



CEO's Christmas Message

The legalised casino industry will remember the past year for a number of reasons, and reflect upon it as one that brought a bag of mixed blessings.

While the country preened itself upon the world stage with the extremely successful hosting of the World Cup Soccer Tournament, the event came at a time of global economic uncertainty and recession, resulting in less foreign visitors than initially anticipated. But, despite this, our industry, with its resort-style casinos and hotels proved that it was up to the challenge and was touted as world-class, showing what an integral part casino resorts play in this country's tourism industry. Offsetting these gains were the ongoing repercussions and economic pessimism of the global downturn which impacted upon the disposable income of South Africans and resulted in less-than-favourable results for casino operators.

While facing these challenges the casino industry, along with all other forms of legalized gambling, was also subject to a review by the Gambling Review Commission aimed at assessing the current socio-economic impact of gambling on the country and gauging the effectiveness of current gaming legislation. Trade Minister Dr Davies is currently pondering the recommendations of the Commission and will table his recommendations to Parliament in the new year. While the exact details of the Commission's report are not yet known at this stage, the Casino Association wholeheartedly supports such an initiative but urges government to temper any mooted changes to current



gambling legislation with forbearance, by taking stock of what has been achieved by the casino industry over the past decade-and-a-half. Any review of legalized gambling should not ignore the vital role casinos play in creating jobs, generating taxes and promoting Black Economic Empowerment, while at the same time remaining responsible corporate citizens and investing heavily in social development.

Good news this year for the Casino Association came in the form of a clampdown from regulators over the impunity with which illegal online casino operators exploited loopholes in the law and advertised their services on South African media. In closing down the illegal

operations after a watershed decision in the Gauteng High Court, regulators brought clarity to the confusion surrounding online gaming. They also earned the respect of law-abiding terrestrial casino operators who had to idly stand by while illegal operations flourished, unable to expand their presence into cyberspace for fear of losing their hard-earned land-based licences.

While we applaud the regulators for this victory, we must raise a note of concern: In its fight to combat the advertising of illegal online casinos, the government proposed amendments to the law that will restrict gambling advertising. Some of these planned restrictions, while making perfect sense in the context of the government's battle against illegal online casinos are not quite suited to other forms of legal gambling like casinos.

The proposed legislation includes limiting gambling advertising on television to the watershed times between 10pm and 6am when children are asleep. Not only would this be impractical, but wholly unnecessary and may be a knee-jerk reaction to the unrestricted media access illegal online casinos enjoyed in the past. Now that illegal online casinos have been outlawed, the mooted advertising restrictions should be seen for what they are – a stop-gap measure to curb the publicity of illegal casinos to the public at large.

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RENEWED EFFORTS TO RESTRICT ADVERTISING IN GAMBLING: SHOULD LICENSED CASINOS BE SEEN

A recurring – and undeniably emotive – issue which continues to raise its head in the context of the licensed gambling industry is the question of the extent to which the advertising of gambling-related products and services should be legally permissible. The thinking underlying the view that such advertising should be restricted or even banned altogether appears to be that there is a link of some kind between conduct which draws the attention of the public to the availability of gambling as a leisure activity and the incidence of problem gambling or other social ills pervasively associated with the conduct of gambling. That there is no empirical evidence pointing towards the existence of any such link has not to date been regarded as relevant for the purposes of the ongoing debate.

The most recent manifestation of this thinking is to be found in the proposed amendments to the regulations made in terms of the National Gambling Act of 2004 (“the Act”), which were published for information and comment in the Government Gazette on 16 September 2010, and propose a number of significant limitations on the nature and scope of gambling-related advertising. The public was invited to furnish comment in respect of the proposed provisions, and CASA responded to this invitation on behalf of its members.

Amongst the provisions referred to above is the proposed regulation 3(A),

which provides that all advertising in relation to gambling “shall be broadcast only from 20h00 on any particular day until 06h00 on the following day” and, moreover, that “such advertisements should not be broadcast between programmes where the audience is expected to be below the age of 18 years”. The rationale behind this proposal appears to be that the broadcasting of television advertisements during hours of the day when persons under the age of 18 years can reasonably be expected to form part of the viewership is socially undesirable inasmuch as such advertisements will presumably lure such persons towards gambling, notwithstanding the fact that even if this could be shown to be the case, such persons would be legally precluded from engaging in gambling should they attempt to do so.

More noteworthy, however, than the fact that no identifiable grounds exist for the mischief at which the proposed provision is aimed, is the fact that the power of the Minister of Trade and Industry to make regulations in relation to advertising is restricted, firstly, to prescribing the manner and form for interactive gambling advertising and, secondly, to exempting any specific type of advertising or advertising media from the provisions of the Act relating to advertising. Accordingly, the Act does not confer on the Minister the power to prescribe by regulation the manner in which advertising regarding gambling

other than interactive gambling may be engaged upon, casting material doubt upon the validity of the proposed regulation.

In addition to the above, CASA has pointed out in its comments that licensed casino operators are neither wholly nor partially precluded from advertising their product pursuant to the provincial Acts in terms of which their licences have been granted. In some cases, the approval of the relevant provincial licensing authorities must be procured in respect of such advertising, and in all cases, such advertising must comply with the applicable standards already set forth in the existing regulations made in terms of the Act, but no provincial Act limits the periods within which such advertising may be placed. The purported limitation on the hours during which gambling may be advertised therefore sets up a direct conflict between the established legal and regulatory regime in respect of advertising in force in the various provinces, which has been existence for a number of years, and an entirely new proposed framework for the advertising of gambling activities, for which no authorisation is given in the Act itself. Furthermore, it has been pointed out that, on a practical level, the implementation of the proposed Regulation 3(A) will materially impede licensed casino operators from embarking on legitimate marketing initiatives in respect of their products, which are lawful in every respect. This



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RESPECT OF BUT NOT HEARD?

materially disturbs rights which have become vested in these operators as a matter of law.

A further question which merits reflection in the context of this matter is the extent to which the enactment of the proposed provision, apart from disturbing the vested rights of licensed casino operators, can be regarded as displacing the right of all persons, enshrined in section 16 of the Constitution, to the freedom of expression, which pertinently includes the "freedom to receive or impart information or ideas". While it is so that, like all of the rights contained in the Bill of Rights, this right is not absolute, but may be limited by law of general application, any such limitation of this right will only be constitutionally permissible to the extent that such limitation is reasonable and justifiable, having regard to, inter alia, the purpose of the provision and the means used to achieve that purpose. In this case, in order to be constitutional, the limitations placed on the freedom of expression by the proposed provision would have to be outweighed by the purpose and importance of limiting the right from a governmental perspective. The question is therefore, firstly, whether it is necessary to place a significant bar on the ability of licensed casino operators offering a lawful activity to provide the public with information concerning that activity, and

secondly, whether the purpose for which the prohibition is contemplated, namely to prevent persons under the age of 18 years from being exposed to such information, is so compelling as to justify the prohibition and with it, the corresponding denial of the right of freedom of expression.

It may be of interest to readers to note that the Supreme Court of the United States of America was called upon to decide a similar question in recent years, and found that the Federal Communications Act of 1934, which prohibited the broadcasting of advertisements promoting lawful gambling activities breached the right of commercial speech. In reaching a decision on the matter, the Supreme Court found that "the respondents (the US Government) cannot overcome the presumption that the speaker (or advertiser) and the audience (or consumers), not the Government, should be left to assess the value of accurate and non-misleading information about lawful conduct." The paradox inherent in attaching lawful status to an activity and, in the same breath, limiting the availability of information concerning that activity applies equally in the South African context, and more pertinently, in the context of the proposed regulations, and will hopefully not go unnoticed.

It is now a superfluous tool which will hamper the legitimate business marketing of legal casinos that are not only thoroughly aware of their role as responsible gambling operators but who vigilantly self-police their operations and marketing initiatives.

Legal casinos, through government legislation have been realized as resort-style, multi-faceted entertainment complexes with casino gambling making up a miniscule part of these operations. Most are family style-destinations, offering accommodation, fun activities for the entire family and various amenities such as family restaurants, theatres, music and other events that are intended as part of a greater family entertainment mix that mitigates the casino gambling on offer.

Access to gambling by children at these resorts is nigh impossible and gambling activities are 'strictly off-limits' to underage patrons; curbing advertising of casino-style resorts to avoid accidental exposure to children is, in our opinion, misguided.

As we see out an eventful 2010 and await developments in the new year that will stem from the review of our industry, on behalf of the Casino Association, I would like to wish all in the casino industry a peaceful holiday season. May you see in the New Year refreshed and eager to take on the challenges and prosperity that 2011 will most certainly bring.

Derek Auret, CEO Casino Association of South Africa.



*Seasons
Greetings
and a
Prosperous New Year*

FROM ALL AT
CASA