

1st Quarter 2024

# NEWSLETTER

**ADVERTISING  
REGULATORY  
BOARD**

Consumer protection  
through responsible advertising

## A note from the CEO ...



The first quarter of 2024 has flown by – I suppose as it always does – I don't know why I keep expecting time to slow down and let us catch up!

The biggest event on the ARB calendar every first quarter is our AGM. This was kindly hosted at the Joe Public premises in March, and attended by members, funders and stakeholders. At the AGM, I gave an overview of the last 5 and a bit years of ARB existence. We are so incredibly proud of the phoenix that rose from the ashes; and the fact that self-

regulation in South Africa has not only survived but thrived.

I also spoke about the need for truth in advertising. Not hiding behind terms and conditions that are hidden ten pages into your website – but actually telling consumers what they need to know upfront and in plain language. If we want consumers to trust the claims that we make in advertising, they have to trust the space. The easiest way to ensure that they trust this space is to have a system of self-regulation that works, and to actively seek to tell consumers the information that they need to make an informed choice.

This quarter, we've grappled with ads that don't seem to want to tell the truth, as well as issues of gender and race and politics.

As we go into the election season, I would like to remind everyone that the ARB does not, thank goodness, consider election claims. This falls to the IEC.

Finally, I want to share that the day-to-day work of the ARB is so interesting! I urge all stakeholders to go onto our website and read our decisions – you might agree or disagree, but I'm sure that you will find it as stimulating as we do!

Warm regards

*Gail*

## CHECKERS vs PICK & PAY

Checkers



Pick n Pay



We were interested to read the decision of the courts handed down in November last year in the matter of *Shoprite Checkers v Pick n Pay* (Case no 12098/22, decision of the Western Cape Division of the High Court). The matter involved an alleged passing off and is exactly the type of matter that the ARB frequently deals with in terms of our clauses on Imitation and Exploitation of Goodwill.

The judgement states, "Considering the notable similarities in terms of colour, typefaces and packaging, I am satisfied that the Crafted Collection range, viewed holistically, is almost certain to confuse and deceive the public, and potentially result in damages for the applicant. The manner in which the respondent had dissected the overall get-up of the Forest and Feast range is artificial and contrary to the well-established test to be applied in matters of this nature. In my view the notional consumer of average intelligence, viewing the products as a whole or looking at the dominant features of each get-up in general, is likely to be confused, or deceived into buying the product of respondent believing that there is a connection or association, in the course of trade, between Checkers and the goods offered by Pick n Pay."

It is always satisfying for us to see that the requirements that the courts apply are similar to those that the ARB applies; ensuring that marketers work in a predictable legal framework regardless of which forum they choose to resolve their complaints.

## NEW APPOINTMENTS

**AIP** : Slindile Khanyile has been appointed as Board Director, after the passing of Octavia Hlungwani

**CTFA** : Adelia Pimentel has been nominated as a new Board Director, representing our newest member

**ACA** : Karabo Denalane has been appointed as our new Chairperson, after Sadika Fakir's term has ended

**IAB** : Chris Borain is our new Vice Chair. He replaced Andrew Allison whose term has come to an end.

# 1st Quarter 2024

## NEW FUNDER



"Kellanova (previously Kellogg's), a company on a journey to achieve its vision of becoming the world's best-performing snacks-led powerhouse, unleashing the full potential of our differentiated brands and our passionate people, has become the latest funder for the Advertising Regulatory Board."

## NEW FUNDER



"Home to some of the world's best-loved and trusted brands, Reckitt is a diverse, global family, united by a shared fight: making access to high quality health, wellness and nutrition a right and not a privilege. Every moment of every day, our products are used by generations of families that have grown up with Reckitt products. Our unrivalled range provides hygiene, health and nutrition to people in almost every country around the world. We work with relentless energy and innovation to make the best possible products we can. And then we make them even better. Each of our products is a leader in its category helping protect, heal and nurture people. We're making a real difference to lives everywhere."

## MEMBER UPDATES

### New Members

- CTFA - Cosmetics Toiletry and Fragrance Association of SA
- SAIA— SA Insurance Association



**SAIA**

### Code of Advertising Practice Submission Review

- CTFA—submission for the Cosmetic Code to be amended was passed
- DFSA— the alcohol code has been amended



## ADS OF INTEREST



### “CITIZENS COMMISSION ON HUMAN RIGHTS”

It's sometimes really difficult to remain objective in making decisions and this file was challenging for some members of the Directorate who found the contents of the advertising deeply problematic.

We think that the ultimate decision was fair:

If one is a Scientologist or sympathetic to the teachings of Scientology, one will attach value to the message; if one does not agree with the teachings of Scientology, one will dismiss the message.

It is therefore crucial that it is clear from the advertising that the Advertiser is affiliated with the Church of Scientology.

In the matter before the Directorate, the banner appears on the premises of the Church of Scientology in Ferndale. Given this, the Directorate is satisfied that passers-by will understand that this is a teaching of this church. They can choose whether they attach any weight to the statement in this context.

Given this, the banner in its particular context falls within Clause 2.4 of Section I of the Code, and the Directorate cannot consider it further.

However, the Directorate wants to clearly state that if this banner or statement were to appear in any other context, it must be clearly expressed that the CCHR is affiliated with the Church or religion of Scientology.

# 1st Quarter 2024

## ADS OF INTEREST

### “NETFLORIST”

Consumers were upset by a Netflorist ad showing a woman spitting into her partner’s morning coffee after he failed to give her flowers. Complainants found the ad to be offensive, racist and sexist!

The Directorate said, “The Directorate is aware that different people have different levels of tolerance for the representation of bodily functions. In considering the likely level of offence by the general public on watching the commercial, the Directorate noted that the actual spit was never shown – only the dry sounds of spitting were heard. The actual act of spitting was obscured in two out of the three instances, and the third was shot from a long angle, so nothing unpleasant was ever actually seen.”



# 1st Quarter 2024

## ADS OF INTEREST



### “HIPPO”

The Directorate pulled a Hippo ad that showed a man putting chilli sauce in his eye to avoid a commitment. It said:

“However, the concern lies with a younger child. In this regard the Directorate notes that the inclusion of an animated hippo would appeal to the young viewer, despite the advertised product being of no interest to them. In addition, as noted, the actual painful consequences of Eric’s actions are not clearly explained. Finally, Eric uses everyday items that a child will be able to find in their home; and in this manner the commercial is not so unrealistic as to reach a conclusion that a child will understand not to emulate it.

When it comes to the physical safety of young children, the Directorate errs on the side of caution. It is preferable to limit the flighting of a commercial over taking the risk that a child may meet some harm as the result of viewing the commercial.”

Read the whole decision on our website to find out why we also dismissed the allegations of racism and sexism.

This decision is being appealed.

## TRAINING

**red & yellow**  
CREATIVE SCHOOL OF BUSINESS  
HONORIS UNITED UNIVERSITIES

STUDY  
**RESPONSIBLE  
ADVERTISING**

In partnership with  
**ADVERTISING  
REGULATORY  
BOARD**

**100% ONLINE**

**3**  
WEEKS

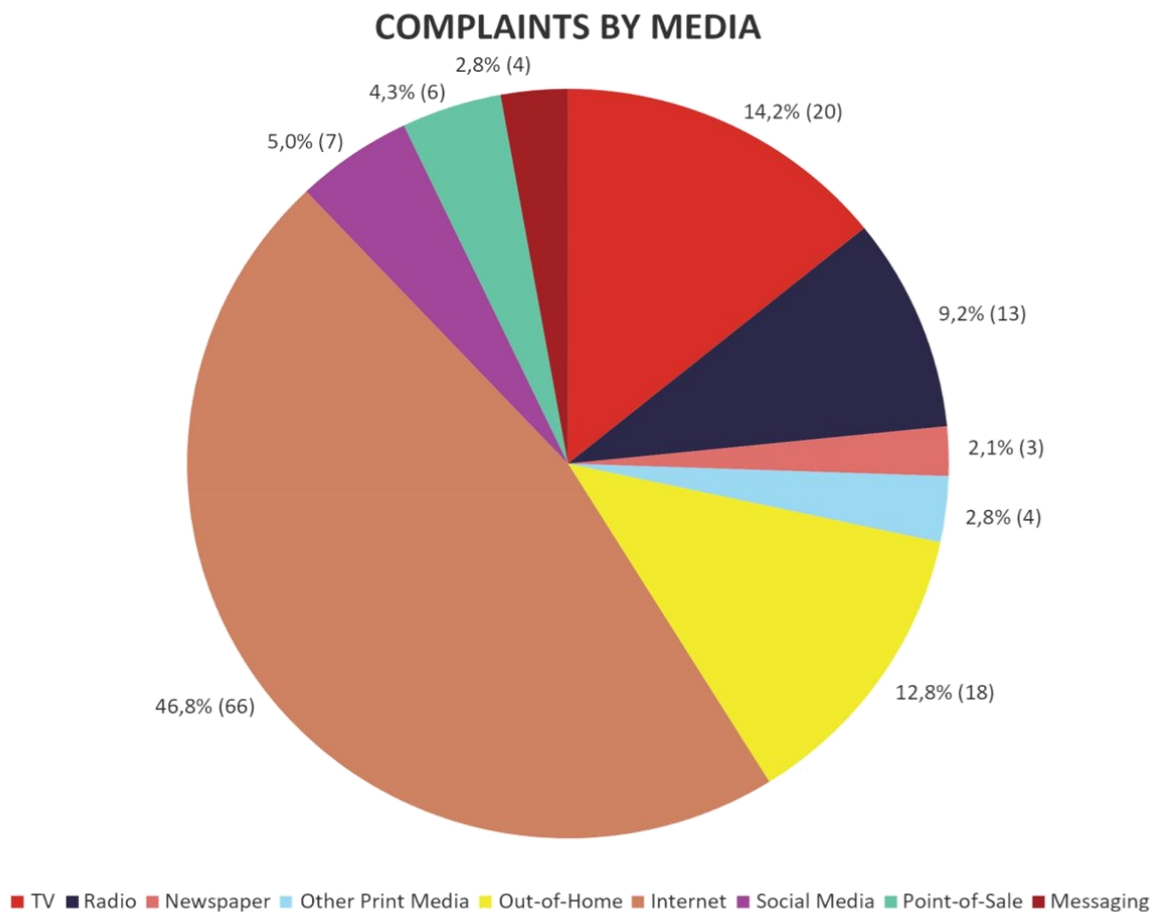
**ADVERTISING**

## Learn more about our new training initiative in conjunction with Red & Yellow Creative School of Business.

MAC Sector businesses can recognise the price of this course towards their RSM spend for B-BBEE purposes. Your teams will also be officially certified in Responsible Advertising.

## STATISTICS — 1 Jan 2024 to 31 March 2024

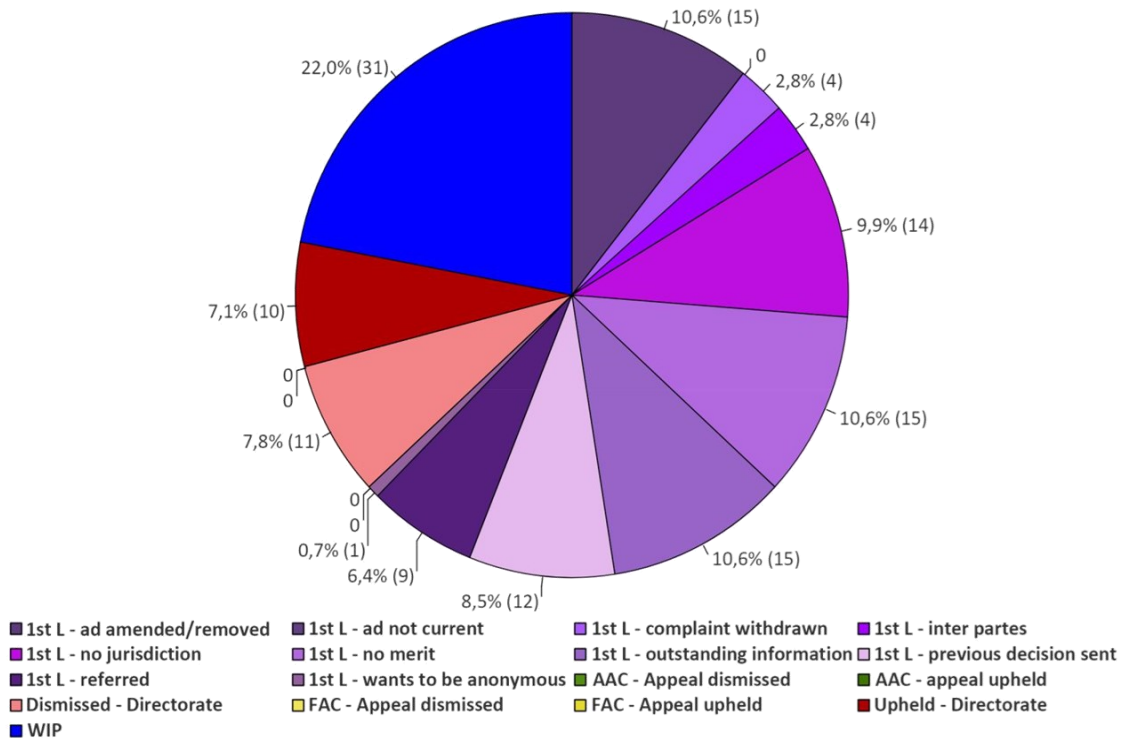
We are so excited that, thanks to our new internal data system, we are now able to provide you with accurate statistics.



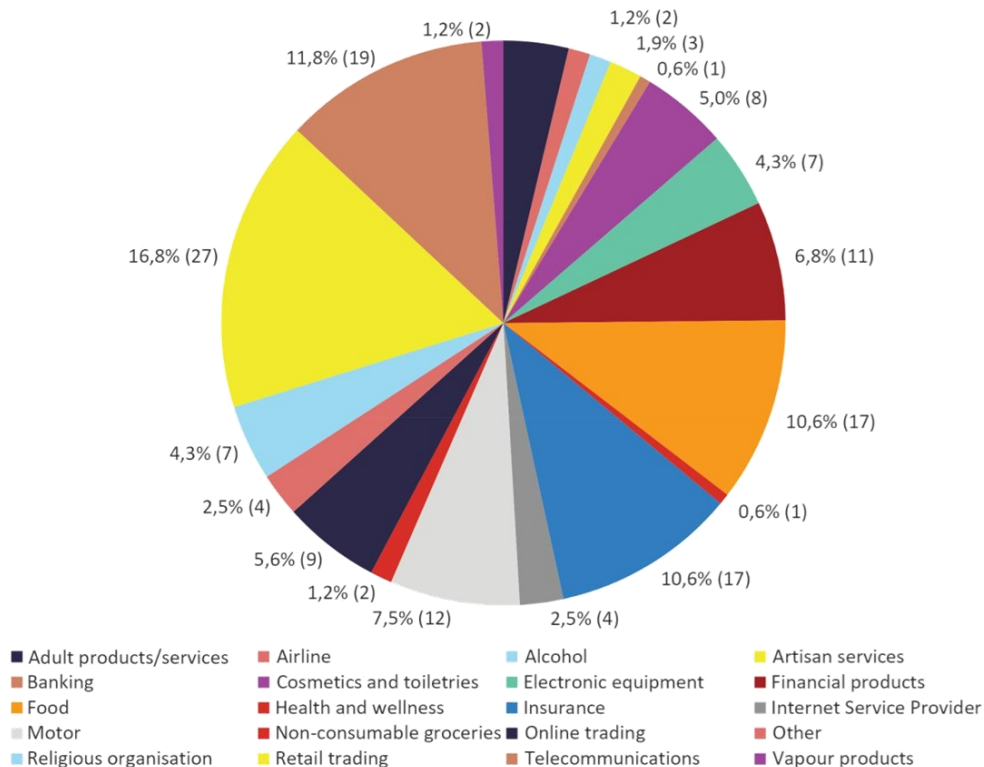


## STATISTICS — 1 Jan 2024 to 31 March 2024


### COMPLAINTS BY OUTCOMES




### COMPLAINTS BY INDUSTRY





## CONTACT US

 Block 4, Albury Office Park, 1 Magalieszicht Road, Dunkeld West, 2196, South Africa


 Advertising Regulatory Board (@ARB\_SouthAfrica) / Twitter


 Advertising Regulatory Board | Facebook

 <https://www.linkedin.com/company/advertising-regulatory-board-south-africa>

 <https://www.youtube.com/channel/AdvertisingRegulatoryBoard>

 [www.arb.org.za](http://www.arb.org.za)

 [info@arb.org.za](mailto:info@arb.org.za)

 011 593 3104

## OUR OFFICE

Stephan Kotze  
(Adjudicator)

Yasmin Laher (Manager)

Phumzile Mhlongo  
(Administrator)

## DIRECTORS

Gail Schimmel (CEO)

Karabo Denalane (Chair)

Chris Borain (Vice Chair)

Andrew Allison

Sadika Fakir

Asanda Gcoyi

Slindile Khanyile

Gareth Leck

Nthabiseng Motsoeneng

Martin Neethling

Adelia Pimentel

## ADVERTISING APPEALS COMMITTEE

Nasreen Rajab-Budllender (Chair)

Andrew Allison

Tintswalo Baloyi

Jarred Cinman

Alison Deeb

Sarah Dexter

Sadika Fakir

Sharon Keith

Lesiba Sethoga

## FINAL APPEALS COMMITTEE

Judge Bernard Ngoepe (Chair)

Chris Borain

Gareth Leck

Martin Neethling

Sisipho Ngoma

**“Consumer Protection through  
Responsible Advertising”**