

LEGAL BRIEFING

Advertising to children in Mexico

Roberto Arochi, Karl H. Tessmann and **Oliver Galindo** from Arochi, Marroquin & Lindner, SC, describe the legal environment in Mexico

UNDERAGE CONSUMERS and other susceptible groups of society are subject to special protection in Mexican law. The Federal Constitution of Mexico (Constitución Política) states that children are entitled to the satisfaction of their needs for food, health, education and recreation in a manner that guarantees their overall development.

Moral values, consumer protection and public health are the cornerstones of advertising regulation in Mexico, especially with respect to children, who are recognised as a vulnerable consumer group.

Nonetheless, there is no single governmental authority or body of law governing products and advertising directed towards children. Consequently, businesses that market their products to children must be aware of a vast array of laws and regulations administered by a variety of government agencies.

On 10 August 1990, Mexico ratified the United Nations Convention on the Rights of the Child. Article 1 of the Convention defines a child as a person below the age of 18. Article 17(e) obligates member states to 'encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being'.

Other local regulations contain specific provisions relating to the marketing of alcohol and tobacco to children, the use of crude language and sexual content in advertising.

The Mexican legal framework

Mexico inherited a tradition of civil law from Spain. Its legal system is based primarily on statutory law. Although Mexico is a federal republic, the regulation of advertising and the mass media is governed primarily by federal law.

Many federal administrative agencies have jurisdiction over advertising. These agencies have broad authority to issue fines and orders. Criminal prosecution is rare but may occur if a party repeatedly refuses to comply with administrative orders, promotes criminal acts or violence, or seriously offends public morals or national symbols.

The three government bodies primarily responsible for the regulation of children's advertising are the Ministry of the Interior (Secretaría de Gobernación), the Attorney General for Consumer Protection (Procuraduría General de Protección al Consumidor), and the Ministry of Health (Secretaría de Salud).

The primary bodies of law regulating children's advertising are detailed below.

Federal Law on Radio and Television (*Ley Federal de Radio y Televisión*)

This statute provides that all radio and television advertising must be approved by the Ministry of the Interior. The Ministry verifies that the advertising is suitable for all audiences, and complies with other legal requirements. To comply with the statute, broadcasters, advertis-

ing agencies and other agencies involved in the preparation and transmission of television and radio advertisements must avoid:

- statements that promote racial discrimination, or that denigrate or offend national heroes or religious beliefs
- statements that promote criminal acts, violence or vice
- the use of offensive language
- advertisements that are contrary to public morality or values
- statements or images that promote the consumption of alcohol, tobacco or illegal drugs
- statements that may cause public alarm or panic.

The Interior Ministry may impose fines ranging from \$5,000 to \$50,000 Mexican pesos (about \$500 to \$5,000 US) for violations of the statute. Typically, the Ministry imposes heavier fines in cases involving children's advertising.

Federal Health Code (Ley General de Salud)

This statute restricts the advertising of pharmaceutical products and harmful substances such as tobacco and alcohol. Generally speaking, advertising for alcoholic beverages may not include actors or models under the age of 25, while tobacco advertising may not include actors or models under the age of 18. Advertisements subject to this law must fulfil the following general requirements.

- Technical information must be verifiable.
- The content must include some sort of educational material.
- It must correspond to the description provided in the sanitary authorisation. The sanitary authorisation is obtained through a separate procedure, where the advertiser files a brief description of the publicity that would be released.
- It must not encourage conducts, practices or habits that would result in a health risk. This is a broad provision; however, a harmonic

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interpretation of this body of law suggests that tobacco and alcohol are not considered health risk activities.

Violations may be penalised with fines ranging from \$40,000 to \$400,000 Mexican pesos (approximately \$4,000 to \$40,000 US).

Federal Consumer Protection Law (*Ley Federal de Protección al Consumidor*)

This is probably the most important body of law relating to advertising in Mexico; it contains specific provisions relating to publicity, special offers, customer databases, and other topics. Generally, the law provides that advertising must be truthful, verifiable, and must not create a likelihood of mistake or confusion among the intended audience. Violations of the statute may result in fines ranging from \$300 to \$960,000 Mexican pesos (approximately \$30 to \$96,000 US), or up to \$2,520,000 (approximately US \$252,000) in particularly serious cases when harm to a group of consumers, such as children, could result if the conduct were to continue.

Codes of conduct

In addition to the statutes mentioned above, there are three major ethics codes that govern advertising in Mexico, promulgated by the Communications Council (Consejo de la Comunicación, AC), the Mexican Association for Advertising Agencies (Asociación Mexicana de Agencias de Publicidad, AC) and the

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Marketing Communication Industry Confederation (Confederación de la Industria de la Comunicación Mercadotécnica). Generally speaking, the principles that inspire these codes are legality, honesty, decency, veracity, dignity, respect, fair competition, welfare and health.

Technically speaking, the codes of conduct do not carry the force of law. Nonetheless, courts have held an advertisement that violates the codes also violates, *prima facie*, 'good practices and morality'.

General rules for advertising to children

According to Article 16 of the Communications Council Code of Ethics, advertisers must pay special attention when selecting material intended for children, to avoid taking advantage of their credulity or lack of experience. Also, children's advertising must not offend national or family values, or encourage hazardous or harmful activities. In light of this provision, advertisers should observe the following guidelines.

- If there is any risk that an advertisement may be confused for informational material, it must be clearly marked 'ADVERTISEMENT'.
- Advertisements must never promote violence, or illicit or anti-social activities.
- It must never be suggested that the possession or use of certain product would provide a physical, social or psychological advantage or disadvantage.
- Advertisements must not undermine parental authority, judgment or preferences.
- Advertisements must not induce children to engage in dangerous activities.
- Children should not be encouraged to urge other persons to purchase a product, especially their parents.
- Minors should not be made to believe that a product possesses exaggerated qualities;

therefore, extra requirements or special needs (such as 'batteries not included') must be clearly stated.

- Advertisements must adequately explain the degree of dexterity required to use a product, as well as the recommended age range.

Special rules for radio and television

The first thing to consider when advertising a product intended for mature audiences in radio and TV is the broadcasting schedule. However, in the case of advertising to children, Federal Law on Radio and Television provides that children's programmes can be transmitted at any hour.

TV and Radio shows for children must pursue the following objectives:

- propitiate harmonic development of children
- stimulate creativity, family integration and human solidarity
- encourage understanding of national and community value
- promote the scientific, artistic and social interests of children
- provide entertainment and help the formative process during infancy.

Television and radio advertising must never exceed 18% of the total time of transmission. Advertisements should always be suitable for all audiences, which is one reason why special regulations for children's advertising in radio and TV have not yet been promulgated in Mexico.

No advertisements containing violence or situations encouraging distortions of feeding habits may be transmitted during children's programmes. Any advertising inappropriate for minors must contain a warning at the beginning of its transmission.

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Alcohol, tobacco, pharmaceutical products and adult-oriented topics

The Federal Health Code, Federal Law on Radio and Television, and the Federal Consumer Protection Law contain a number of restrictions in this area, the most important of which are summarised below.

- Alcohol and tobacco may never be advertised during television or radio programmes broadcast during time periods reserved for broadcasting suitable for all audiences (from 5 am to 8 pm); alcohol advertisements may not be broadcast before 10 pm.
- Alcohol and tobacco products may never be given to minors. Children may not be used to sponsor activities relating to consumers under the age of 25 years.
- Alcohol and tobacco may not be promoted through raffles, contests or collectables intended for children.
- Alcohol and tobacco advertising may not use models under the age of 25 years and must never show actual consumption of the product.
- Tobacco billboards may not be located within 200 m of elementary or high schools, hospitals, public parks, sports or family centres.
- Alcohol and tobacco advertising may never be shown in movie theatres during showings of

movies that might be viewed by an underage audience.

- Alcohol and tobacco advertisements may not appear in elementary or high school materials of any kind, such as notebooks, rulers or books intended for school-age children.
- Pharmaceutical products of any kind may not be advertised through cartoons that might encourage consumption by children.
- Free samples of medication may not be distributed to underage consumers.

Conclusion

Mexico does not have a uniform body of law relating to children's advertising. Nonetheless, there are a number of laws, regulations and codes that govern various types of advertisements and promotions directed to underage consumers. Advertisers can avoid common legal problems by familiarising themselves with these provisions.

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