

Decision of the ADVERTISING REGULATORY BOARD

Advertiser	Department of Health
Consumer/Competitor	Consumer
File reference	3732 - Department of Health
Outcome	Upheld
Date	27 March 2025

The Directorate of the Advertising Regulatory Board has been called upon to consider a consumer complaint against a television commercial for The Department of Health.

Description of the advertising

The Commercial features a father and daughter sitting on a sofa, having a conversation.

“Daddy,” the daughter asks. “If too much sugar is so bad, and it can eventually lead to death, why don’t they ban it?”

The father responds: *“Well, uh, no my princess. You see, the essence of freedom and democracy is that people have the right to choose.”*

“But what if they make wrong choices?” the daughter asks.

The father looks uncomfortable and confused.

A voiceover says, *“Consuming too much sugar can lead to heart disease, diabetes, obesity and other health problems.”*

The ad cuts to the Department of Health logo.

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Complaint

The Complainant stated: *“My fear with this father's response is that it might send out the wrong message to our already challenged youth. It might create the impression that they have the right to make wrong choices which may include drugs and other illegal activities in the name of democracy.”*

The Complainant further stated: *“I am just concerned that the whole message about democracy may be misinterpreted and that the advertisement is doing very little to protect the youth, nor put enough emphasis on the dangers of sugar, which the actual aim with the script should ideally address. In my view this advertisement has the ability to do more harm than good.”*

Response

The Advertiser was given an opportunity to respond to the complaint. However, despite all reasonable efforts to elicit a response from the Advertiser, no response was received. The Directorate therefore has no alternative but to rule on the matter based on the information provided by the Complainant.

Application of the Code of Advertising Practice

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

- Misleading claims – Clause 4.2.1 of Section II
- Children - Clause 14 of Section II

Decision

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

Jurisdiction

The Directorate notes that the Advertiser did not respond to the complaint. The Directorate therefore presumes that the Advertiser does 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 therefore proceed to consider this matter for the guidance of its members.

Merits

The Complainant has, in essence, raised two issues with wording of the commercial:

- That children will understand that because they live in a democracy, they can do harmful things
- That democracy leaves people unprotected, which could be confusing to children.

The Directorate starts by noting that it is incredibly difficult, without the Advertiser providing background, to understand what the creative motivation behind this commercial might have been. In trying to understand it, the Directorate contemplated the link between sugar regulation and democracy. While South African citizens do have the right to choose how much sugar they consume, the Directorate could find limited

evidence of citizens being denied the right to make choices about sugar consumption in less democratic nations. And on the other hand, generally speaking, even democratic nations regulate the use of hard drugs – denying their citizens the right to choose when it comes to the consumption of things that are inevitably bad for them. The message becomes even more confusing when one takes account of the fact that the Department itself is, in fact, trying to legislate sugar consumption through developments such as the “sugar tax” and draft Regulation 3337. Finally, the Directorate finds it confusing that a government department has produced a commercial of which one reasonable take out is that democracy is bad.

In short, the Directorate finds the message of the commercial to be confusing and unfocussed. However, this alone is not enough to rule against a commercial. The claims in question must be tested against the Code.

Clause 4.2.1 of Section II of the Code, 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 first question that the Directorate must therefore answer is whether the claim raised by the Complainant is misleading. This claim is *“the essence of freedom and democracy is that people have the right to choose”*. In isolation, this claim appears to be, at the very least, an acceptable interpretation of what freedom and democracy mean. The question then becomes whether, in the context of the commercial, the bigger message that sugar is not banned *because* we live in a democracy, is misleading, and the accompanying message that democracy is therefore bad.

On the second issue, the Directorate notes that whether democracy is a good or bad thing is a matter of opinion, which may be somewhat controversial. Clause 2.4 of Section I of

the Code is clear that the Directorate does not have jurisdiction over advertising in so far as it “expresses an opinion on a matter which is the subject of controversy”. This interpretation of the claims will therefore not be considered.

The implied claim that sugar is not banned because we live in a democracy is harder to assess. There is certainly no evidence that there is support for this view, as canvassed above. However, it is to some extent a matter of opinion. However, the Directorate must consider the fact that it is almost impossible to believe that it was the intention of the Advertiser – a government department – to communicate that *democracy* is the problem that is to blame for the non-banning of sugar.

The communication is overwhelmingly confusing. One of the possible take-outs is not supported by any factual substantiation and is highly unlikely to have been intended by the Advertiser. **Given this, the Directorate finds that the commercial is misleading and in breach of Clause 4.2.1 of Section II.**

Given this, it is unnecessary to consider Clause 14 of Section II.

Instruction to members

Members are instructed not to accept the advertising from the Advertiser in its current form.