

Advertising to children in Brazil

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Abstract text

BRAZILIAN legislation pays special attention to children and teenagers in a great range of issues in view of their vulnerability, naivety and lack of experience. Provisions regulating advertising to children and teenagers in Brazil are found mainly in the Brazilian Federal Constitution (Constituição da República Federativa do Brasil), the Brazilian Consumer Defence Code (Código Brasileiro de Defesa do Consumidor), the Children and Teenagers Statute (Estatuto da Criança e do Adolescente) and in specific rules and regulation, such as those issued by the National Council of Advertising Self-Regulation (Conselho Nacional de Auto-Regulamentação Publicitária – CONAR) and the International Code of Advertising Practices (Código Internacional da Prática Publicitária).

This article discusses the rules applicable to advertising to children, as well as those applicable to advertising with the participation of children, whether or not relating to products aimed at their peers.

The Brazilian Federal Constitution (BFC) provides that it is a duty of the family, society and the State to ensure that children and teenagers have, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, as well as to guard them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression. Therefore, although the BFC guarantees freedom of speech, thought, creation and

expression, Brazilian legislation requires some restrictions to advertising to, and with the participation of, children and teenagers, so that the Constitutional requirements discussed above are duly met.

General principles for advertising in Brazil

In the 1980s, a few Brazilian associations, such as advertising agencies, newspapers, magazines, radio and television stations, created the National Council of Advertising Self-Regulation (Conselho Nacional de Auto-Regulamentação Publicitária – ‘CONAR’) and, following national and international standards, established a series of rules on advertising in Brazil. CONAR is a private organisation whose Self-Regulation Advertising Code and other rules and recommendations are taken seriously and are strictly followed by the media in general.

CONAR determines, among other things, that every advertisement should obey Brazilian legislation and be honest and truthful. It also sets out other general advertising guidelines on product safety, ethical behaviour, comparative advertising and advertising addressed to children and teenagers.

In 1990, when the Brazilian Consumer Defence Code (‘CDC’) was enacted, the rules on advertising shifted from a system that was almost entirely self-regulated by the CONAR rules and others, to one subject to increasing control by the legislators and the Judiciary system.

In spite of that change, CONAR still plays a meaningful role and its rules and recommendations constitute an important source of orientation for advertising companies and the media. In fact a mere investigation by CONAR on whether a certain advertisement is abusive frequently is considered enough to have it withdrawn by the advertiser, even when a final decision is still pending (see CONAR Case No. 46/85).

The CDC has established various principles that apply to advertising, including advertising to children. The CDC prohibits simulated, misleading and abusive advertising. Misleading advertising is any mode of advertising or communication that is totally or partially false, including by omission, or is capable of misleading the consumer with respect to the nature, characteristics, quality, quantity, properties, origin, price and any other information about the product or service. Advertising is also considered misleading by omission when it fails to inform essential data about the product.

Abusive advertising is, among other things, that which in any way discriminates, incites violence, exploits people's fears or superstitions, takes advantage of the deficiency of judgement and inexperience of children, or is capable of encouraging the consumer to behave in a way that is detrimental or dangerous to his/her health and safety.

The CDC also condemns the practice of product-placement, popularly considered as the insertion of implicit advertising of products or services in the media without focusing exclusively on the trademark of the product.

Another innovation brought by the CDC is that, in case of disputes, the supplier has the burden of proving that the information provided in an advertisement is truthful and accurate.

Advertisements addressed to children

The CDC condemns, as seen above, any form of misleading and abusive advertising. Certain categories of consumers are deemed to be more vulnerable than the average person. This includes poorly-educated consumers, children and the elderly, those with a fragile health condition, as well as those whose social condition may impair their ability to evaluate adequately the product or service they are acquiring. Because of the evident vulnerability of children and teenagers, Brazilian rules and regulations treat advertising addressed to this group with special care. Any advertisement directed to these consumers, have an enormous damage potential.

With regards to children, the ideal form of advertising should not take advantage of their deficiency of judgment and experience. Also, advertising should not induce children to behave in an unconventional manner or in any way that may be harmful to their safety and health.

CONAR, in turn, dedicates an entire section of the Code of Self-Regulated Advertising to children and teenagers. CONAR establishes that advertising addressed to children and teenagers should:

- (1) consider their psychological characteristics;
- (2) respect their naivety and beliefs as well as their inexperience and loyalty;
- (3) not offend them morally;
- (4) not imply that they are inferior to other children and teenagers in case the advertised product is not bought. In Case no. 87/83, CONAR determined the suspension of a calcium-based product advertisement, as it showed a boy who was weaker than his friends and, because of that, asked his

mother to give him a double dose of the product.

- (5) not stimulate them to embarrass their parents or third parties to buy the advertised product. In Cases No. 26/83 and 112/85, CONAR determined the suspension of advertisements that incited children to misbehave in order to convince their parents to buy the advertised clothes.

The Children and Teenagers Statute ('CTS') provides more rules protecting the rights of children and teenagers. Among other measures, the CTS determines that magazines containing material that is inappropriate to children and teenagers should be sold in sealed packages and have written warnings about their contents.

Advertising with the participation of children

It is a common advertising strategy to use children to gain the attention of other children of the same age. Although there is still some ongoing discussion on this topic, the majority of Brazilian scholars agree that the participation of children in advertising should be allowed by the CTS upon authorisation of the parents. According to this understanding, the Public Authorities should not interfere, unless in cases where the child does not have a family structure to protect their interests.

Advertising in which children participate should not directly encourage other children to buy a product or service, should not impel a child to persuade her parents or any other adults to buy a product or service, nor should it exploit the child's trust in her parents, teachers, etc. Also, children who act and participate in commercial advertising should behave typically for children of the same age.

CONAR provides that any advertising that involves the presence of children and teenagers must have safety as a priority, followed by a concern with good manners. For example, in Case No. 47/85, CONAR determined the suspension of a soft drink advertisement because it showed a young boy coming out of a refrigerator to surprise his mother. CONAR understood that children could try to imitate the boy in the film and put themselves in a risky situation.

Tobacco, alcoholic beverages, pesticides, medicine and guns

The BFC provides that commercial advertising of tobacco, alcoholic beverages, pesticides, medicines and therapies shall be subject to legal restrictions and contain, whenever necessary, a warning concerning the damages associated with their use.

Law 9,294/96, which regulated the above Constitutional provision expressly prohibits the participation of children and teenagers in advertising of tobacco.

The CONAR rules also determine that advertisements for these products should not be addressed to children or teenagers and that no one who appears smoking in an advertisement should be or look like they are under legal age.

Likewise, advertising of alcoholic beverages should not be addressed to children or teenagers and no one who appears drinking in an advertisement should be or look like they are under legal age.

With regard to medicines that do not demand prescription, advertising should not induce children to use it without the supervision of their parents. (Advertising of prescription medicine is only allowed in the media directed to health professionals and is subject to several restrictions.)

The participation of children and teenagers in advertising of pesticides and guns is strictly prohibited. The actors or actresses that participate in this type of advertising should not be or look like they are under legal age.

There are also restrictions as to the hours of the day during which advertising of these products is allowed.

Finally, magazines, programmes and publications directed towards children and teenagers should not contain illustrations, photographs, legends, texts or advertising related to alcoholic beverages, tobacco, guns and ammunition. As to tobacco and alcoholic beverages, advertising is also prohibited on websites directed at minors.

Conclusion

When advertising to children in Brazil, one should take into account the general principles and rules provided for by the BFC, the CDC and CONAR, as well specific rules protecting children, such as the CTS. Specifically when advertising to children in Brazil, among other things, one

can:

- use children and teenagers in an advertisement, provided that the requirements and limitations discussed above are duly met,

except as regards tobacco, alcoholic beverages, pesticides and guns.

cannot:

- discriminate, incite violence, exploit fear or superstition, take advantage of the deficiency of judgement and inexperience of children and teenagers or encourage them to behave in a way that is detrimental or dangerous to their health and safety;
- morally offend children;
- imply that the child is inferior to other children and teenagers in case the advertised product is not bought;
- prompt the child to embarrass their parents or third parties into buying the advertised product;
- address advertising of tobacco, alcoholic beverages, medicine, pesticides, guns and ammunition to children and teenagers.

References

- Brazilian Federal Constitution – available at <http://www.senado.gov.br/bdtextual/const88/const88.htm>
Consumer Defence Code – available at <http://www.mj.gov.br/dpdc/cdc.htm>
Children and Teenagers Statute – available at http://www.planalto.gov.br/ccivil_03/Leis/L8069.htm
National Counsel of Advertising Self-Regulation (CONAR) – available at <http://www.conar.org.br>

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