

**THE REGULATIONS RELATING TO FOODSTUFFS FOR INFANTS AND YOUNG CHILDREN (R 991): A FORMULA FOR THE PROMOTION OF BREASTFEEDING OR CENSORSHIP OF COMMERCIAL SPEECH?**

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**SUMMARY**

The regulation of commercial speech in the interests of public health is an issue which recently has become the topic of numerous debates. Two examples of such governmental regulation are the subjects of discussion in this article, namely the prohibition on the advertising and promotion of tobacco products, as well as the proposed prohibition on the advertising and promotion of infant formulae and other foods and products marketed as being suitable for infants or young children. The article seeks to evaluate the recently proposed regulations published in terms of the Foodstuffs, Cosmetics and Disinfectants Act in the light of the reasoning by the Supreme Court of Appeal in the *British American Tobacco South Africa (Pty) Limited v Minister of Health* 463/2011) [2012] ZASCA 107 (20 June 2012) decision, and in particular in terms of the section 36 test of reasonableness and proportionality found in the Constitution of the Republic of South Africa, 1996. It argues that, although the South African Department of Health must be applauded for its attempt at improving public health in the country, some of the provisions of the proposed regulations are not constitutionally sound. It will be contended that, despite the fact that the promotion of breastfeeding is a laudable goal, the introduction only of measures which restrict the right to advertise these types of products will not necessarily achieve this objective.

**KEYWORDS:** Freedom of speech; commercial speech; advertising and promotion; public health; best interests of the child; regulation of public health policy;

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deprivation of intellectual property; trademarks; tobacco products; infant formula; breastfeeding.