

## COSTA RICA



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<b>1. Case report:</b>	Ministerio Público v. Tiendas La Gloria
<b>Topic:</b>	Counterfeiting / Parallel imports
<b>Where:</b>	Fiscalía de San José
<b>When:</b>	August 2003
<b>What happened:</b>	<p>The police seized Adidas® and Tommy Hilfiger® branded merchandise in five stores and three warehouses of one the main Department Stores in the Country. The merchandise was seized on the basis of complaints made by the owner of these trademarks, alleging that the products are forged, and sold without a license or consent from the trademark owner.</p> <p>Representatives from the store affirm that the product is not counterfeit, and that it was legally purchased directly from the facilities that produce the products in the Far East. They further allege that the products were purchased and imported legally, and they constitute legally permitted parallel imports, against which the owner of the trademark has no legal action.</p>
<b>Comment:</b>	<p>Even though it is still early to predict the outcome of this process, the legal discussion has correctly been directed towards whether or not the product is authentic, and not towards the ownership of the trademark. If the discussion remains on this issue, it seems that all the parties involved agree that if the products were not forged, the parallel import would be legally permitted.</p> <p>This focal point of the discussion is the result of recent reforms on Costa Rican trademark Laws, that expressly allows parallel imports. In similar cases in the past (before the current law), part of the discussion was on whether or not a third party may legally sell a branded product without a license from its owner, even if the product was legally acquired in the market.</p>

<b>2. Regulation:</b>	List of requisites for complaints
<b>Topic:</b>	Complaints against offensive advertising
<b>Where:</b>	Oficina de Control de Propaganda (Office for the control of advertisement)
<b>When:</b>	March 2003
<b>What happened:</b>	<p>The "Oficina de Control de Propaganda" (Office for the Control of Advertisement) issued a series of requirements that must be followed by anyone wishing to file a complaint against any advertisement.</p> <p>Among others, the main change is that all complaints must be made in</p>

	<p>writing, with sufficient information to identify the allegedly offensive ad, and the legal basis for the claim.</p> <p>This office is the governmental authority in charge of the application of Law 5811, which prohibits advertisement that may offend women, children or family values.</p>
<b>Comment:</b>	<p>For many years, this office admitted claims without any formal basis. In some cases, verbal complaints made through the telephone were upheld without even identifying the complainant. Some ads were pulled out based on the sole of the point of view of the petitioner.</p> <p>This rule is a positive first step towards the reduction of subjectivity in this sensitive area of the law.</p>

<b>3. Case report:</b>	Fenasco v. Mall San Pedro
<b>Topic:</b>	Promotions
<b>Where:</b>	Comisión Nacional del Consumidor
<b>When:</b>	September 2003
<b>What happened:</b>	<p>FENASCO, a non-for-profit association of consumers filed a claim against Mall San Pedro (a Shopping Center), for modifying the rules of a promotion.</p> <p>The promotion consisted of a car that would be raffled between shoppers of the Mall. The raffle was initially scheduled for August, and then suspended and re-programmed for the month of December.</p> <p>The Commission found that the organizer of the promotion infringed its terms and the Law, and ordered the payment of a penalty.</p>
<b>Comment:</b>	<p>The legal principle involved in this case is very clear: Every promise made to the general public has the binding force of an agreement.</p> <p>This case reinforces the need for advertisers to carefully review the rules of a promotion and to stick to them when it is carried out.</p> <p>This need is increased due to the fact that promotions are not cleared by any authority beforehand, but the advertiser is responsible for any infringement of consumer rights occurring during any promotional program.</p>

<b>4. Case report:</b>	Fonseca v. Comidas Centroamericanas S. A.
<b>Topic:</b>	Special offers
<b>Where:</b>	Comisión Nacional del Consumidor
<b>When:</b>	May 2003
<b>What happened:</b>	<p>Defendant (local franchisee of Pizza Hut® restaurants) made an offer to the general public in which certain products could be bought at special prizes.</p> <p>The claim originated when a Consumer tried to benefit from this special offer, but the special price was denied because that particular restaurant was not participating in the offer. However, the advertisement of the offer</p>

	<p>did not inform that it was applicable only in certain restaurants.</p> <p>The Commission agreed with the applicant, considering that the advertisement was deceitful and misleading. The advertiser was ordered to correct the ads, and to pay a penalty.</p>
<b>Comment:</b>	<p>This decision ratifies the obligation of every advertiser to sufficiently inform consumers of all elements necessary to make its decisions. Failure to inform consumers may lead to the existence of legal obligations in excess of the desire of the advertiser, along with the exposure to legal penalties.</p>

<b>5. Case report:</b>	Almacenes Santa Marta et. al. v. ASODELGO
<b>Topic:</b>	Comparative advertising / substantiation of claims
<b>Where:</b>	Comisión Nacional del Consumidor
<b>When:</b>	March 2003
<b>What happened:</b>	<p>A group of retailers of electric appliances filed a complaint against an ad of the concessionaires of a duty free Commercial Zone in Golfito. This ad affirmed that this Commercial Zone was "Costa Rica's biggest Shopping Center", in which the prices were 50% less than in the rest of the Country.</p> <p>The advertisement was considered misleading, since it failed to inform that due to governmental regulations, all purchasers of the Commercial Zone were required to stay at least one night in a local hotel, which increased the costs of shopping.</p> <p>Additionally, it considered that the claim of having the prices 50% below the rest of the Country required substantiation, and in this case it was not provided.</p>
<b>Comment:</b>	<p>This case involved two interesting developments in the criteria of the Commission. Firstly, it allowed a claim made by a group of competitors, rather than consumers (the commission had been reluctant to do that).</p> <p>Secondly, the Commission established that the burden of the proof of the accuracy of the advertising relies on the advertiser, who must substantiate all claims when a complaint is filed. Hence, advertiser must proof that the claim is accurate, instead of the petitioner having to proof that is a false claim.</p>

<b>6. Case report:</b>	HWWP v. Ministerio de Salud
<b>Topic:</b>	Substantiation of claims on health related products
<b>Where:</b>	Ministry of Health
<b>When:</b>	July 2003
<b>What happened:</b>	<p>Ministry of Health rejected an ad for a hair growth product. The ad was considered misleading in claiming that it was an appropriate cure for hair loss.</p> <p>The authorities questioned the phrase "More hair guaranteed", since the product was useful only against some of the causes for hair loss, while it did not treat other causes.</p>

	Hence, the claim of "more hair guaranteed" could not be substantiated, and the ad was rejected.
<b>Comment:</b>	<p>As the Constitutional Hall of the Supreme Court has established, the advertisement of any product that may affect the health is to be analyzed with stricter standards.</p> <p>Even if all advertisement must be truthful, substantiation is particularly relevant in this type of products.</p>