

Before the Final Appeals Committee of the Advertising Regulatory Board

In the matter between:

HEALTHY LIVING ALLIANCE (Heala.org)

Appellant

and

NICO ERASMUS (Consumer)

Respondent

FINAL APPEALS COMMITTEE RULING

1. Healthy Living Alliance (Heala.org/appellant) appeals the Ruling of the Advertising Appeals Committee (AAC) of the Advertising Regulatory Board (ARB) dated 23 June 2025. The Ruling was in favour of Mr Nico Erasmus (Consumer/respondent), upholding the Decision of the Directorate of the ARB, which was against the appellant.
2. The complaint by the Consumer, lodged with the ARB, was against the following advertisement put out by the appellant in Afrikaans:

“Gaskoeldrank en vrugtesap maak ons kinders siek. Met elke slukkie word suiker in hulle liggame 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 strengere gesondheidsvorderingsheffing. Onderteken die petisie op heala.org. Dis H-E-A-L-A punt org.”

3. The translation into English, which was accepted both at the level of the Directorate and the AAC, was:

“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 That’s H-E-A-L-A.org.”

4. The complaint, aptly put by the Directorate, was that *“the advert incorrectly states that consumption will cause heart and intestinal disease. It would be correct if it stated that excessive consumption can cause these diseases. Instead, it currently creates the impression that any consumption will cause disease”*.
5. The above statement required no more than that the advertisement should have at least stated that the diseases would set in in the event of excessive or regular intake. The complaint was therefore that the advertisement was misleading, and thus in violation of Clause 4.2.1 of Section II of The Code of Advertising Practice of the ARB.
6. The appellant raised a number of grounds in its notice of appeal. Most of them were adequately discussed and dismissed by the AAC. We do not intend to go into all of them, but deal with only a few because, in truth, the matter is not as complicated as the appellant seeks to make it out to be.
7. The AAC rejected, correctly, the appellant’s argument that the advertisement does not claim that consuming such drinks would always cause obesity, diabetes and heart disease. It held that the advertisement did not contain any

qualifications. Before us, Adv L Zikalala for the appellant sought to introduce qualifications into the advertisements which were not there. We agree with the AAC, because that is exactly how the advertisement reads as it stands.

7.1 The very first part of the advertisement reads: “*Fizzy drinks and fruit juice make our children sick.*” This is a category and unqualified statement, the correctness of which cannot, as indicated below, be maintained.

7.2 The next sentence reads: “*With every sip, sugar is dumped into their bodies, leading to obesity, heart disease and diabetes as they age.*” Here too there is no qualification, which Adv Zikalala sought to introduce, to the effect that the onset of obesity, heart disease and diabetes is related to the quantity or regularity of the intake.

Therefore the two statements, singularly and cumulatively, state as a fact that irrespective of the quantity or regularity of the intake, the said diseases would set in as the children grow older.

8. Somewhat confusingly, the appellant sought to argue that the unqualified advertisement derived support from some scientific research; we say confusingly because that argument is not consistent with the appellant’s above attempt to read qualifications into the advertisement. This aspect was dealt with adequately by the AAC, with reference to appellant’s reliance on scientific research, to show that the advertisement was, even on appellant’s own version, meant to be a statement of fact.
9. The appellant’s argument that the Code does not require of it to quantify or provide granular details regarding exactly how much sugar should be consumed

to be harmful, misses the purpose of the Code. The exact purpose of Clause 4.2.1 is to protect consumers against sweeping and generalized advertisements like the one above. We take into account the fact that the World Health Organization's view, which the appellant does not and cannot dispute, accepts moderate consumption; the WHO does not subscribe to the view that a consumption of any quantity – as the advertisement conveys – would cause those diseases.

10. Regarding jurisdiction: the appellant's argument that the ARB has no jurisdiction over it, has no merit. As the appellant itself indicates, the ARB acquires jurisdiction over the matter by reason of the fact that it has the competence to order its members not to carry the advertisement. Because of that, the appellant found itself submitting to, and did accept, the ARB's jurisdiction; the appellant did so in order to get the platform to try and ensure that the ARB's members carry its advertisement. The appellant cannot blow hot and cold.
11. It is also incorrect to say the AAC misinterpreted the advertisement because the advertisement is a clear statement of fact with no qualifications. For this reason, the argument that the advertisement was an opinion or an advocacy, cannot stand; such argument would in any case be inconsistent with the reliance on the literature referred to above. A supposed advocacy or opinion must clearly be presented as such and not as a statement of fact, otherwise it would be misleading and thus contravene Clause 4.2.1 of the Code. Contrary to the appellant's assertion, the AAC correctly understood the mandate of the Code, namely, to protect consumers against misleading advertisements.

12. As said earlier, this is a simple matter: the advertisement is in the form of a statement of fact, and not an opinion, and it is without any qualifications of the nature the complainant correctly contended should have at least been put in.

13. The Ruling of the AAC cannot be faulted. In the circumstances:

13.1 The appeal is dismissed;

13.2 The Ruling of the AAC is upheld.

Dated this 29th September 2025

Judge B M Ngoepe, Chair, Final Appeals Committee

Mr C Borain, Member, IAB Representative

Mr M Neethling, Member, MASA Representative

Ms S Ngoma, Member, DFSA Representative.

For the Appellant:

No appearance for the Respondent

Adv L Zikalala and Adv S Abdool Karim

Instructed by: Centre For Applied Legal Studies, Braamfontein, Johannesburg.