

IAB calls for comment on draft regulations for FMCG advertising, labelling

The Department of Health has published draft regulations relating to the Labelling and Advertising of Foods, together with supporting guidelines, which when passed will - amongst other things - directly regulate the commercial marketing of foods and non-alcoholic beverages to children of school-going age (up to Grade 12), and more strictly govern the labelling and advertising of foods in general.



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Whilst many of the marketing criteria listed in Guidelines 13 and 14 reflect principles already enshrined in the ASA's Code of Advertising Practice, the Regulations will effectively translate these industry self-regulatory principles into legal ones (expanding on them in the process) and establish state jurisdiction over the affected marketing practices (transgressions will as such become criminal offences).

Although the draft regulations are predominantly aimed at the labelling of foods, marketers (including brands and their agencies) need to pay particularly close attention to them as it will become illegal to market goods in a misleading manner, or to make assertions, declarations or claims about foods or beverages which do not comply with the rigorous requirements laid down.

Brief summation of topics

The regulations and guidelines span more than 250 pages, which makes summarising them a challenge and the IAB has accordingly limited its focus in this communication to those topics, which it believes are of particular interest for marketers and its members.

- Members are cautioned to pay close attention to Guideline 14 (and in particular the "implications" and "criteria" set out in pages 82 to 86), which relate to the commercial marketing of foods and non-alcoholic beverages to children. Commercial marketing is very broadly defined and covers both traditional and digital channels and practices. These provisions will arguably be the most controversial of the regulations, and apply not only to food manufacturers and sellers but also to anyone involved in the promotion and marketing of the products. At its widest application, the regulations will prohibit the marketing of unhealthy foods to children "during their entire school going years."
- Guideline 13 is broadly based on guidance published by the UK's Foods Standards Agency, and contains general best practices for marketers, all of which are aimed at preventing misleading claims and advertising, and at protecting the 'average consumer'. The guidelines range from very broad ("do not be misleading") to very specific (e.g. the manner in which specific terms such as 'hand-made', 'premium' or 'original' should be used).
- Marketers of health products should note that claims relating to health, weight loss, nutritional or restorative qualities and the functions of certain nutrients are heavily regulated. This includes references in brand names. Endorsements (particularly by health practitioners and entities) will also be regulated.
- Negative claims (e.g. that a particular product does not contain a certain substance) are regulated.

- Statements relating to freshness and quality (eg whether the products are natural or free range) must comply with the prescribed criteria.
- Comparative claims (e.g. claims containing the word(s) 'less than', 'fewer', 'light/lite', 'more than', etc.) will only be permitted under specific circumstances.
- For the most part, the regulations will come into operation 36 months after the date of final publication, although the regulations relating to the marketing of foods and non-alcoholic beverages to children will come into immediate effect on publication.

The above is not intended to be an exhaustive summary of the regulations or guidelines, and members are urged to read them and consider the impact for their particular businesses and contexts.

IAB encouraging industry participation, member support

The closing date for submissions to the Department of Health on the Draft Regulations and Guidelines is 29 August 2014.

The IAB would also encourage members to seek legal advice where they believe they are particularly vulnerable or exposed.

Members are encouraged to make submissions on their own behalf directly to the Department, although the IAB is currently in discussions with other industry bodies (including the ACA) and representatives relating to further potential combined and/or individual submissions.

In the interim, members are invited to forward specific concerns to the IAB (identifying the particular regulation or guidelines, together with a supporting rationale underlying the concern) for consideration as part of these broader discussions. Please ensure that all such concerns are sent by email by no later than Friday 22 August 2014.

Should any members be independently considering the regulations and formulating positions, submissions or opinions of their own, the IAB would be grateful for the support and assistance in its efforts. Likewise, it would be very grateful if its larger members could reach out to their in-house legal departments to assist it.

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