

## NEWS RELEASE

### ADVERTISERS SHOULD TAKE DRAFT REGULATIONS ON JUNK FOOD INTO ACCOUNT – LEGAL EXPERT

Advertisers of junk food and designers of junk food packaging should take the draft regulations to the Foodstuffs, Cosmetics and Disinfectants Act into account, even though they have been put on hold until after the World Health Organisation meeting in May 2011.

These draft regulations, when they become law, will complement the existing regulations imposed by the Advertising Standards Authority (ASA).

Until the introduction of the ASA's Food and Beverage Code in 2008, there was no specific restriction in South Africa on the type of product or service that could be advertised to children – with the exception of alcohol and tobacco – or the type of advertising that could be employed. However, the ASA regulations have since placed limitations on the advertising of products which are not healthy dietary choices to a target market which is too young to make informed dietary choices.

Published for public comment in 2007, the government regulations are also aimed at protecting children from unhealthy food choices and have resulted in heated debate because of their many severe restrictions.

Kelly Thompson, partner at intellectual property law firm Adams and Adams, has welcomed the Department of Health's decision to do more work on the provisions dealing with health claims on foodstuffs and nutrient profile models before implementing them.

"Fortunately, the self-regulatory approach of the ASA is already in place and the government regulations will not be the only limitations placed on advertisers of so-called junk food. The government can afford to spend some time doing more research to ensure that the regulations are, ultimately, both effective and reasonable."

She says it has been reported that surveys have revealed that up to 17 percent of children in South Africa between the ages of one and nine, who live in urban areas, are overweight.

"The role played by advertising in exacerbating this problem has in recent years received much public attention worldwide. Pressure from the public and consumer bodies has led to many countries implementing regulations that restrict which foods and beverages may be advertised to children, as well as the methods of advertising and promotion that may be used."

Thompson says the draft regulations are controversial because of their potential far-reaching effects. They envisage that certain foods, categorised as non-essential to a healthy lifestyle, would be prohibited from being advertised or promoted to children. These include carbonated drinks, confectionary, potato crisps and fast foods of certain specifications.

“They also envisage that no cartoon-type characters, puppets, animation, tokens or gifts may be used in the advertisement of any foodstuff to any child under 16. Identified foodstuffs would also have to carry labels that warn consumers to use the product in moderation and that excessive consumption on a regular basis may lead to poor health. Moreover, a total prohibition on the words “health” and “healthy”, “wholesome” and “nutritious” on any product is proposed.

According to Thompson many food and beverage companies have introduced their own responsible marketing practices in response to the increased public debate.

“Kellogg’s, for example, has introduced self-imposed guidelines which stipulate what and how it markets to children. It does not advertise at all to children younger than six and only advertises products that meet certain nutrient criteria to children under 12.

“These guidelines are in line with the ASA regulations, which prohibit advertising that encourages poor nutritional habits or an unhealthy lifestyle in children or which encourages excessive consumption.

“The final government regulations, even though it is not clear precisely what they will contain, will definitely heighten the protection of children against irresponsible advertising even further, and the advertising industry would do well to prepare for them, even at this early stage,” she says.

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