



# ARGENTINA

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## Country Report

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<b>1. Case Report:</b>	Japan Tobacco Inc. and Nobleza Piccardo SAIC vs. Massalin Particulares S.A.
<b>Topic:</b>	Trademark- Parody of a third party trademark as an act of unfair competition and Trademark infringement
<b>Where:</b>	Federal Court of Appeals for Civil and Commercial matters of the City of Buenos Aires
<b>When:</b>	June 14 <sup>th</sup> , 2001
<b>What happened:</b>	<p>Both plaintiffs claimed that the TV commercial that Massalin Particulares S.A. (MP) aired constituted an unfair competition practice as well as trademark infringement, as it was a parody which dilutes by tarnishment trademark WINSTON. That is why JTI and NP (JTI is the owner and NP the licensee of said trademark), basing their arguments on a violation to the Paris Convention, filed an injunction against MP to obtain the immediate cease in the exhibition of said TV advertising and future ones with similar contents, which was initially granted by the judge.</p> <p>This ruling was appealed by MP and, in the end, the Court of Appeals determined that forbidding the emission of future ads with “<i>similar contents</i>” represented a case of censorship and banning of free expression, which contradicts our Constitutional basic principles. In addition, the Court concluded that the ad does not denigrate plaintiff’s trademark, arguing that despite the ad made clear reference to JTI’s trademark without naming it, it did it on a humorous way and giving nothing but truthful and objective information to the consumer audience. The Court made special reference to the fact that although the content of the TV commercial had a humoristic tone, none of the information provided was false or represented an unfair competition act, taking into account that the ad made reference to the real origin of the product, which was not the US but Uruguay, and that was something that the plaintiffs omitted on their own advertising campaign. In</p>

	<p>fact, plaintiff intentionally gives an “American image” to the product in stating that “the free-shop is here”, since almost all the cigarettes sold in the free-shops are manufactured in the U.S.</p> <p>In the end, the Court reversed the previous ruling and decided that the ad could be freely aired by MP, because it did not contradict the terms of the Paris Convention nor any other local law.</p>
<b>Comment</b>	<p>The importance of this ruling is notorious, because it states that making implicit reference to other trademarks on an ad is not enough to commit an unfair competition act. If said allusion is done in an objective and truthful way, no harm or damage could be alleged by the trademark right holder. On the other side, no advertising could be banned before its effective appearance, though the prohibition of “similar content” ads is seen as a censure measure, which is opposed to the Constitution.</p>

<b>2. Case Report:</b>	FIFA v. PEPSICO DE ARGENTINA S.R.L.
<b>Topic:</b>	Unfair competition- Injunction ordering the immediate stop of the broadcasting of the PEPSICO ad in any form
<b>Where:</b>	Federal Court for Civil and Commercial matters of the City of Buenos Aires
<b>When:</b>	June 3 <sup>rd</sup> , 2002
<b>What happened:</b>	<p>FIFA filed an injunction based on art. 50 GATT-TRIPS and stating that the ad constitutes a particular form of unfair competition: the association of the ad with the world-cup which was sponsored by a competitor (COCA-COLA), misleading the consumers, particularly regarding the sponsorship of PEPSICO in such event.</p> <p>The description of the ad, which was the object of the injunction issued by the Argentine Judge, is as follows: A team of famous soccer players, playing against another team composed of sumo wrestlers, the most popular and well known sport in Japan. The famous soccer players were playing with the ball and dominating the game. However, the sumo wrestlers start drinking PEPSI, and after that they ended up winning the game. (It is worth mentioning that the description of the ad is based upon the recollection of people who watch the ad by TV, and thus, it might be different.)</p> <p>The Judge issued the injunction in favor of FIFA “ordering PEPSICO to stop the broadcasting of the ad referred to the PEPSI product done by PEPSICO de ARGENTINA S.R.L. in any form, related to the phrase TOKIO 2002 between two logotypes of PEPSICO, and behind that the</p>

	<p>image of a soccer team, which apparently was the Argentine team. This scenario would lead consumers to believe that PEPSICO is sponsoring the world-cup.</p> <p>According to the information gathered, This ruling was not appealed by PEPSICO. Therefore the resolution of the judge of first instance is final now.</p>
<b>Comment</b>	<p>It is worth mentioning that Argentina was the only jurisdiction where FIFA obtained an injunction to ban the broadcasting of the ad. It is still to be determined whether the PEPSICO ad constitutes an act of unfair competition. FIFA will have now to file a complaint and start the proceeding in order not to lose the rights arising from the resolution of the injunction. According to Argentine law the plaintiff has to file the lawsuit (and previously a mediation mandatory process) within 10 days counted as from the notification of the injunction to PEPSICO.</p>

<b>3. Legislation:</b>	Tobacco's Promotion and Advertising self regulation Code
<b>Topic:</b>	Establish a common policy between competitors to assure the responsible and objective promotion and advertising of tobacco products.
<b>Who:</b>	Managed by The Argentine Tobacco Industry Chamber, signed by Nobleza Piccardo SAIC (Argentine licensee for BAT products) and Massalin Particulares SA (Philip Morris International local subsidiary)
<b>When:</b>	December 2001
<b>What happened:</b>	<p>The two most important worldwide competitors on the tobacco industry (The BAT Group and Philip Morris International), together with the Argentine Tobacco Industry Chamber, signed a common policy agreement to prevent and reduce youth smoking, assuming the commitment to direct every promotion or advertising campaign exclusively to adult people.</p> <p>The Code determines some basic principles to follow in connection to tobacco advertising and promotion campaigns. The most important ones are:</p> <ul style="list-style-type: none"> <li>_ <i>No advertisement may be aimed at or particularly appeal to minors.</i></li> <li>_ <i>No advertisement may be placed on any billboard, wall mural or transit stop or station located closer than 100 meters from any point of the perimeter of a school attended predominantly by minors. Outdoor advertising must not be placed on signs or billboard located in close proximity to playgrounds or other facilities which are frequented particularly by minors.</i></li> </ul>

	<p><i>_ All models appearing in any advertisement must be, and must appear to be, over the age of 25.</i></p> <p><i>_ No advertisement may suggest that smoking enhances sporting or athletic success, popularity, professional success, or sexual success.</i></p> <p><i>_ With respect to newspapers, magazines, and other printed publications, the Company must take reasonable measures to ensure that its cigarette advertising is not placed on or adjacent to features that have particular appeal to minors.</i></p> <p><i>_ No tobacco advertisement may be projected in a cinema or theatre, unless the films are forbidden for minors.</i></p> <p><i>_ No advertisement may be broadcast on television between 8 to 22 hours (according to the dispositions of the law 23.344).</i></p> <p><i>_ The Company may not make any direct or indirect payment or contribution for the placement of tobacco products, advertisements or items bearing tobacco brand names within the body of any motion picture, television program, theatrical production or other live performance, live or recorded performance of music, commercial film or video, video game, or any similar medium which is intended for the general public.</i></p> <p><i>_ Tobacco advertising must be directed exclusively to adult smokers.</i></p> <p><i>_ No name, logo, or other indicia of a cigarette brand, including any indicia or element of a brand-related marketing activity, may appear on items that are marketed to or likely to be used by minors like toys, dolls, miniature replicas of racing vehicles, video games, etc.</i></p> <p><i>_ Clothing items must be in adult sizes only.</i></p> <p><i>_ The Company will not sponsor an event or activity unless there is a reasonable basis upon which to believe that the sponsored event or activity will not be of particular appeal to youth.</i></p> <p>These rules are concurrent to the principles established by the No 23.344 Act, which provides certain limitations to cigarette advertising.</p>
<p><b>Comment</b></p>	<p>This type of code is very similar to the other codes and regulations adopted by the BAT and PM Groups all over the world, related to the adoption of common basis for promotions and advertising, specially regarding positive actions against youth smoking and enforcing prevention programs for minors.</p> <p>The common statement of the two most powerful tobacco enterprises in the world about restricting the ads and promotions should be seen as an important step in the protection of consumer rights, specially youth ones, which is a complex issue that requires a serious commitment from the entire society.</p>