

8 July 2020

To:

Lt Col (Rtd) Bernard N. Njiraini
The Managing Director,
Kenya Bureau of Standards,
P.O. Box 54974 - 00200,
Nairobi, Kenya

Via email: njirainib@kebs.org
cc: info@kebs.co.org

To Whom it May Concern

Re: Commentary on Kenya Bureau of Standard (KEBS)– Standards Act

The Cosmetic, Toiletry and Fragrance Association (CTFA) is a national trade association representing over 80% of cosmetic companies in South Africa. These range from major multi-national cosmetic manufacturers and brands to medium and small companies. Industry members include companies who import and export products internationally, including Kenya.

As the industry association in South Africa, CTFA has overseen the self-regulatory system for cosmetics for 26 years. Our industry members are committed to the continued development of safe, innovative and efficacious products both for the local market as well as for products destined for export. South Africa is in the process of regulatory reform since 2016, when we saw the first draft of the Regulations Relating to Advertising, Labelling and Composition of Cosmetics, published by the Department of Health, on the 19th of August 2016 in Government Notice R 921. Through the efforts of the CTFA and engagement with the regulator, the Department of Health published a second draft on 22 December 2017 in Government Notice R 1469. As the industry awaits the promulgation of these regulations, the regulatory framework remains self-regulated. This framework consists of national standards; compulsory specifications in terms of legal metrology, CTFA cosmetic compendium which provides the regulatory requirements in terms of product composition and labelling and the advertising code of practice. The South African National Standards though premised on the standards published by the International Standards Organisation, are amended to specific South African product requirements.

As South Africa is part of the African continent we are in support of an African regulatory reform and the Kenyan Bureau of Standards' efforts to curb the scourge of illegal and counterfeit products, which pose potential safety risks to the consumer and taints the reputation of a responsible industry. We are supportive of the KEBS established audit process which forms part of the pre-export verification of compliance (PVOC) process and the diamond mark scheme. However, with the update of the Standards Act and the diamond mark scheme for imports process, we have noticed some changes that will have a negative impact on trade for South African companies and have itemised them below for your consideration to enhance trade relations with South Africa:

1. The amended Standards Act indicates that diamond mark products are exempted from the PVOC inspection which is a welcomed move. The concern is that the diamond mark certification scheme, where KEBS intends to introduce a mid-term inspection before the validity period of three years has expired. This will mean that the company concerned will have to incur additional travel costs for KEBS inspectors to accommodate this additional

requirement. Furthermore, since the Covid-19 pandemic, travel bans have been imposed which will delay and even prevent the onsite inspection in some cases, thus compromising the 3-year validity of the diamond mark permit. Furthermore, this requirement imposes complexity to an already burdensome process. We would like to propose that an alternate process for inspection be considered, where no physical audits are required, such as a risk-based analysis of manufacturing facilities, remote inspection and review of product's Certificate of Analysis at the specified period. This will mitigate the travel risks and the need for a cumbersome and costly onsite inspection.

2. The requirement to place the import standardization mark (ISM) stickers on each unit poses risks especially under the current Covid-19 conditions where product safety and integrity must be ensured and maintained. The opening of consignments to expose products to apply these stickers will increase the risk of contamination due to additional handling of the products.
3. There is an already well established and successfully operational audit process in place with the resultant issue of a Certificate of Compliance, to compliant companies. The additional requirement for an Import Standardization mark sticker with a unique reference number is an unnecessary and expensive duplication of an already verified product status. Furthermore, the authenticity and integrity of these stickers is no longer controlled by KEBS and is thus exposed to the threat of falsified sticker application. We therefore propose that the Certificate of Conformity form the basis of the inspection of imported products and not a sticker system that is not safeguarded.
4. The Standards Act refers to an "Inspection agency list" that will be issued by KEBS upon request by an importer. We propose that this list be added as an addendum to the Act for quick and easy access to this information or avail the list on the KEBS website. This will ease the resource burden in responding to each importer and mitigate possible delays in communicating to importers.

Based on the above, we suggest a review of the clauses pertaining to our concerns in the KEBS Standard Act and in the Diamond Mark Scheme for imports. As a country on the African continent and one that is currently in the process of reforming, we understand first-hand the challenges faced by our markets. We believe that our proposals will not only enhance trade with Kenya but simultaneously ensure our common efforts to ensure the supply of safe and efficacious products for the local consumer.

The South African Department of Trade and Industry (the Dti) supports CTFA and the local industry's concerns and proposal and thus endorses this letter. We extend our gratitude to the Kenya Bureau of Standards for affording the South African industry association the opportunity to comment on the proposed amendment to the Standard Act. CTFA remains available to discuss the contents of this letter in more detail and would thus like to extend an invitation to engage with the relevant persons at KEBS.

Yours sincerely



Dershana Valla
Head: Regulatory & Policy Affairs
CTFA



Adelia Pimentel
Executive Director
CTFA