



CEO'S COLUMN

Draft regulation relating to smoking in public places and certain outdoor public places

Sufficient grounds to justify partial exemption



In a recent letter to the Director-General of the Department of Health, CASA expressed its concerns on the possible implications such regulations would have on the casino industry.

The Casino Association of South Africa (CASA) is a voluntary association which represents 35 or the 37 licensed casino entertainment venues in South Africa.

CASA members have to date invested in excess of R20 billion in infrastructure leading to the development of world class entertainment destinations incorporating more than 5 000 hotel rooms, road upgrades, convention centres, tourist attractions, theme parks, sports facilities, restaurants and eventing facilities, and have singlehandedly revived the arts through theatres, museums and the development of new cinema complexes. Our members have created approximately 52 000 jobs, many of which give employment to the people with no previous work experience, in addition to BBBEE shareholding structures that are the envy of traditional industries struggling to transform.

CASA members have also contributed in excess of R50 billion to GDP in terms of

economic multipliers, invested in excess of R90 million per year in community social investment, established an internationally recognised responsible gambling programme with a budget of more than R10 million per year, and in 2009/2010 alone accounted for nearly R1.6 billion in Provincial Gambling Taxes and VAT which, together with Company Tax, contributed more than R4 billion to Government revenue.

Government has an effective 39.31% share of the 'value-added' to the economy by the casino sector and as such it is the largest de-facto stakeholder in the industry.

None of the foregoing benefits are possible without the continued success of the 'engine room' of the casino business, namely the casino gaming floor itself. Without wishing to sound alarmist, and whilst we appreciate and support the broad objectives of your Department, namely the promotion of a healthy society and the protection of minors from exposure to second-hand smoke we sincerely believe that the proposed smoking regulations will put all those benefits at risk and will jeopardise the continued success of our industry to the detriment of Government, the economy and thereby the country as a whole.

We are not suggesting that we expect the industry to be entirely exempted from the regulations prohibiting smoking in public places and certain outdoor public places, but we do wish to request that the Department recognise that there is sufficient justification to exempt the casino gaming floor alone, given certain of its unique characteristics. We say this because by law, only persons over 18 years of age are permitted to access the casino gaming floor which is then already a barrier to the entry of minors. Casino operators have incurred considerable expense to create casino gaming facilities for smokers that are separately partitioned from non-smoking areas. These have been created in good faith having regard to the existing legislation at significant cost, and have been effective in providing facilities for smokers that are well ventilated and hygienic with good air quality. None of this has been to the detriment of non-smokers, nor has it risked the health of minors.

CASA looks forward to a positive response from the Department of Health and is confident that if all role players are engaged in amenable discussions around this issue, a solution can be found that will be beneficial for all.

Derek Clumet



GIVING WITH ONE HAND, TAKING AWAY WITH THE OTHER? AMENDMENTS TO NATIONAL REGULATIONS ON THE ADVERTISING OF GAMBLING:

Advertising in respect of gambling has proven to be a contentious, and often emotive, issue which has sparked ongoing debate since the decision to legalise gambling was taken by the national government in the nineties. Recent discourse on the issue has been dominated by the perception that the advertising of gambling amounts to enticement to engage in an activity which is undesirable, notwithstanding its legality. The anomaly inherent in taking a policy decision, on the one hand, to license and regulate an activity such as gambling, but, on the other, simultaneously seeking to restrict the flow of information to the public regarding that activity, has either gone unnoticed or has been studiously ignored at a policy-making level.

It goes without saying that there is an obligation on persons advertising goods and services to ensure that their marketing initiatives are not untrue, misleading, offensive, or illegal. This applies equally to all sectors of commercial endeavour. In recognition of this, in the context of gambling, the regulations made in terms of the National Gambling Act in 2004 laid down uniform, nationally applicable standards with which all advertising in relation to gambling is required to comply. These not only make reference

to the need to ensure that advertising regarding gambling complies with the generally recognised standards outlined above, but also that particular foreseeable pitfalls are avoided. Justifiably therefore, the National Regulations include provisions designed to ensure, inter alia, that gambling-related advertising is not targeted at persons who are legally ineligible to participate in gambling, that the likelihood of winning is not misrepresented and that gambling is not portrayed as a means of achieving financial success. In addition, the National Regulations make provision for the mandatory communication of information concerning the National Responsible Gambling Programme, the prevailing age restrictions applicable to participation in gambling, and related matters.

The enactment of these nationally applicable provisions proceeded from the recognition that, as licensed gambling is legal, advertising in relation thereto must by definition be permissible, but provided a benchmark against which all advertising relating to gambling may be measured. Failure to comply with the relevant provisions is an offence, as well as being regarded as a breach of licence, in terms of the National Gambling Act. There are accordingly appropriate mechanisms in place to

ensure that decisive action can be taken in relation to any advertisement in respect of gambling which does not comply with the standards set by the National Regulations.

Despite the existence of a more than adequate set of requirements, the issue of advertising in respect of gambling continued to attract attention and to evoke criticism, particularly at a policy-making level. In its Final Report, the Gambling Review Commission ("GRC") noted, without providing any specific motivation for this opinion, that, in its view, the restrictions applicable to advertising, as well as the enforcement thereof, were "not considered very effective", and that these would have to be "enhanced and properly enforced" if a sumptuary model in respect of the regulatory framework was to remain the policy preference. This view appeared to spring from a pre-occupation with labels on the part of the GRC, in terms of which the approach regarding advertising would be pre-determined by the policy choice as to whether the primary motivation for the regulation of gambling was to be revenue generation, on the one hand, or the mere accommodation of existing demand, on the other. The GRC appeared to be of the view that in the former case, it would automatically

follow that advertising in respect of gambling would be more permissive, while in the latter, reasonably extensive restrictions would be inevitable. The GRC's own stated preference for the sumptuary model in respect of all forms of gambling other than the National Lottery effectively opened the door to further restrictions in relation to gambling-related advertising.

These were not long in coming. A draft set of proposed amendments to the National Regulations in respect of gambling-related advertising was published during September 2010. These were open to material criticism in a number of respects, and comment was submitted accordingly. Some 20 months later, on 15 May 2012, the Minister of Trade and Industry published a document entitled "Amendment of Regulations Regarding Gambling Advertising and Exclusions Register" in the Government Gazette. The relevant Government Notice indicated that the amendments in question had already been effected by the Minister, and therefore made no provision for any period for the purposes of comments or objections by the public, despite the fact that the amended Regulations differed materially from (and were significantly wider in scope than) those originally published for comment in September 2010.

The amended National Regulations seek completely to prohibit any advertisement relating to gambling, whether licensed or unlicensed, other

than between the hours of 20h00 on any day and 06h00 the following day, subject to the further proviso that any such advertisement "should not be broadcast between programmes where the audience is expected to be below the age of 18 years". In addition, they purport to prohibit advertising in relation to gambling by any person other than the holder of a licence issued in term of the National Gambling Act or provincial gambling legislation.

The rationale for the above - completely unprecedented - prohibitions is unknown. The terms thereof are in direct conflict with the provisions of both the National Gambling Act and the Regulations previously made in terms thereof, pursuant to which advertising is expressly permitted, subject only to compliance with specific, uniform, nationally applicable requirements.

In consequence of the above, the amended National Regulations are not only ultra vires to the extent that they conflict with the express terms of the National Gambling Act itself, but also because the Act does not confer on the Minister of Trade and Industry the power to prohibit any form of gambling-related advertising by way of regulation. The purported exercise of such a power is therefore outside of the bounds of the authority conferred on the Minister by the Act, and for this reason also, the amended National Regulations are unsustainable in law. CASA has called upon the Minister

of Trade and Industry to withdraw the amended National Regulations, failing which it will have no alternative but to seek relief from the courts.

Perhaps the most disconcerting feature of this matter, however, is not the enactment of National Regulations without providing the opportunity for comment, and the inroads which this makes into the levels of transparent government and participative law-making which South Africans have become accustomed to expect from their constitutional dispensation. Perhaps it is also not the fact that the Minister of Trade and Industry has acted far beyond the scope of his powers in purporting to make the relevant amendments to the National Regulations. Perhaps it is also not the fact that further avenues of relief may need to be employed by CASA to enforce the rights of its members. Perhaps, ultimately, it is the fact that the amended National Regulations provide such compelling evidence of the continuing tendency of the government to treat the casino industry as a product of its policy-making which may be seen, but should not be heard to advertise its presence in the market. To craft legislative policies permitting casino gambling, but to eliminate the right of the industry to advertise its legitimate product. This tendency to give with one hand, and to take away with the other, can never make for consistent and fair policy-making.



Seen at the recent launch of the new satellite studio at Emperors Palace is Gareth Kaschula (Peermont Gaming Marketing Manager) and Dumisane Sikhwebu (Deputy Chairperson of East Rand Stereo).

Dignitaries attending the opening of the satellite studio included Dumisane Sikhwebu (Deputy Chairperson of East Rand Stereo) (seated), (L-R) Vusi Zwane (Peermont Corporate Affairs & CSI Executive), and Executive Committee of the Ekurhuleni FM Board members Johan Smit, Frans Swart and Johann Krüger.



"My Vrou Se Man Se Vrou" cast members Hannes Brümmer and Tobie Cronje pictured here in the new satellite studio ahead of their interview with the Afternoon Drive Time Show.

Guests attending the satellite studio opening included Anton "The Joker" Olwage (East Rand Stereo's breakfast show presenter), Jean Hanekom (Emperors Palace Food and Beverage Manager) and Pedro Fernando (Saturday Top 40 host).



Its all about simplicity says Sibaya's new chef

A warm welcome to Tony Kocke, the new Executive Chef at Sibaya Casino and Entertainment Kingdom, near Umhlanga Rocks KZN.

Chef Kocke was born and raised in Berlin, Germany. His passion for food started when he was 10 years old, when he encountered a cruise liner in port. Most other young boys would have played games on board, but young Tony found himself drawn to the ship's galley where he met the Chef, who kindly showed the lad around.

The bug bit hard and Tony left school early and enrolled at a Berlin Hotel School. He eventually went to Paris, then London and later to the USA, international cuisines began to influence the young Chef. More travel and world experience followed until his first trip to South Africa, Chef Tony Kocke had found a country he wished to call home.

Chef Kocke plans to gradually exert the cuisines and techniques learnt from his international work experience on Sibaya's array of restaurants. He is no fan of Nouvelle Cuisine or Fusion: "for me having more than 5 or 6 items on a plate is a waste – there are too many tastes. It's all about simplicity, simplicity and then simplicity".



EMPERORS PALACE DONATES TO THE SOUTH AFRICAN GUIDE DOG ASSOCIATION (SAGA)

Proceeds collected from their recent luggage wrapping service saw Emperors Palace donate R10 000 to SAGA. The cheque handover took place at a recent Wine and Dine function held at Aurelia's restaurant in late June.



Wayne Hill (Emperors Palace General Manager for Hotels and Resorts Operations), Pieter van Niekerk, O'Reilly and John Oakes (Bruma and Aviation Academy).



Pieter van Niekerk (SAGA's Marketing Manager), guide dog O'Reilly and Vusi Zwane (Peermont Corporate Affairs & CSI Executive).