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THE PRESIDENCY

No. 23

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It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 63 of 2008: Tobacco Products Control Amendment Act, 2008.



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 5 January 2009.)

ACT

To amend the Tobacco Products Control Act, 1993, so as to define certain expressions and to amend certain definitions; to provide anew for the advertising, sponsorship, promotion, distribution and information required in respect of the packaging and labelling of tobacco products; to make the standards that apply to manufacturers of tobacco products applicable to importers of tobacco products; to prohibit the sale of tobacco products to and by persons under the age of 18 years; to extend the provisions in respect of free distribution of tobacco products; to provide anew for tobacco sales by means of vending machines; to extend the Minister's power to make regulations; and to adjust the provisions in respect of offences and penalties; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 83 of 1993, as amended by section 2 of Act 12 of 1999 and section 1 of Act 23 of 2007

1. Section 1 of the Tobacco Products Control Act, 1993 (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the substitution for the definition of "advertisement" of the following definition:

“**‘advertisement’**, in relation to any tobacco product—

- (a) means any commercial communication or action brought to the attention of any member of the public in any manner with the aim, effect or likely effect of— 10
- (i) promoting the sale or use of any tobacco product, tobacco product brand element or tobacco manufacturer's name in relation to a tobacco product; or 15
- (ii) being regarded as a recommendation of a tobacco product;
- (b) includes product placement; and
- (c) excludes commercial communication between a tobacco manufacture or importer and its trade partners, business partners, employees and share holders and any communications required by law, 20
- and ‘advertise’ has a corresponding meaning;”:

Act No. 63, 2008 TOBACCO PRODUCTS CONTROL AMENDMENT ACT, 2008

- (b) by the insertion after the definition of “advertisement” of the following definition:
- “ **‘brand element’** includes the brand name, trade mark, trade name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, print, typeface, recognisable colour or pattern of colours, or any other symbol of product identification, that is likely to be taken as or confused with any brand of tobacco product designed to promote tobacco use;”;
- (c) by the insertion after the definition of “‘employed’ or ‘employment’” of the following definition:
- “ **‘importer’** means any person who brings, or attempts to bring, a tobacco product into the Republic for the purposes of selling that product, and ‘import’ has a corresponding meaning;”;
- (d) by the substitution for the definition of “organised activity” of the following definition:
- “ **‘organised activity’**—
- (a) means any activity or event—
- (i) which any member of the public **[attend]** attends or in which he or she participates **[in]**;
- (ii) which is organised for the purposes of entertainment, sport or recreation or for educational or cultural purposes; and
- (iii) where a tobacco product, or brand name, trade mark, logo or company name in relation to a tobacco product, is used in the name of or portrayal of the activity or event to promote tobacco use; but
- (b) excludes any **[private activity or]** event arranged by a manufacturer, importer, distributor or retailer of a tobacco product where only its shareholders or its employees or their spouses or partners attend;”;
- (e) by the substitution for the definition of “package” of the following definition:
- “ **‘package’** means **[any packing, carton, wrapping or any other]** the container, receptacle or wrapper in which tobacco products are **[generally]** sold, **[by]** supplied or distributed at wholesale or at retail;”;
- (f) by the insertion after the definition of “private dwelling” of the following definitions:
- “ **‘product placement’** means the depiction of, or reference to, a tobacco product or brand element in a broadcast programme, film, video recording, telecast or other electronic medium for which the producer, or any other person associated with the broadcast programme, film, video recording, telecast or other electronic medium, receives payment in cash or otherwise;
- ‘promotion’** is the practice of fostering awareness of and positive attitudes towards a tobacco product, brand element or manufacturer for the purposes of selling the tobacco product or encouraging tobacco use, through various means, including direct advertisement, incentives, free distribution, entertainment, organised activities, marketing of brand elements by means of related events and products through any public medium of communication including cinematographic film, television production, radio production or the internet, and ‘promote’ has a corresponding meaning;”.

Substitution of section 3 of Act 83 of 1993, as substituted by section 4 of Act 12 of 1999

2. The following section is hereby substituted for section 3 of the principal Act:

“Advertising, sponsorship, promotion, distribution, display and [re-
quired] information required in respect of [packages] packaging and 5
labelling of tobacco products

3. (1) (a) No person shall—

- (a) advertise[, **including the use of tobacco trade marks, logos, brand names or company names used on tobacco products; or**
- (b) **use tobacco trade marks, logos, brand names or company names used on tobacco products for the purposes of advertising any** 10
organisation, service activity or event] or promote, or cause any other person to advertise or promote, a tobacco product through any direct or indirect means, including through sponsorship of any organisation, event, service, physical establishment, programme, project, bursary, scholarship or any other method. 15

(b) A commercial communication between a tobacco manufacturer or importer and its trade partners, business partners, employees and share holders, must contain no other information except for factual information about the tobacco product, its characteristics, its availability or price, 20
pictures of the tobacco products, the component parts and their packaging.

(2) No manufacturer, importer, distributor or retailer of tobacco products shall—

- (a) organise or promote any organised activity that is to take place in whole or in part in the Republic; 25
- (b) make any financial contribution to any organised activity that is to take place, or is taking place, or has taken place in whole or in part in the Republic;
- (c) make any financial contribution to any person in respect of— 30
- (i) the organisation or promotion of any organised activity in the Republic by that person;
 - (ii) the participation, by that person, in any organised activity that is to take place, or is taking place in whole or in part, in the Republic.

(3) **[A retailer of tobacco products may post in accordance with the regulations passed in relation to this Act, signs at the point of sale that indicate the availability of tobacco products and their price]** 35
A manufacturer or importer of a tobacco product may make a charitable financial contribution or sponsorship, provided that such contribution or sponsorship is not for the purpose of advertisement. 40

[(4) No person shall sell or import for subsequent sale any prescribed tobacco product, unless—

- (a) **such product is in a package;**
- (b) **the package in which the tobacco product is sold bears the prescribed warning concerning the health hazards incidental to** 45
the smoking of tobacco products; and
- (c) **the quantities of the constituents present in the tobacco product concerned are stated on the package.]**

(5) Notwithstanding the provisions of [section 3] subsections (1), (2) and (3), the Minister may[, **by regulations, provide for]** prescribe exemptions 50
for unintended consequences or the phasing out of existing sponsorship or contractual obligations.

(6) No person shall package or label a tobacco product in any way that is false, misleading, deceptive or likely to create any erroneous, deceptive or misleading impression about its characteristics, properties, health effects. 55