

## Decision of the ADVERTISING REGULATORY BOARD

Advertiser	Heala.org
Consumer/Competitor	Consumer
File reference	3564 - Heala.org
Outcome	Upheled
Date	12 December 2024

The Directorate of the Advertising Regulatory Board has been called upon to consider a consumer complaint against a radio commercial for Heala.org.

### Description of the advertising

The Radio Commercial says the following in Afrikaans:

*“Gaskoeldrank and vrugtesap maak on kinders siek. Met elke slukkie word suiker in hulle liggome gestort, wat lei tot vetsug, hartsiekte en diabetes soos hulle ouer word. Ons moet ons kinders teen alle drinkgoed met suiker in beskerm. Dring nou aan op ‘n strenger gesondheidbevorderingsheffing. Onderteken die petitie op [heala.org](http://heala.org). Dis H-E-A-L-A punt org.”*

The English translation reads as follows:

*“Fizzy drinks and fruit juice make our children sick. With every sip, sugar is dumped into their bodies, leading to obesity, heart disease and diabetes as they age. We must protect our children from all drinks with sugar in them. Insist on a stricter health promotion levy now. Sign the petition on [heala.org](http://heala.org). That’s H\_E\_A\_L\_A dot org.”*

With a translator's note: “levy” is the direct translation of the word “heffing”, but in this context it seems they mean “tax”.

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## Complaint

The Complainant states: *“The advert incorrectly states that consumption will cause heart and intestine disease. It would be correct if it stated excessive consumption can cause, instead it currently creates the impression that any consumption will cause disease.”*

## Response

The Advertiser responded, *inter alia*:

- *Based on this text [of the Advertisement] the advertisement clearly makes a very narrow claim: that sugary beverages make children ill by leading to obesity, heart disease and diabetes later in life.*
- *[The Complaint] is that the advertisement is misleading because it “incorrectly states that consumption [of sugar] will cause heart and intestine disease.” In addition, [the Complainant] agrees that consumption of sugar causes disease. His complaint is that HEALA should have stated how much sugar would cause this disease and that not including the word “excessive” makes the advert misleading.*
- *The advertisement does not make reference to any intestine disease. The advertisement also specifically refers to consuming sugary drinks, not sugar.*
- *The advertisement actually says that sugar in fizzy drinks and fruit juices which, when consumed by children can lead to obesity, diabetes and heart disease when they get older.*
- *The advert does not claim, definitively, that consuming sugar-sweetened drinks will always cause this disease though it is incontrovertible that sugary drinks cause certain diseases and health harms in children and adults.*
- *Even if [The Complainant’s] characterisation is correct, the Code does not require HEALA to quantify and provide granular detail about exactly how much sugar should be consumed to result in what degree of increased health risks.*
- *An analogy to this would be to claim that warning labels on cigarette cartons that say “Smoking Kills” or “Smoking Causes Cancer”. By [The Complainant’s] view, these warnings (which are mandated by government regulation and carried on all tobacco advertising) are misleading because the warnings do not stipulate the amount someone needs to smoke or that not all smokers get lung cancer.*

- *When warning about an adverse health consequence, it is sufficient to indicate the product is harmful and what potential adverse consequences would result without being overly specific.*
- *When considering whether an advertisement is misleading, it is important to take account of what the advertisement is asking consumers to do and what precisely it “misleads” them about.*
- *This advertisement is not asking consumers to buy anything. HEALA is a non-profit civil society organization that used this campaign to improve consumer awareness about the health promotion levy and try to garner support for a stronger levy.*
- *All the advert seeks to do is make consumers aware of a potential problem and encourages them to sign a petition on HEALA’s website.*
- *Importantly, the webpage that HEALA directs consumer’s to has a lot of information about the issue of sugar-sweetened beverages and the evidence demonstrating its harms. This information is based on research and scientific consensus about the harms of sugary beverages.*
- *It is also important to note that the HEALA website is structured in a way where consumers first are given information about the problem of sugary beverages. It is only after this information that HEALA provides a link to take consumers to a page to sign the petition. That petition page also has further information and links to additional evidence.*
- *I include an excerpt of some of the information a consumer will be given before:*

“Drinking liquid sugar in beverages and the extra calories a person takes in this way have been linked to noncommunicable diseases (NCDs) like diabetes, hypertension, overweight and obesity. These are leading causes of death and disability in later life in South Africa.

“Sugary drinks often have no nutritional value.

“They are particularly harmful to the body in liquid form because the liver absorbs them more quickly than it can process and release. The excess is then stored as fat or glycogen deposits in the liver. This can lead to fatty liver disease and a higher risk for diabetes and other NCDs. A person should not consume more than 10% of total calories from added sugar (World Health Organization and the World Cancer Research Fund guidelines). But just one 600ml bottle of cooldrink contains 12% of total calories from added sugars for an adult.

“It would require 16 minutes of running and over 1.5 km of walking to exercise it off.”

- *It is apparent that the advertisement serves the sole purpose of directing a consumer to the HEALA website to get further information which can enable them to decide whether to sign a petition.*
- *When HEALA develops campaign materials and the petitions themselves, it does so with extensive input and review by experts in the field of public health nutrition. This includes having academics and researchers review the materials for major campaigns (such as the cited advertisement) to ensure HEALA’s advocacy is evidence-based and that we arrive at language that is accurate.*
- *Consequently, HEALA’s advocacy is not based on opinion or speculation but anchored in robust scientific evidence and validated through context-scientific expertise. If necessary, expert affidavits could be provided by the groups HEALA consults with to confirm the scientific validity of the claims HEALA makes.*
- *[The Complainant’s] complaint is based on the outdated notion that consuming sugar is not harmful to children or adults. This demonstrates why HEALA’s campaign is so important.*
- *What is important in the WHO’s position is that even drinking one sugary beverage is considered harmful to health – in other words, any consumption of sugary beverages has the potential to be harmful.*
- *Consequently, the advertisement is not misleading because it is true, accurate and based on scientific evidence.*

## Application of the Code of Advertising Practice

The following clause of the Code of Advertising Practice (the “Code”) was considered in this matter:

- Clause 4.2.1 of Section II (Misleading claims)

## Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

## Jurisdiction

The Directorate notes that the Advertiser is not a member of the ARB, and did not submit to the jurisdiction of the ARB.

For the purpose of clarity, the Directorate notes that Clause 3.3 of the Memorandum of Incorporation of the ARB states:

*"3.3 The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the non-member or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published."*

This position has been confirmed by the Supreme Court of Appeal, in a judgement against which leave to appeal to the Constitutional Court was refused.

The ARB will rule on whatever is before it when making a decision for the guidance of its members.

## Merits

Clause 4.2.1 of Section II of the Code of Advertising Practice, which deals with Misleading claims, states: *"Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer."*

The Directorate must therefore determine whether the Commercial, which states, *"Fizzy drinks and fruit juice make our children sick. With every sip, sugar is dumped into their bodies, leading to obesity, heart disease and diabetes as they age. We must protect our children from all drinks with sugar in them,"* is likely to mislead the public.

The Advertiser makes a number of statements to argue against this point. The Directorate would like to dispense with one aspect of the argument by the Complainant, which states that the Commercial says that consumption of sugary drinks will lead to intestine disease. The Advertiser says that it does not state this and the Directorate agrees. The Directorate

therefore will therefore only consider the remaining diseases specified in the Commercial, including obesity, heart disease and diabetes.

The Advertiser itself argues two contradictory views. It firstly argues that “*the advertisement clearly makes a very narrow claim: that sugary beverages make children ill by leading to obesity, heart disease and diabetes later in life.*”

It then later states: “*The advert does not claim, definitively, that consuming sugar-sweetened drinks will always cause this disease though it is incontrovertible that sugary drinks cause certain diseases and health harms in children and adults.*”

Although this may seem like a semantic argument, the Directorate believes that this distinction is at the crux of the matter – that the Complainant argues that the consumption of sugary drinks does not always lead directly to various diseases, while the commercial states that it does.

Despite what the Advertiser argues, the Directorate finds that the commercial clearly states “*Fizzy drinks and fruit juices make our children sick*” and “*With every sip, sugar is dumped into their bodies, leading to obesity, heart disease and diabetes as they age.*”

The Directorate is of the opinion that the hypothetical reasonable person will understand that obesity, heart disease and diabetes are an inevitable consequence of consuming fizzy drinks and fruit juices. This does not appear to be substantiated, as moderate consumption appears to be acceptable by the WHO.

The Advertiser also makes the claim that the Code does not “*require HEALA to quantify and provide granular detail about exactly how much sugar should be consumed to result in what degree of increased health risks.*”

The Directorate agrees that the Code certainly does not require any specifics relating to this particular commercial, but it does guard against “*omission*” or “*inaccuracy*” that is “*likely to mislead the consumer*”. Given that even the World Health Organization, which is quoted on the Advertiser’s site and in their response to this Complaint, specifies a recommended daily consumption limit for sugary beverages, the absolute claim that sugary drinks causing disease made by the Advertiser in the Commercial is therefore an example of omission or inaccuracy.

The Advertiser further argues that its stating that sugary drinks cause disease is the same as cigarette packs stating that smoking causes cancer. The Directorate dismisses this argument, as the cigarette pack disclaimers are government mandated and are not an active choice by the Advertiser to sell their product, but rather to warn against its use. The Directorate also highlights that there is a difference between regulating cigarettes, which

are a vice with no nutritional or other health value, and a food type that can be consumed in moderation. If a person were to stop smoking all together, the health results would inevitably be positive. The same cannot be said if a person stopped eating and drinking. The Advertiser therefore has to make its claims responsibly.

The Advertiser also argues that the information on its website provides further context and research for the claims it made in the commercial. The Advertiser seems to be making the argument that the additional material found at its website justifies the absolute statement made in the Commercial that sugary drinks cause illness. However, the Directorate clarifies that any aspect of a campaign should not be misleading, and that information published elsewhere cannot explain away, or give context to, a misleading claim.

The Advertiser also makes the claim that as the Advertisement is "*not asking consumers to buy anything*", its claims are not misleading, as it only directs consumers to a website. However, Clause 4.1.2 of Section I of the Code, which states that: "*Advertisement' means any visual or aural communication, representation, reference or notification of any kind. . . which appeals for or promotes the support of any cause.*" The Code applies to causes as much as products.

**Based on the above, the Directorate considers the advertisement to be misleading and in contravention of Clause 4.2.1 of Section II of the Code.**

### Instruction to members

Members are instructed not to accept any advertising from the Advertiser stating that consuming sugary drinks leads to diabetes, heart disease or obesity, unless that claim is qualified.