

Bye-bye birdie - new food law challenges

 By [Natasha Wright](#)

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The topic of advertising of unhealthy foodstuffs to children, and its contribution to obesity and disease amongst the target audience, has been an ongoing debate for years. According to studies, one of the four main risk factors for non-communicable diseases is an unhealthy diet.

In a bold move in May 2010, the 63rd World Health Assembly (WHA) endorsed a set of recommendations to limit children's exposure to the marketing of foods and non-alcoholic beverages, with particular emphasis on foods that are high in fat, sugar and salt and low in nutritional value. Hot on the heels of the WHA, South Africa implemented an "Integration Nutrition Strategy" which is designed to address nutrition in South Africa, and in a clear attempt to limit children's exposure to the marketing of foods and non-alcoholic beverages, the Department of Health has proposed new regulations relating to the labelling of foodstuffs.

Marketing aimed at children

Currently in South Africa, the concept of attracting the attention of children to confectionery, non-alcoholic beverages and fast food is synonymous with the use of cartoon characters, famous movie characters and toy give-aways, which is aimed at selling those foodstuffs to children, or convincing parents to make the purchase. One only has to glance down the aisle of a grocery store to notice which foodstuffs are being marketed to children and which are being marketed to adults. Of course, the colourful, cartoon inspired packaging is almost always a sugary, energy dense and nutrient-low treat. Almost always, this clever marketing works, as children associate their favourite sugary cereal or fruit drink with a particular cartoon character, and beware, Mom or Dad, if you come home with a product that does not bear the much-loved character!

In May 2014, the Department of Health published for comment, draft regulations relating to the labelling of foodstuffs (R429), that will see a severe clamp down on the use of our favourite meal-time characters in the advertising of unhealthy foodstuffs to children. In an attempt to define what an unhealthy foodstuff is, Guideline 14 of R429 defines an unhealthy foodstuff as an energy dense, nutrient poor food and/or non-alcoholic beverage, which is high in fat, sugar or salt. By definition, almost all non-alcoholic beverages, confectionery and "fast food" will fall within the ambit of R429. This has manufacturers up in arms, while some parents and health organisations are welcoming the move by the Department of Health.

In effect, R429 and Guideline 14 prohibits the commercial marketing of unhealthy foodstuffs (as defined above) to any children under 18, through advertising (which includes product packaging, print media, in-school marketing, outdoor advertising), cross promotions (in which manufacturers link unhealthy foodstuffs with popular children's movies) and television programme sponsorships. Guideline 14 goes further to prohibit the commercial marketing to children that incorporates celebrities, cartoon-type characters, puppets, computer animations or any similar strategy.

Restrictions may affect manufacturers

Manufacturers are concerned, and advertising agencies are perplexed, as the new restrictions will severely affect briefs to advertising agencies when manufacturers launch or rebrand their, supposedly, unhealthy foodstuffs in South Africa.

Interested parties had until 29 August 2014 to comment on the draft regulations. Over and above the obvious restrictions, manufacturers are focussing their attention on the irrationality and, perhaps, unlawfulness of the draft regulations, to the extent that they deprive manufacturers of their rights to use, for instance, cartoon characters that are registered trade marks in South Africa. Arguments have been put forward to the Department of Health that the new law is unconstitutional.

It appears that there is an attempt by the Department of Health to have the draft regulations in place as soon as possible. However, it remains to be seen whether or not this will materialise, as numerous manufacturers and bodies, including overseas entities, have made submissions to the Department of Health regarding the validity of R429. It is clear that the extent of the effect of R429 will not only be felt by South African manufacturers, but by international companies, who have business interests in South Africa.

While we wait for the Department of Health's next move, manufacturers and advertisers alike, may wish to put their thinking caps on, as the advertising of foodstuffs to children is about to get much more challenging!

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