


CHILE



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1. Case Report:	
Topic:	Giving Away Promotions and the Consumer's Right to be Duly Informed
Who	The Council for Advertisement Self-Regulation and Ethics (CONAR)
When:	March 27, 2003
Where:	Santiago, Chile
What happened:	<p>Due to the large impact of Bank Santander's promotional campaign "giving away a DVD set" connected with money loans, the Council on its own initiative analyzed the compliance of such promotion with the Ethic Code's provisions.</p> <p>The Council grounded its ruling over the doctrine of promotions and offers by which advertisers must inform the audience providing enough elements so consumers are able to take educated and informed decisions considering all relevant factors. Moreover, advertising must not be either false or misleading consumers to wrong choices.</p> <p>In this case the Council ruled that the promotional campaign "Get a free DVD with your loan" was not in compliance with the Code's requirements. TV commercials and advertising campaigns must inform consumers about the essential features of the gifts and their conditions to be eligible to win those prizes together with the terms in which the offer remains available to the public, participant's restrictions, limitations et al.</p> <p>TV commercials and ads put under scrutiny were deemed outside the self-regulatory framework set by the Ethic's Code and the Bank was asked to withdraw all advertising actions.</p>
Comment:	The Council made a very interesting point setting the standard widely applied in future rulings by which advertising campaigns must not mistake the public with strict promotional guidelines - unknown to the audience and kept in secret in - with the content finally exhibited to them, which may differ with the guidelines.

2. Topic:	Likelihood of Confusion and Promotion of In-house Brands
Who:	Chilean Trademark Office
When:	June 2003
Where:	Santiago, Chile

<p>Advertisement:</p>	 <p>(1)</p> <p>(2)</p>
<p>What happened:</p>	<p>D & S filed for an application for registration for the following device (label)</p> <p>Unilever N.V. filed opposition against the application based on the similarity of its own label (shown above) already registered at the Chilean Trademark Office. Moreover, both labels cover same type of product (Class 03 of the Int'l Classifier).</p> <p>The Chilean Trademark Office clearly ruled in favor of Unilever N.V. due to the similarity of the label submitted by D & S.</p> <p>The Trademark Office based its decision on a comparative analysis between the labels in dispute. The analysis showed that both layouts are evidently similar in features drawings and color combination.</p> <p>These common features may result in a likelihood of confusion because respondent's label was not able to differentiate itself from claimant's.</p> <p>From an advertising point of view, respondent's labels are banned to be published, aired or exhibited.</p>
<p>Comment:</p>	<p>This ruling set a threshold regarding in-house brands developed by big retail chains aimed at resembling those traditional brands with a long standing in the local market. As a consequence, the labels are forbidden to be used in future commercial ads.</p>

3. Case Report:

Topic:	Unfair Comparative Advertising
Who:	The Council for Advertisement Self-Regulation and Ethics (CONAR)
When:	October 2002
Where:	Santiago, Chile
What happened:	<p>Ford Motor Company aired a TV commercial showing a Subaru car.</p> <p>Petitioner claims the ad as unfair and misleading on the basis that the Subaru car is depicted as obsolete due to the strong remarks made by the characters. In fact, the key part of the ad shows a teenager emotionally frustrated when getting the Subaru car as a graduation gift from his parents.</p> <p>The teenager thought he was getting a new Ford Fiesta.</p> <p>The Council for Advertisement Self-Regulation and Ethics (CONAR) concluded that there is no prejudice in showing on TV a competitor's car under certain circumstances. Respondent acknowledges the fact that the ad conveys "deception and surprise" when the son realizes he is getting the Subaru's car instead of a Ford's.</p> <p>According to the respondent although the "deception and surprise" element the ad did not involved or implied any "obsolescence" message disparaging Subaru because the teenager had assumed his parents are bringing a new model as a graduation gift.</p> <p>The Council nevertheless determined the ad showed the Subaru's car as not desired and thus violating the Ethic Code.</p>
Comment:	<p>CONAR's ruling set the standard for advertising campaigns using comparative tools based on registered trademarks.</p> <p>The Council's decision stated that ethical use of a registered trademark implies obtaining prior consent from the owner of the trademark.</p> <p>The owner is the only person or entity in a position to assess the impact on its own trademark when used in advertising campaigns created by third parties or competitors.</p>

4. Topic:	Advertising, Violence and Young People
Who:	The Council for Advertisement Self-Regulation and Ethics (CONAR)
When:	April 2002
Where:	Santiago, Chile
What happened:	<p>Petitioner's claims filed before the Council for Advertisement Self-Regulation and Ethics (CONAR) are based on a TV ad aired between 1 - 9PM aimed at promoting BK's sneakers.</p> <p>The ad shows a young person skating through the crowds while suddenly stops before a gym where older fellows are practicing yoga. The youngster riding the skate enters into the room imitating yoga movements. While making turns he grabs and breaks an old person's neck resulting in the person falling dead into the floor.</p>

	<p>The ad's closing remark shows the slogan "Put adrenaline in your life".</p> <p>Respondent defended on the grounds that petitioner is confused about the meaning, purpose and content of the ad. BK claims to have used a humorous situation in order to reach a primary objective audience.</p> <p>CONAR's ruling stated that the message infringed Ethic's Code and requested BK to withdraw the ad from TV on the grounds that even humorous situations while used in advertising are neither exempt nor excluded from Ethic's Code provisions.</p> <p>Likewise, the message cannot convey or in some ways provide any support to any kind of violent acts.</p> <p>Even tough humorous TV commercials and ads are always abided by certain morality rules and messages are not allowed to convey statements or to represent situations clearly conflicting with the predominant concept of decency held by society at a given time</p>
Comment:	<p>In this case the Council draws the line between the use of humorous and ironic situation used in advertising in connection with the provisions set by the Ethic Code. It is worthwhile to note that the Council stress the point that the media must be morally responsibly before society for certain values implied in the messages conveyed to the public.</p>

5. Case Report:	
Topic:	Advertising and Banking Services
Who:	Chilean Regulatory Agency for Banks and Financial Entities
Where:	Santiago de Chile
When:	June 2003
What happened:	<p>Following certain measures enacted by the Chilean Government, on June 30, 2003, all Chilean and foreign banks executing banking transaction in connection with the local market are now bound by updated controls and restrictions when advertising banking and financial services.</p> <p>The main aspects of Directive No. 3.226 are as follows: <i>a) <u>New Legend Attached to the Governmental Insurance Protection Provided by the Government of Chile</u></i> The current mandatory legend attached to any advertising action in connection with banking and financial services by which private deposits are backed up with governmental insurance ("Inform yourself regarding the insurance limit provided by the Government") was changed as follows: "Inform yourself regarding governmental insurance provided at your bank or at www.sbinf.cl".</p> <p>The Directive mandates a gradual process by which all banks and financial entities must start using the new legend while set in motion advertising campaigns. Likewise, the legend must be added to the formats currently used by customers in regular banking transactions, to the branches, affiliates and website.</p> <p><i>b) <u>Advertising Measures Aimed at Chilean Banks and Financial Entities with</u></i></p>

	<p><u>Branches or Subsidiaries at Overseas Locations</u> Advertising campaigns and commercial ads published or advertised in local media by Chilean banks and financial entities while mentioning branches, subsidiaries at overseas locations are subject to certain restrictions.</p> <p>Commercial ads must include the following legend: i. Exact location of the branch or subsidiary together with the name of the bank or the financial entity, ii. State the fact that the branch or subsidiary is bound to the laws of the government where it was established and, iii. Private deposits are not subject to the governmental insurance provided by the Government of Chile.</p> <p><u>c) Advertising Measures Aimed at Foreign Banks and Financial Entities with Branches or Subsidiaries in Chile</u> Advertising campaigns and commercial ads published or advertised in local media by foreign banks and financial entities promoting services related or executed in its headquarters, branches, subsidiaries located overseas are subject to certain restrictions as well.</p> <p>Commercial ads must include the following legend: "Banking transactions executed by the headquarter of this bank or other branches at overseas locations are neither subject to compliance requirements set by the Chilean Government nor to the governmental insurance provided by the Government of Chile."</p> <p><u>d) Advertising Measures Aimed at Local Agents of Unlicensed Foreign banks in Chile</u> Advertising campaigns and commercial ads published or advertised in local media related with transactions executed in headquarters, branches or subsidiaries located overseas of unlicensed foreign banks having an agent in Chile are subject to more stringent restrictions.</p> <p>Commercial ads must include the following legend: "This bank's headquarter is located overseas (country, city) and all transactions held in connection with the headquarter are subject to the laws and court decisions of said country. This bank is neither subject to Chilean Authorities nor to the governmental insurance provided the Government of Chile."</p> <p><u>e) Advertising Format for the Governmental Insurance Legend Provided by the Government of Chile</u> The Directive also set the format, dimensions and other features for all the legends and ads above mentioned in this report.</p>
Comment:	New measures enacted by the Chilean regulatory watchdog are aimed at keeping abreast with banking services' globalization and the risks involved in this process.

6. Topic:	Advertising and Dangerous and Reckless Conduct in Violation of Traffic Laws
Who:	The Council for Advertisement Self-Regulation and Ethics (CONAR)
When:	January 2000

Where:	Santiago, Chile
What Happened:	<p>Petitioner brought an action against a local tobacco maker for diffusing a TV commercial where groups of youngsters drive an SUV with unfastened seat belts. In addition, one of them is observed exposing half of his body outside the vehicle seated in the window while in movement.</p> <p>Petitioner argued the commercial ad was fostering illegal and reckless conduct against current traffic laws.</p> <p>The Council agreed with petitioner considering the ad as infringing traffic laws and article 16° of the Ethic Code. Such proviso states that <i>“commercial ads may not exhibit dangerous or reckless conducts especially those aimed at young people or children”</i>.</p> <p>The Council asked respondent to withdraw the TV commercial and to refrain from future campaigns showing these types of conduct.</p>
Comment:	The Council's ruling though somewhat obvious is interesting as it set a clear restriction to the use of reckless behavior in violation of traffic laws in advertising.