpose."

With a Code of Conduct that is aligned with international best practices and an established Regulatory Portfolio to address consumer complaints and deal with transgressions of its Code of Conduct, the IAB is of the view that rigorous self-regulation by the advertising industry is a viable alternative to criminalising advertising and marketing businesses, which may play a part in the transgression of the proposed Regulation.

"It's also of great concern to the IAB that the Regulations demonstrate an overall lack of understanding of the digital industry and the manner in which digital communications, transactions and interactions are transmitted and received. The digital industry and the very nature of digital communications are dynamic, fluid and complicated; for this reason, governments the world over are ill-equipped to regulate them effectively and efficiently."

Limited exposure to brands

If the Regulations come into being, South African children would be limited in their exposure to local brands marketing unhealthy foods and beverages; however, when it comes to the online environment they would continue to be fully exposed to the marketing of international competitors, creating an unfair bias against the South African food and beverage industry, and its supply chains.

In its submission, the IAB South Africa has appealed to the Department of Health to conduct a full regulatory impact assessment and communicate the findings publicly; as well as to engage with the affected industries in the form of public hearings. It has invited the Department of Health to work with them, in conjunction with other leading industry bodies, to find better solutions that will support the Department's mandate to protect the health of South African children.

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