



COSTA RICA
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Country Report

COSTA RICA - Membership Pending

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1. Case Report:	Houlberg v. Gillette de C.R.
Topic:	Sweepstakes
Where:	National Commission for Consumers
When:	October 2001
What Happened:	<p>This case concerns a promotion by which a car was raffled between purchasers of Plaintiff's products (purchase related promotions are legal in Costa Rica). In order to participate in the raffle, consumers had to register by telephone, reporting a code and some personal information.</p> <p>Rules of the promotion established that only consumers over 18 years of age could take part in the sweepstake. However, these rules were made public for the first time one month after the promotion initiated. During this period, the only indication that the consumer had were the instructions to participate, and the phrase "some restrictions apply".</p> <p>A minor, who purchased the product before the rules of the sweepstake were made public, won the raffle. Subsequently, the organizing company refused to deliver the price, and raffled the car again. The original owner filed a complaint before the Commission requesting the deliverance of the car as initially promised.</p> <p>The Commission granted the request, alleging that all advertising materials are binding to the advertiser and form a contractual relationship with anyone taking part of the promotion. Consequently, advertiser may not alter any rule applicable to a promotion unilaterally and, even less, retroactively.</p> <p>All rules, restrictions and conditions for any sweepstake and promotion must be informed adequately and prior to the beginning of the promotional program. Any rule that does not comply with these requirements will be rendered as inapplicable.</p>

	<p>Therefore, even if the prize had already been delivered to the winner of the second raffle, the Commission ordered the advertiser to deliver the prize to the first winner, and imposed a fine on advertiser for not providing sufficient information to consumers.</p> <p>This decision has been objected by advertiser, and is currently under review.</p>
Comment:	<p>This decision established a very straightforward principle: Restrictions may not apply to a promotional program if they are not properly informed to the consumer before he/she makes the decision to purchase the product.</p> <p>All information made through advertising materials may be subject to the application of contract law.</p>

2. Case Report:	SACAM v. Kamakiri, S.A.
Topic:	Copyright infringement
Where:	Supreme Court of Justice, First Hall
When:	December, 2001
What happened:	<p>SACAM, the main performing rights organization in Costa Rica, sued a local Restaurant for playing protected music during business hours without securing an appropriate licence. The nature, powers and legitimacy of such organizations were questioned by defendant, and discussed during the process. In its ruling, the Supreme Court affirmed the legitimacy of these organizations, while setting the minimum procedural requirements that must be complied by them. It also listed the available defences against their claims.</p> <p>In brief, the Court established that: 1) Performing rights organizations may represent their members in court, event in absence of a formal power of attorney; 2) To enforce their rights, the organization must prove that it represents a range of titles (repertoire), without having to document the representation for each and every one of such titles; 3) Organizations claiming to represent a repertoire must produce sufficient evidence that the owner of its heirs is a member of the organization, or is represented by it; 4) Available defences for the defendants are: a) Lack of representation by plaintiff, b) A valid licence or authorization was secured somewhere else, and c) Payment has been already made to plaintiff.</p> <p>The Court accepted the claim, since defendant was not in any of these 3 categories.</p>

Comment:	The rules applicable to the enforcement of Copyrights by performing rights organizations have not been thoroughly regulated by Costa Rican Law. This resolution is the first of its kind, and significantly clarifies the Law in this area. It is reasonably expected that subsequent cases will follow the path set forth by this resolution.
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3. Regulation:	Regulation N° 30094-S “Control of Food Advertisement”
Topic:	Advertisement of Food Products
Who:	Ministry of Health
When:	January 2002
What Happened:	<p>The Ministry of Health issued a new regulation for the control of food advertising. This new rules eliminates any form of previous control of food advertising materials.</p> <p>Hereinafter, food advertising will not need previous clearance from authorities before they are made public. The content of such materials is still subject to many applicable limits, but any control on them will be applied on an “<i>ex-post</i>” basis.</p> <p>The regulation also establishes that both the advertiser and the advertising agency will be responsible for any material that infringes any applicable Law or regulation.</p>
Comment:	This new regulation is a step forward towards the protection of commercial free speech. Before the previous control was eliminated, the process of obtaining the previous clearance was an excessive burden imposed on advertisers and advertising agencies.

4. Case Report:	OCNP v. Roche
Topic:	Regulations based on morality
Where:	Costa Rican Office for Control of Advertising
When:	May 2002

<p>What Happened:</p>	<p>Based on some claims received by offended viewers, the National Office for the Control of Advertising (OCNP) ordered the suspension of an advertising campaign for “XENICAL”, the weight loss product manufactured by Roche. The questioned ads showed people in daily situations while their oversized pants and skirts dropped, showing their underwear.</p> <p>OCNP considered these ads to be offensive to public morality, to positive family values, and particularly to the dignity of women. For this reason, it ordered the advertiser to pull out the ad.</p> <p>The advertiser successfully appealed the decision, which was considered to be excessively rigorous and unreasonable.</p>
<p>Comment:</p>	<p>This case is a clear example of the transition that is currently taking place in Costa Rica. Some regulations issued in the 1970’s and 1980’s, which tend to increase control from authorities and regulators, coexist with some other “new” rules, that have a more non-interventionist approach.</p> <p>Similarly, while there is a strong tendency towards deregulation, some segments of the population demand more control from authorities. This duality is also reflected in the inconsistency of decisions taken by different regulators and law enforcers.</p>

<p>5. Case Report:</p>	<p>CR Fast Food Services, S.A. v. Corporación de Alimentos del Rey, S.A.</p>
<p>Topic:</p>	<p>Comparative Advertisement</p>
<p>Where:</p>	<p>6th Civil Court – San José</p>
<p>When:</p>	<p>February – June, 2002</p>
<p>What Happened:</p>	<p>On early February, plaintiff (local franchisee of McDonald’s® restaurants) sued defendant (local franchisee of Burger King® restaurants). The object of the claim was a TV ad placed by BK in which, according to the claim, plaintiff’s products were shown in a demeaning form, and in violation of trademark rights of plaintiff.</p> <p>Plaintiff obtained a preliminary injunction banning the commercial, which was later revoked on procedural grounds. When defendant was permitted to air the commercial again, it modified its contents, eliminating the scenes that were considered the most questionable by plaintiff.</p> <p>Since the ad was modified, McDonald’s representatives affirmed that their purpose was accomplished, and withdrew the claim.</p>

Comment:	<p>Even if there wasn't a final resolution on the merits, this case is considered as groundbreaking. This is the first time that an ad has been pulled out by a court as a consequence of a private suit.</p> <p>After this claim, the door was open for subsequent lawsuits, which are now being considered by courts.</p>
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