

ARGENTINA



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1. Case Report:	Ortiz, Miguel Angel vs. La Gaceta S.A.
Topic:	Intellectual Property – Right to reproduce one's own image - Right to privacy
Where:	Court of Appeals for Civil and Commercial matters of Tucumán.
When:	July 3, 2003
What happened:	<p>In April 2000 the defendant, who is the editor of a major circulation newspaper in the Province of Tucumán, published a scanned photograph of a minor smoking by the door of the National University of that Province.</p> <p>The parents of the boy filed a complaint against the defendant, claiming for an indemnification for the emotional harm suffered by their son for the violation of his privacy. They claimed that the title of article for which the photo was used despised the child.</p> <p>The First Instance Ruling denied the claim for indemnification, on the basis of considering that no tortuous fraud or negligence has been configured. Besides, the judge found that the freedom of the press right has a constitutional hierarchy and could not be limited.</p> <p>The Court of Appeals revoked the First Instance Ruling and fixed an indemnification in favor of the parents of the boy, for considering that the "right to reproduce one's own image" is personal and inalienable, and can only be used by others with the previous authorization of the photographed person, unless it is used for scientific, cultural or general interest purposes. The Court understood that none of these exceptions had been configured, for which decided that the emotional harm caused had to be repaired. The Court also stated that in this case the Freedom of the Press right was opposed to the Right to privacy, both with a constitutional hierarchy, and that the second one had to prevail in this particular case.</p>
Comment:	The importance of this decision is that the emotional harm will always be present in cases as this one, where there is an unauthorized use of a person's own image, for commercial purposes. The Court says that there is no need for the photographed person to prove the damage; if there is no authorization, there is a damage, that must be repaired.

2. Case Report:	Cervecería y Maltería Quilmes S.A. vs. C.A.S.A. Isenbeck
Topic:	Comparative Advertising – Disobedience or contempt to Court – Freedom

	of expression
Where:	Federal Court of Appeals for Criminal or Misdemeanor matters of the City of Buenos Aires
When:	August 7, 2003
What happened:	<p>The plaintiff had filed for an injunction before the Civil and Commercial Court to order the defendant to refrain from publishing any kind of ad in which its main trademark "Quilmes" was mentioned. Said injunction was granted. At the same time, the claimant filed a criminal action before this Criminal Court against Isenbeck for fraudulent imitation, falsification and illegal use of its trademark "Quilmes". Said claim was rejected (see case N° 1 of the April 2003 Argentina Report).</p> <p>After that, Quilmes decided to file a criminal action for disobedience and contempt to a Court order. They claimed that after the injunction was granted, the defendant continued publishing different kind of ads mentioning the trademark "Quilmes".</p> <p>The Court found the claim inadmissible, due to the fact that although there was disobedience from a judge's order, the right to freely express the ideas by any means has a constitutional root and cannot be limited by a censoring governmental act. So, despite the possible future civil claims for damages that could arise from Isenbeck's unfair behavior, freedom of expression is a right recognized by the National Constitution and other International Treaties signed by Argentina, which cannot be subject to censorship.</p>
Comment:	There is a very significant outcome from this ruling, it is that despite the existence of a judicial order forcing someone to do or refrain from doing something, if there is a right to be superior in hierarchy than the one in which the judicial order is based on, then this last right would have preeminence over the judicial order.

3. Case Report:	Bosso, Claudia and other vs Viajes Ati S.A
Topic:	Binding publicity – Breach of contract – Consumer's rights – Misleading advertising – Emotional Harm
Where:	Court of Appeals for Commercial matters of Buenos Aires
When:	June 30, 2003
What happened:	<p>The plaintiffs -Claudia Bosso and her husband- signed a contract with the defendant -a travel agency- for the arrangement of a 10 day trip to Paris, including the stay at a hotel in Paris. They paid the corresponding price and, one day before the departure, the agency communicated to them that there were no accommodations at the Paris hotel.</p> <p>Consequently, Bosso and her husband filed a civil complaint, claiming the devolution of the money paid, plus an indemnification for the breach of contract and the emotional harm suffered.</p> <p>They claimed that the agency had published several ads on diverse mass media, in which they assured that by simply paying a down payment of US \$50 per person, plane tickets and hotel accommodations in Paris were guaranteed.</p>

	<p>The Court ruled that the content of the ads should be understood as included in the contract with the plaintiffs, due to the rules contained in the Consumer Protection Act, which determine that the offer made to undetermined persons bind the offeror. This Act also determines that there is a legal obligation for the ones who offer products or services to provide consumers with real, sufficient and truthful information. The Court found that the breach of contract was also configured for not complying with such duty.</p> <p>The Court finally said that the obligation assumed was related to the ends desired, not to the means used to achieve a given end.</p>
Comment:	<p>This ruling confirms an important principle that jurisprudence has been stating on the last years, in the sense that the information given by any means to consumers must be truthful, and if not, offerors will have to indemnify such misleading information.</p>

4. Case Report:	O. Marta Beatriz vs Mutual del Personal del Centro Industrial Acindar
Topic:	Interpretation of contracts in favour of consumers
Where:	Court of Appeals for Civil and Commercial matters of San Nicolás
When:	May 13 th , 2003
What happened:	<p>The plaintiff filed a civil action against MPCIA for reimbursement of the money paid for the dental surgery of her daughter. The reason why the surgery had to be practiced urgently is an accident suffered by the child with a bicycle.</p> <p>The counterpart alleged that dental services were not included in the Medical Plan of the plaintiff, which could be verified by reading the contract signed by the claimant when subscribing for said Plan.</p> <p>The Court found that the referred contract was an adhesion contract, which did not determine in a clear way the medical services included or excluded of the plan. The contract made reference to the different particular agreements to be reached with the various medical centers, for which there was not a complete, sufficient and truthful information to the associate.</p> <p>So the Court decided that in doubtful cases, the decision must be in favor of consumers. Consequently, because of the lack of clarity of the limits of the services included in the Plan hired by the plaintiff, the Court ordered the defendant to reimburse the payments made because of the dental surgery of the plaintiff's daughter, plus an extra payment as indemnification for emotional harm.</p>
Comment:	<p>We have here another decision in favour of consumers. Not only advertising made is binding for the offeror, but the incomplete or insufficient information provided to consumers is interpreted in their favour, for which everyone who produce, distribute, import or commercialize any good or service should be very careful on the advertising made and the information given to consumers on their products or services.</p>