

ADVERTISING LAW

Y E A R I N R E V I E W

VOLUME II
JAN > DEC
2023



**KASZMAR
LEONARDOS**

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INTRODUCTION

Kasznar Leonardos' Marketing & Entertainment Law practice group is pleased to publish the second edition of its **Advertising Law: Year in Review**, highlighting the most relevant cases reviewed by the Brazilian Advertising Self-Regulation Board ("CONAR"). This edition analyzes CONAR decisions published between January and December 2023.

CONAR is an independent self-regulatory board of the advertising industry created in 1980 with the aim of strengthening consumer confidence in national advertising, promoting commercial freedom of expression, and supporting fair competition in the Brazilian advertising market. CONAR reviews advertising materials published across all media types upon challenge by its associated members, trade associations, consumers, or by its own initiative. **CONAR also plays a proactive role in shaping industry standards and best practices through educational initiatives and collaborations with industry stakeholders.**

Our Marketing & Entertainment Law team is recognized by leading national and international legal rankings, such as Chambers & Partners. The group stands out for providing **integrated, broad, and multidisciplinary legal advice to marketing, advertising, and multimedia entertainment companies**. We advise brands and content creators on a wide range of legal issues related to marketing campaigns, advertising campaigns, and commercial promotions. From the drafting and negotiation of contracts supporting advertising and marketing campaigns, such as contracts with advertising agencies and content creation, traditional and digital media channels and platforms, celebrities and influencers, to the analysis of risks of campaigns and advertising claims in the light of CONAR's advertising self-regulation rules, up to the broad legal advice regarding the entry of brands and content creators into new media platforms such as Web3, we support our clients to connect with their audiences in a safe and strategic way.

Our **Advertising Law: Year in Review** curates the most relevant CONAR decisions in 2023 that addressed, among other topics, with the use of **artificial intelligence** in advertising campaigns, the **responsibility of digital influencers** for the ads they publish on their official profiles, **cause advertising, ambush marketing, sustainability claims**, campaigns involving **product review/evaluation**, and even the practice of **astroturfing**, known as the practice of creating a false illusion that a particular product or cause has public support.

For this edition, we also highlight **recent judicial cases** involving relevant issues to the marketing and entertainment industries, offering invaluable insights about critical legal issues shaping the Brazilian Advertising Law landscape.

Please be in the lookout for subsequent editions of our Advertising Law: Year in Review. **Feel free to contact us to discuss any specific concerns about your marketing campaign, or if you have any questions.**

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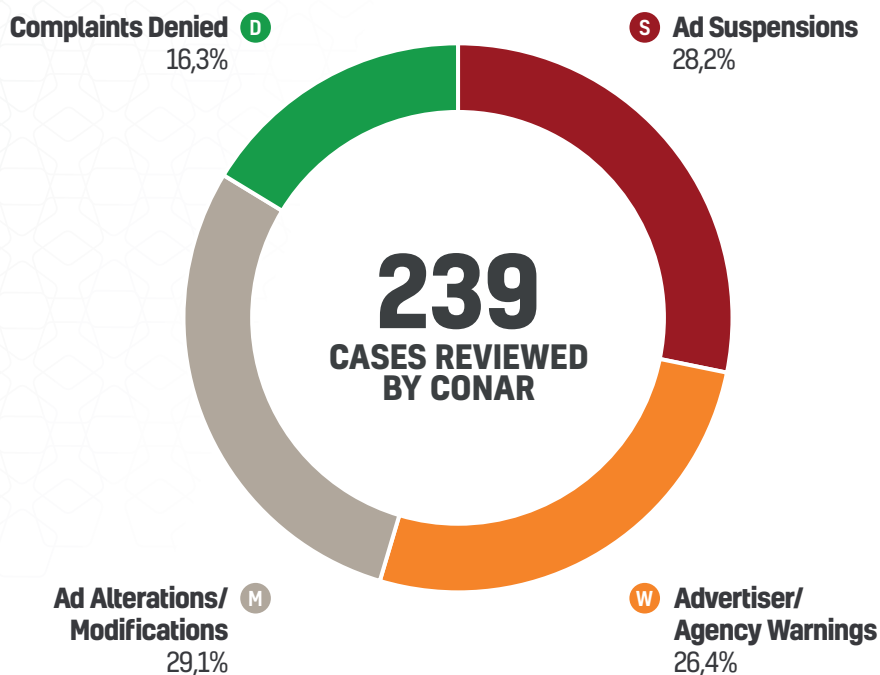


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CONAR PUBLIC CASE REPORT

Statistical Breakdown of 2023 Decisions



By Complainant

Consumers	63,3%
Members of CONAR	19,6%
CONAR by own initiative	13,7%
CONAR Superior Board	3,3%

By Type of Complaint

Comparative Advertising	5,6%
Respectability	6,1%
Social Responsibility	11,7%
Sustainability	1,1%
Legal Compliance	0,3%
Truthful Advertising	50%
Children Advertising	7,8%
Copyright	4,5%
Discrimination	0,6%
Others	5,6%
Advertising Identification	5,9%
Decency Standards	0,8%

By Industry Sector

Drugs, Cosmetics and Other Health Care Goods/Services	12,3%
Investment, Banks, Payment Cards	4,5%
Electronic Industry	1,1%
Education Industry	3,7%
Toys	0,4%
Alcoholic Beverage	16,4%
Food, Juices and Soft Drinks	15,2%
Vehicles and Parts	3,3%
Telecom	5,2%
Cleaning Supply Goods	0,4%
Other Sectors	16%
Fashion, retail and wholesale	18,6%
Bets	3%

ARTIFICIAL INTELLIGENCE

In 2023, CONAR had the opportunity to rule on its first case involving the use of artificial intelligence (AI) in advertising. The disruptive advertising campaign gained significant public attention as AI technology was used to recreate the image of a famous Brazilian singer (Elis Regina) who had passed away in 1982. Consumers filed complaints questioning CONAR whether the advertising had disrespected the artist's personality rights and if the use of AI should have been explicitly disclosed to consumers. After intense debate among Counsel's members, CONAR ruled to reject the complaint finding that the advertisement did not violate artist's personality rights as use of her image was properly authorized by her family members, as required by Brazilian Law (Civil Code). As to the issue of disclosure requirement, CONAR considered that the ad piece did not lack transparency under the principles of the Brazilian Advertising Self-Regulation Code (CBAP) as the artist notoriety and public knowledge about her premature death were sufficient to inform consumers unequivocally of the use of an enabling technology. As a consequence of the case, members of the Counsel filed a motion asking CONAR to monitor further use of AI in advertising as well as to assess the need for specific recommendations on the use of the technology in the ad industry. (Case 134/23 - Volkswagen and AlmapBBDO - VW Brasil70: O novo veio de novo)

ALCOHOLIC BEVERAGES

In reviewing an advertising campaign for a low-alcohol beverage brand, CONAR decided to suspend the advertising campaign and issued a warning to advertiser as it found that the campaign had the potential of misinforming average consumers as to the alcohol content of the products. Under CBAP's specific rules for bottled cocktails, flavored malt beverages, hard seltzers, and other similar alcoholic beverages, regulated under Annex T, advertising materials for those products that share communication elements such as brand, slogan, signs, ad expressions or characters with higher level alcoholic beverages (e.g beer, distilled beverages), should adopt the more restrictive regulations applicable to the those under Annex A of the Code. (Case 252/22 - Brown Forman - Tudo Pronto Para O Jogo)

When reviewing an ad campaign featuring scenes of explicit product consumption, expressly prohibited by CBAP, CONAR recommended for the inclusion of social responsibility warnings and the removal of all consumption scenes. The campaign was launched on social media and displayed in out of home media during major carnival celebration. CONAR ultimately issued a warning to both product manufacturer and live event producer for the non-compliant practices which also included lack of proper identification of social media commercial content. (Case 042/23 - Aurora, Premium, and Revista Engarrafador Moderno - Jose Cuervo - Bebedouro de Tequila no Carnaval de Salvador)

In another case involving an out of home media campaign, this time for a whisky brand, CONAR reviewed the alleged improper use of models who appeared to be under the age requirement (25 years old) established by CBAP for advertising of alcoholic beverages, as well as the potential misapplication of the restrictions

established by the Code for ad pieces of this type of product in out of home media (e.g mere showcase of the product, its brand, and/or slogan, with no consumption appeal of any sort, among other restrictions). Despite advertiser's arguments that the campaign was in line with ad pieces previously reviewed as adequate by CONAR, the Board recommended for the modification of the specific advertising piece highlighting that it had disregarded the specific rules applicable to out of home media advertising of alcoholic beverages. (Case 083/23, in ordinary appeal – Diageo – Chegou Johnnie Walker Blonde)

DIGITAL INFLUENCERS

CONAR ruled against an influencer's Instagram ad citing violations of ethical standards due to deficient commercial content identification and questionable claims about the promoted product, in violation of the Board's Digital Influencer Advertising Guidelines. Consumer complaints alleging non-delivery of the promoted products further fueled concerns about the ad's veracity. While the influencer argued no responsibility for product fulfillment, CONAR emphasized the shared liability created by partnerships where influencers endorse products, especially those bearing their name. In its decision, the Board highlighted the importance of transparency and truthfulness in influencer marketing. (Case 069/23 – MSC Comércio de Acessórios (By IK) and Gabi Bandt – E se eu contar pra vocês que eu consegui qualquer óculos da minha coleção mais um óculos de brinde por R\$ 50?)

In another representation, initiated by its own board of directors, CONAR ruled against an influencer's misleading ad posted in her own social media account, promising unrealistic financial gains, in violation of advertising guidelines. Despite the influencer's claims, CONAR held the influencer accountable for exploiting followers' trust and using unverified data to substantiate her claims about the advertised services. The ad was suspended, and both influencer and advertiser received warnings from CONAR. The Board took this case to **reinforce the shared responsibility of both advertisers and influencers in respecting consumer protection laws and ethical standards.** (Case 105/23 - EPE Negócios Digitais (faturando com o insta) and Paula Freitas - Like For Money)

On a similar case, CONAR addressed a consumer complaint against a group of digital influencers who advertised financial

gains through clothing reviews on a website. While some influencers claimed their posts were organic, others cited adherence to the advertiser's briefing, denying responsibility for the ad content. CONAR's examiner recommended suspending the campaigns and issuing warnings to both the advertiser and influencers. This decision reinforces CONAR's stance on **influencers responsibility for ensuring their social media content complies with the law and CBAP's ethical principles.** (Case 072/23 - Money Looks, Vera Digital, Davi Mateus, Emily Garcia, Kerline, Mariana Menezes, Nadja Pessoa, Pétala Barreiros e Yanka Barreiros, tendo a Shein como terceira interessada - "Avalie e ganhe agora mesmo" e "Você pode ganhar pelo menos seis mil reais por mês apenas dando sugestões sobre roupas da Shein")

CONAR tackled an advertiser's responsibility for influencer content in a recent case involving an influencer who promised financial gains to followers through watching and reviewing videos in a platform. Advertiser claimed to be just a payment platform with no control over the influencer's message while influencer did not submit a defense. CONAR found the ad to be misleading and non-compliant with CBAP's requirements regarding proper commercial disclosure of the relationship between advertiser and influencer. It reinforced the shared responsibility within the advertising chain by suspending the ad and issuing warnings to both the advertiser and influencer. (Case 074/23 - Braip Intermediações & Negócios e Emily Garcia - Opiniões Lucrativas)

CONAR continuous to hold digital influencers accountable for their commercial content in social media, ruling that **mere offering of discounts, website promos, and social media blitzes are insufficient**

to disclose paid content. In a recent case, an ad for a skin-lightening product posted on an influencer's platform lacked proper identification, prompting CONAR to recommend its modification and issue warnings to both influencer and advertiser. (Case 251/22 - Rosa Selvagem and Adrielly Mendess - Não Sabe O Que Fazer Para Tirar Manchas Escuras?)

CONAR struck down an ad featuring a **child influencer making alleged direct appeals and exaggerating product consumption** which directly violates the Brazilian Advertising Self-Regulation Code. Despite the influencer's claim of adult viewers, the ad, aired on Children's Day, was deemed to target children in view of the statements made by the influencer and the context of the ad piece. Emphasizing the ad's impact on children, CONAR ordered its modification to comply with advertising ethics. (Case 243/22, in extraordinary appeal - Seara and Influenciadora Mirim - Margarina Primor - Dia das Crianças)

In another case involving child influencers, CONAR ruled to suspend an ad campaign promoting a gambling platform on a child social media account. The campaign violated Brazilian law, which prohibits minors from advertising gambling. Notably, **Instagram, also named in the complaint, proactively removed the ad due to their policy requiring pre-approval for gambling content.** Advertiser did not offer a defense and received a warning from CONAR for using an underage promoter. (Case 201/23 - Sambawin e Influenciador Mirim - Stories Sambawin)

CAUSE MARKETING ADVERTISEMENT

In 2023, CONAR weighed in on two cause marketing campaigns with contrasting outcomes. The first, initiated by the Consumer Prosecutor's Office of the State of São Paulo (MPSP), dealt with an alleged e-cigarette ad allegedly disguised as discussion about regulation. Despite claiming censorship, the advertiser's defense failed to convince CONAR. Citing clear advertising intent and blurred lines between journalism and promotion, CONAR initially suspended the ad. However, an appeal led to a nuanced ruling: the ad's promotional aspects remained prohibited, while the discussion portion was deemed acceptable cause marketing. (Case 004/23, in ordinary appeal – Souza Cruz, with UOL as a third party – Cigarros eletrônicos)

In the second case, CONAR examined an advertising campaign by the Brazilian Internet Association (Abranet) challenged by the Brazilian Federation of Banks (Febraban) and several associated banks, on the grounds of **alleged exploitation of consumer fears and spreading of misinformation about "Desenrola Brasil," a proposed debt relief bill, by claiming banks supported eliminating interest-free installments.** Abranet defended the campaign's accuracy, stressing the importance of different perspectives especially on discussions affecting consumers' purchasing power. Ultimately, referring to a report from the Advertising Standard Authority - ASA, CONAR decided to suspend the ad campaign highlighting that while advertising can promote a particular viewpoint over others, marketing professionals have an obligation to ensure that statements made are accurate and supported by evidence. In this case, according to CONAR, Abranet did not meet this obligation. (Case 169/23 - "ABRANET")

- #NÃO MEXA NO PARCELADO SEM JUROS - Os grandes bancos querem acabar com as suas compras parceladas sem juros")

CHILDREN AND TEENAGERS

In an important ruling regarding marketplace liability for third party advertising content, CONAR ruled on a complaint related to an adult product ad misplaced on a children's toy e-commerce page. The ad sparked consumer outrage and prompted scrutiny of the platform's responsibility for content within its virtual walls. Despite citing a Supreme Court precedent shielding platforms from third-party liability, the platform's defense did not convince CONAR. The Board emphasized its distinct role in regulating advertising and marketing offerings to consumers and not consumer relationships between the end customer, partner seller, and the platform which was the merit of the Court's decision. The platform arguments that precautions were in place were deemed insufficient by CONAR, prompting the Board to declare that in a world of artificial intelligence, machine learning, and product deliveries by drones, it is unacceptable for the platform to argue it has no capabilities to verify and prevent such occurrences. The ad was suspended by CONAR recommendation. (Case 264/22, in ordinary appeal – Amazon – Masturbation Toys)

In a recent decision at the appellate level, CONAR ruled to suspend an advertising for an alcoholic beverage brand after a challenge by a competitor. The ad piece, posted around easter holiday on the brand's social media platform, depicted a chocolate egg containing a bottle and a can of beer. The ad prompted a formal complaint from a competitor, citing concerns about the ad's blatant disregard for the established regulations governing alcohol advertising and its potential negative impact on children and adolescents. Though the advertiser argued that the ad was restricted to the brand's specific profile and protected by an age-gating mechanism,

CONAR ultimately prioritized broader societal concerns surrounding the influence of alcohol advertising on the younger generation. The Board emphasized that, regardless of age controls, warning labels, or broadcast times, **such depictions hold the potential to normalize the association of alcohol with childhood experiences**, posing a significant risk to vulnerable audiences. Consequently, CONAR ordered the ad campaign suspension. (Case 119/23, in ordinary appeal – Cervejaria Kaiser Brasil (Amstel) – O ovo de Páscoa que eu queria)

When reviewing another alcoholic beverage advertising case, this time related to ads placed in online environments used by minors, CONAR issued a cautionary warning to **advertiser whose campaign appeared within a mobile game designed for users aged 9 and above**. The Board's decision stemmed from concerns regarding the campaign's potential exposure to an audience significantly below the legal drinking age, despite the game's 18+ age rating. The core of CONAR's concern hinged upon the advertiser's inability to demonstrate the implementation of adequate safeguards to prevent the ad's display to underage users. This shortfall, particularly within a platform harboring a large demographic of minors, constituted a violation of established ethical standards for alcohol advertising. Notably, **CONAR emphasized that regardless of age restrictions implemented by platforms, the responsibility for ensuring responsible advertisement placement ultimately rests with the advertiser**. (Case 050/23 - Campari do Brasil – Campari Tonic Feat – Simples e Original)

CONAR addressed concerns about protecting children from excessive gaming habits. The case involved a food company's

ad campaign with slogans that seemingly encouraged nonstop online gaming. The advertiser argued the campaign targeted adults and that the slogan "partida online não tem pause" (online matches have no pause) referred to the fast-paced nature of the game, prompting snack breaks. However, CONAR's examiner disagreed, citing data on the advertiser's website indicating a child and adolescent audience. The examiner further highlighted the World Health Organization's recognition of gaming addiction, emphasizing the need for careful advertising in this sector. Ultimately, CONAR ruled for the modification of the advertisement. (Case 176/23 – Pepsico – Partida Online não tem pause)

Finally, CONAR ruled on a complaint regarding an ad campaign by a firearms equipment retailer. The advertising, which featured a child modeling a "child tactical vest" equipped with magazine holders, handcuffs, and a cooler, was made available on advertiser's website and triggered concerns about its potential impact on child perceptions of violence. Despite advertiser's defense that the ad piece merely promoted a garment and depicted no firearms, and that their website restricted access to adults, CONAR unanimously ruled to modify the campaign by removing the child's image. This decision underscored the Board's commitment to protecting children from advertising that normalizes potentially harmful themes, such as the militarization of childhood or the association of weaponry with play. (Case 077/23 – Wwart Tactical – Simples e Original)

COPYRIGHT AND PLAGIARISM

In 2023, CONAR reviewed and ruled on a number of relevant cases related to copyright and plagiarism.

One of them involved potential copyright infringement and disparagement within an advertising campaign. The subject matter of the case was a soda brand's campaign referencing the iconic "Mamíferos da Parmalat" dairy ad campaign popular in Brazil in 1990s. The owner of the rights attached to the "Mamíferos da Parmalat" campaign challenged the soda ad before CONAR, asserting that the campaign constituted an unauthorized exploitation of its intellectual property through the appropriation of distinctive elements like costumed actors and musical jingles. Additionally, it argued that the soda campaign employed a disparaging tone, replacing the original child actors with adults and altered the original famous jingle to convey messages of superior product attributes like "less sugar and less marketing." Advertiser defended its ad under the argument that it merely constituted a playful homage to the "Mamíferos da Parmalat" campaign (parody) and lacked any malicious intent. However, CONAR disagreed, ultimately recommending the suspension of the soda campaign under the rationale that while parodies are permissible under certain circumstances, they must be executed respectfully and avoid exploiting the original work for commercial gain. **This case provides a valuable insight of CONAR's upholding of ethical advertising standards particularly regarding intellectual property rights and creative expression. Furthermore, it underscores the challenges associated with utilizing parodies in advertising, demonstrating the need for careful consideration of potential legal and ethical implications before incorporating elements of existing works.** (Case 155/22 –

SOCIAL RESPONSIBILITY AND DECENCY

FYS Contém Menos Marketing)

In another case, in response to a complaint brought by a dairy product brand, CONAR reviewed an advertising campaign which allegedly exceeded acceptable levels of similarity with a prior campaign by a direct competitor, reaching the levels of plagiarism. In this case, CONAR upheld its initial assessment even at the appellate level and determined that while both campaigns shared similarities, they remained within **the realm of common themes often employed in advertising campaigns targeting consumer "routine"** within the dairy product segment. Consequently, the Board concluded that the ad campaign had sufficient distinctiveness from the prior campaign to preclude any likelihood of consumer confusion and compliant should be denied. (Case 222/22, in ordinary appeal – DPA Brasil – Nova Campanha Nesfit@)

In another representation involving direct competitors, CONAR ruled on a complaint filed by a major advertiser in the food and beverage industry alleging copyright infringement due to the use of a globally recognized advertising slogan. On appeal, CONAR accepted the advertiser's arguments that the slogan used was consistent with all its brand's campaigns, and therefore, consumer would not confuse the competing products in question. Unanimously, the Board decided that the compliant should be denied. (Case 117/23, in ordinary appeal– Ferrerro – Kinder Tronky – Uma deliciosa pausa na sua rotina)

CONAR dismissed a representation filed by a consumer alleging that an ad campaign promoting racial awareness incited prejudice by featuring a child protagonist discussing racial stigmas. The case Examiner concluded that the ad piece, while addressing a sensitive topic, **ultimately served as a societal reflection and, as such, could naturally evoke discomfort and debate among viewers.** CONAR acknowledged the advertiser's deliberate choice to highlight children as key agents for racial progress and drivers of necessary social change. Ultimately, Board recommended for the modification of the advertising's title ("Social Experiment") as it could potentially mislead viewers since the advertising had been effectively scripted. (Case 253/22 – Tereos – Respeito na Medida – Respeito na Medida)

In response to an advertising campaign promoting erotic products, CONAR recommended the suspension of the campaign and a warning to advertiser as the ad piece, displayed on outdoor media, featured the phrase "Back to school, Susurra Boutique Sensual" alongside an illustration of a banana with lipstick marks. CONAR's decision stemmed from concerns regarding the chosen advertising channel (out of home media), deemed inappropriate for the sensitive nature of the content. The Examiner emphasized the **crucial role of selecting appropriate communication methods** to prevent the trivialization of sensitive topics and ensure responsible advertising practices. (Case 030/23 – Susurra Boutique – Volta Às Aulas Susurra Boutique Sensual)

DISCRIMINATION

CONAR addressed a case involving an advertisement displayed at public health centers, operated by the Federal Ministry of Health. A consumer complaint alleged that the ad's core messaging, targeting a specific demographic and outlining HIV precautions, potentially incited discrimination and stigmatization against the LGBTQIAP+ community. In response, CONAR recommended the ad's suspension and strongly condemned the ongoing prejudice and violence faced by transgender individuals and the broader LGBTQIAP+ community in Brazil. The Board emphasized that given HIV's indiscriminate nature, **all advertising materials, even those aiming for public health awareness, have an ethical obligation to prioritize sensitivity and avoid contributing to harmful biases.** (Case 244/22 – Ministério da Saúde e AGU – Travesti, Não Deixe a Sua Saúde Para Depois. Faça o Teste de AIDS)

FOOD COMPOSITION

CONAR recommended modifications to a fast-food chain's advertising campaign promoting a new "made from plants" product line. The Board's decision was based on concerns regarding discrepancies between the advertising claim and the actual composition of some products, which contained animal-derived ingredients like eggs and butter. While acknowledging that the advertised products were suitable for vegetarian diets and did not have explicit misleading information, CONAR emphasized the potential for consumer confusion within the target audience, particularly individuals who avoid all animal products, such as vegans. To address this concern, **CONAR proposed amending the advertising campaign to ensure clarity and accuracy in representing the product line's ingredients**, thereby preventing misdirection among consumers seeking plant-based food options. (Case 043/23 – Habib's – Nova Linha Vegetariana Habib's – O Sabor do Habib's Agora Feito de Plantas)

Following an extraordinary appeal, CONAR recommended for partial modification of an advertising campaign for a well-known artificial sweetener brand, displayed on the brand's website and product label. The campaign faced concerns regarding claims highlighting the presence of a natural sweetener (erythritol) while also containing sucralose, an artificial sweetener. Although CONAR acknowledged that product labeling had sufficiently clear information about the sucralose ingredient, the Board expressed concerns that consumers accessing the brand website, enticed by claims of a "healthier product" based on the product name, might miss the information about the artificial sweetener alongside the natural one. Considering the potential misleading

MEDICATION AND AESTHETIC PROCEDURES

impact of the website advertisement, CONAR recommended modifications to the website ad to ensure clarity, transparency, and visibility of information about the other ingredients and the presence of artificial sweeteners. Furthermore, prompted by issues raised in the appeal, CONAR's plenary board recommended for a separate review of the impact of product's name as it could convey misleading benefits related to composition of ingredients. (Case 189/22, in extraordinary appeal - Hypera (Hypermarcas) - Zero Cal - Bem Natural)

CONAR initiated ex-officio the review of a prescription drug advertising campaign posted on an influencer's TikTok account. The review was founded in the specific prohibition of the Brazilian Advertising Self-Regulation Code (CBAP) against broadcasting advertisement for prescription drugs through mass media channels. Once the company responsible for the drug provided defense indicating no knowledge or control over the content, the Board recommended for the closing of the case. Nonetheless, recognizing the critical issue under review, the Board of Examiners recommended that CONAR consider sending official letters to key stakeholders (TikTok, Anvisa (Brazilian National Health Surveillance Agency), the Federal Pharmacy Council, the Brazilian Association of Pharmacy and Drugstore Networks, and the Brazilian Federation of Associative and Independent Pharmacy Networks) in order to inform them of the specific case and, more importantly, to express CONAR's growing concerns regarding the dissemination of content promoting prescription drugs on social media profiles. (Case 095/23 - Celleria e Meu Dia de Trabalho - Cetobeta)

Finally, worthy of mention a case filed before CONAR by the Regional Pharmacy Council of the State of São Paulo (CRF-SP) against an advertising by the Regional Council of Medicine of the State of São Paulo (CREMESP) for alleged violation of the truthfulness principle required CBAP as the ad falsely implied that aesthetic procedures can only be performed by medical professionals, while non-invasive procedures may fall within the competence of other qualified healthcare practitioners. CREMESP defended its ad as an educational tool intended to raise public awareness about the potential risks associated with undergoing medical procedures without qualified

professionals. However, CONAR found that the advertisement's messaging **relied heavily on fear-inducing tactics** since it conveyed the message that only medical professionals can perform aesthetic procedures, which is factually inaccurate for certain non-invasive procedures. As a consequence, CONAR ruled for the modification of the advertising, emphasizing the **critical role of promoting awareness campaigns while ensuring they do not misinform or mislead consumers.**

(Case 018/23, in ordinary appeal – Cremesp and Agência Brick – Se algo der errado, você vai parar nas mãos de um médico)

TRUTHFULLNESS

In 2023, **CONAR reviewed its first case involving the marketing practice of astroturfing**, a deceptive technique used to create the illusion of grassroots support for a product or cause. The specific case involved allegations of sponsored social media posts by an influencer promoting a food app company. While CONAR strongly disapproved the practice and its potential misleading nature, the Council determined that this particular case fell outside its jurisdiction as the matter had already been addressed by regulatory authorities and complaint lacked sufficient evidence to conclusively demonstrate a financial relationship between the influencer and the food app company. In this scenario, CONAR chose to dismiss the representation.

(Case 078/22 – Ifood, Beijamim Comunicação, and Social QI – SQI and Mii Ferreira: “Não Breca meu trampo”, “Faca da Caveira”, “Mii Ferreira – Eu sou boa, boa de boca, boa de garfo, colher e faca!rs)”)

Regarding advertising claims, CONAR recommended a representation concerning an advertising campaign by major consumer product company for its fabric softener brand containing alleged **superiority claims** - "The most loved fabric softener in Brazil" and "Number 1 in Brazil among fabric softeners" (free translations). In its defense, advertiser informed that it had suspended the use of the "most loved" claim but that it considered its "Number 1" claim to be ethical and sufficiently substantiated. Upon review of advertiser's substantiation evidence, CONAR recommended for the suspension of use of the "most loved" claim but agree that the "Number 1" claim was properly supported by objective evidence. In this case, CONAR commented that "number 1" claims may be used in several contexts and not only to indicate sales leadership, and that use

SHAMEFUL BEHAVIOR

of prominent and continuous disclaimers in the advertising campaign indicating the supporting evidence for the claim supports the finding that consumers were properly informed of the bases for the claim. (Case 238/22 – Unilever Brazil – Comfort, Campanha 1#)

On the same topic, CONAR tackled the **limits of puffery in advertising**. A competitor challenged a fabric softener ad's claim, "O Segredo dos Perfumes que nunca acabam" ("The Secret of Never-Ending Perfumes"), arguing it was misleading and unsubstantiated. Advertiser defended its claim as a common, harmless puffing practice and offered substantiation that product scent lasted "at least 100 days". CONAR found that the term "never" has absolute meaning, with no space for interpretation. The board ultimately suspended the ad and issued a warning to advertiser. (Case 178/23 – Unilever Brasil – O Segredo dos Perfumes que nunca acabam)

In another representation, filed ex officio by CONAR, the Board analyzed the compliance of an ad promising high financial gains, distributed on websites and sponsored inserts, that lacked proper identification and raised red flags about the results. The ad also used images of celebrities, misleadingly implying their endorsement and boosting the offer's credibility. With no defense from the advertiser, CONAR suspended the ad and issued a warning. (Case 090/23 – Chat Money – ChatGPT: Nova Inteligência Artificial do Elon Musk está pagando 50 dólares por dia)

CONAR addressed a case involving a fast-food chain's advertising campaign promoting a new sandwich. The campaign encouraged viewers to take and share on social media a picture of themselves licking the TV screen while the ad was broadcast, utilizing a specific hashtag. This prompted numerous complaints from consumers raising two primary concerns: firstly, the potential for the act to be perceived as embarrassing or inappropriate, and secondly, the alleged association of the campaign's hashtag with erotic content, posing a potential child safety risk. While CONAR found no evidence to substantiate the complaints regarding the hashtag's content, the Board **expressed concerns about the potentially embarrassing or socially awkward behavior encouraged by the campaign**. It ultimately recommended for the modification of the advertisement to clarify that such extreme behavior was not required for participation in the promotion and further recommended that the advertiser exercise greater caution in tailoring their future messaging to be appropriate for a diverse audience range. (Case 225/22 – Burger King – Não Lamba Esta Tela)

AMBUSH MARKETING

CONAR ruled on a relevant case involving an advertising campaign disseminated by a beer advertiser on social media profiles with references to the 2022 World Cup. The official sponsor of the event, a competitor of the advertiser, filed a complaint before CONAR against the campaign **alleging ambush marketing practices and the consequent violation of its brand exclusivity rights**. CONAR decided to suspend the ad and sent a warning to the advertiser, emphasizing that **even indirect references to the 2022 World Cup, i.e., without mentioning the specific event or football games, may constitute ambush marketing (by association)**. This is not the first ambush marketing case reviewed by CONAR, but it **indicates the Board's disposition towards potential ride along campaigns**. (Case 247/22 – "Cervejaria Petrópolis – Petra Origem Puro Malte" and "Lei de Petra")

In another case involving ambush marketing in the alcoholic beverage industry, a beer brand faced accusations of using a competitor's sponsored football clubs' names in its advertising. The complainant argued the ad was unethical and infringed on their sponsorship rights. The advertiser countered that they sponsored a specific Latin American football championship and aimed to connect their brand with the tournament, not specific clubs. It argued that no club logos or mascots were used in the ad campaign, ensuring consumers were clear about the intended association. Despite such arguments, CONAR found that the campaign could mislead viewers into believing the advertiser sponsored the clubs and that the lack of a clear reference to the specific tournament was key to such findings. Ultimately, CONAR recommended for the modification of the campaign requiring

the inclusion of the specific tournament name and removal of the football club names. (Case 191/23 – Cervejarias Kaiser Brasil – Sócio-Torcedor Amstel – A Torcida de todas as torcidas)

SUSTAINABILITY CLAIMS

In a case involving the advertising of an automobile brand, CONAR concluded that automobile advertisement showing vehicles driving across deserted beaches did not, **solely on that basis**, violate the sustainability principles established by CBAP. The Board reasoned that depicting such activity was not demonstrably detrimental to the environment and is permitted in a number of locations, although subject to potential traffic prohibitions in specific municipalities. The Board recommended for the refusal of the complaint. (Case 255/22 – Caoa Cherry – Tiggo É Brasil)

Consumers from the city of Maceió challenged promotional activities by a mining company on a reality show under the argument that the company's use of claims like "an increasingly sustainable future" and "if everyone cooperates, we all help the planet" was misleading, considering the company's responsibility for an ongoing environmental disaster in the municipality. According to the Examiner, the **environmental disaster allegedly caused by the advertiser does not prevent the company from creating an awareness and recycling program**, as was the case with the specific campaign aired on the show. This rationale was unanimously accepted by the Board of Examiners. (Case 025/23 - Braskem e Globo Comunicação e Participações como Terceiro Interessado – "A Braskem Entrou No BBB Para Incentivar Um Futuro Cada Vez Mais Sustentável")

In an advertising case involving a fuel brand, CONAR ruled on a consumer complaint against a campaign promoting sustainability and fuel efficiency – a fuel with 30% fewer pollutant emissions and at least 7% fuel consumption savings – without providing clear and accessible information regarding the disclosed results.

The complaint also questioned the use of the United Nations symbols and logos, as it was not clear which certifications were actually being attested. In its defense, advertiser argued that all claims were based on scientific facts. In both the initial decision and on appeal, CONAR determined that, given the sensitivity and complexity of sustainability issues, ensuring that information is presented to consumers in a simple, accessible, and consistent manner is a fundamental aspect of any compliant advertising. Despite the measures taken by the advertiser after the complaint to provide technical information about the claims to consumers, the Board recommended the alteration of the advertising material. (Case 109/23, em recurso ordinário – Alesat Combustíveis – Daqui pra frente, energy")

COMPARATIVE ADVERTISING

Upon challenge by a competitor, CONAR recommended for modification of an advertisement by a telecommunications company for use of **comparative claims** which allegedly created a negative association with competitor's brand and misled consumers. CONAR partially accepted advertiser's defense arguments considering that the campaign effectively compared the services in an objective manner, but it also recommended for the modification of the ad piece to ensure disclaimers would clearly inform consumers of the economic benefits of the services. (Case 229/22 – Sumicity – "E Aí, Muito Combo Hoje? Claro! Eu Vivo Empurrando Telefone Fixo e TV Por Assinatura Para Eles" E "Economize Até R\$ 1.500,00 Ao Ano Com A Internet e Solução de TV Da Sumicity")

In another **comparative advertising case**, CONAR recommended for the modification of the advertising campaign featuring the claims "Nuromol has arrived" and "No other common analgesic has proven to be more effective" (free translations) as it considered that the claims "has arrived" and "new" were not justified as the product has been marketed for more than two years, violating Brazilian Sanitary Authority's regulations regarding the indication of novelty. In regard to the claim "no other analgesic", CONAR found no sufficient basis to support the statement as advertisers did not provide evidence that all drugs or formulas available in the Brazilian market were tested against its product. (Case 123/23 – Reckitt Benckiser Health – Chegou Nuromol – A evolução no combate às dores de cabeça)

UNAUTHORIZED USE OF AN ARTIST'S IMAGE

Brazilian music legend Caetano Veloso is suing clothing brand Osklen for allegedly using his image and the Tropicália movement, which he helped pioneer, to promote a clothing line. Veloso claims the brand used his image and the movement without his permission to increase sales, essentially exploiting his fame for commercial gain. He argues that he never authorizes his image or work for product or service advertising, and if he did, the fee would be significant. This unauthorized use, he claims, has caused him substantial damages.

Osklen defends itself by saying the Tropicália-inspired collection was in development long before they used Veloso's image. They see Tropicália as part of Brazilian culture and argue that using his image falls under fair use because he's a public figure and the image was meant as a tribute, not a direct sales tactic. The lawsuit is ongoing.

This case is important because it could set a precedent for how much protection artists have against the unauthorized use of their identity, not just their image, in advertising campaigns.

(TJR), Lawsuit #0958997-40.2023.8.19.0001, CAETANO EMANUEL VIANA TELES VELOSO vs. TERRAS DE AVENTURA INDUSTRIA DE ARTIGOS ESPORTIVO e OSKAR FOSSATI METSAVAHT).

AMBUSH MARKETING

Brazilian racing organization Brazil Motorsport sued airline Tam Linhas Aéreas over a 2022 promotion. Tam offered to consumers Formula 1 race tickets as prizes of a sweepstake promotion, but Brazil Motorsport, the official organizer of the Brazilian Formula 1 event, claims that such use of tickets was never authorized. In August 2023, a São Paulo court ruled in favor of Brazil Motorsport finding that Tam's promotion infringed on Brazil Motorsport's trademark and commercial rights. The court also found that the promotion brought an unfair advantage to Tam as consumers were required to use points from Tam's reward program to enter the promotion. The decision can still be appealed.

The decision highlights the judiciary's interpretation of ambush marketing practices and also serves as a warning to companies regarding the rules for sweepstakes.

(TJSP, Lawsuit #1019983-90.2022.8.26.0003, MC BRAZIL LPG HOLDINGS LTDA. vs. TAM LINHAS AEREAS S/A)

COPYRIGHT VS. TRADEMARK

A brand licensing company filed a trademark infringement claim against nationally known singer Luisa Sonza and her artistic representation company for alleged unauthorized use of the trademark "MODO TURBO", registered by the company before the Brazilian Patent and Trademark Office (INPI) to identify cosmetics. The company claims Sonza's line of nail polishes improperly exploits the brand's prestige and poses a risk of confusion to consumers, diverting consumers and causing financial and moral harm to the company. In response, the Artist argues that her line of nail polishes is identified by the brand "DAILUS" and that the term "MODO TURBO" is used as the name for one of the colors in the product line, in reference to a musical work registered prior to the allegedly violated trademark.

This case raises an interesting question about the limits between copyright protection and industrial property rights.

(TJSP, Lawsuit #1148168-15.2023.8.26.0100, MODO TURBO ROYALTIES E LICENÇAS LTDA vs. LUIZA SONZA CIA LTDA e LUISA GERLOFF SONZA)

CONTRACT BETWEEN AGENCY, ADVERTISERS AND INFLUENCERS

In 2023, the Rio de Janeiro State Court of Justice ruled in favor of a digital influencer in a case concerning unauthorized use of his image in advertising. This case highlights the importance of establishing clear contractual terms for relationships among Agencies, Advertisers, and Influencers.

A nationally known digital influencer sued a company for using his image in ads after their advertising contract had expired. The influencer argued that the company had permission to use their image only during a specific timeframe, and reusing it afterwards was a violation of its personality rights. The company defend its use of the ads pointing to its advertising agency, allegedly responsible for hiring influencers. Ultimately, the court found no evidence of the influencer's consent for the posts published by the company after the contracted period. The advertising agency was found not liable for the misuse as the contract with the influencer was entered into directly with the company.

(TJRJ, Lawsuit #0023307-40.2017.8.19.0209, BRUNO ROCHA DA FONSECA vs. FÁBRICA DE ARTEFATOS DE LATEX BLOWTEX LTDA.)

RIGHT OF PUBLICITY VS. COPYRIGHT

A case currently pending appeal raises a fascinating discussion between the balance of two constitutional rights: freedom of speech and author's rights.

The dispute began in 2023 with a declaratory action filed by Santa Rita Filmes against composer João Ricardo Carneiro. Santa Rita seeks to compel Carneiro to authorize the use of his co-owned musical compositions in a journalistic documentary ("Primavera dos Dentes") about an iconic 1970's band - Secos & Molhados. Santa Rita argues the music is essential for the documentary's purpose. Ricardo, however, refuses authorization contending that synchronization of the works is not necessary for the creation of the biographical documentary as it would be for a musical work, for example.

The lower court decision sided with the composer emphasizing the importance attributed to the exclusive rights of authors under the Brazilian Constitution which according to the decision should prevail in this case. Santa Rita's appeal argues for a more nuanced approach, potentially balancing the freedom of speech for the band with Ricardo's authorial control.**

(TJSP, Lawsuit #1024389-23.2023.8.26.0100, SANTA RITA FILMES EIRELI-ME vs. JOÃO RICARDO CARNEIRO TEIXEIRA PINTO)

COPYRIGHT CLAIMS

A Brazilian court recently weighed in on the liability of those who report copyright violations on social media platforms. The São Paulo State Court of Justice upheld a lower court decision ordering a self-proclaimed composer to pay damages for falsely claiming copyright to a song.

The case began in 2019 when music producer DBL Produções e Eventos Ltda and artist DJ Lui sued Sandro Rogerius for reporting their work to YouTube as copyright infringement, claiming he authored the song. Rogerius was not able to prove his authorship of the work while DBL's and DJ Lui's presented licenses from the work's copyright holder registered with the Brazilian Copyright Collecting Society (ECAD). The court concluded that Rogerius' report infringed on the true owner's right to freely exploit their work and ordered Rogerius to pay compensation for infringing on the such rights.

(TJSP, Lawsuit #1008622-30.2019.8.26.0020, DLB PRODUÇÕES E EVENTOS LTDA. e CHRISTIAN LIU DE ALMEIDA vs. SANDRO ROGERIUS BARBOSA)

LAWSUIT BETWEEN ECAD AND RIBEIRÃO GRANDE MUNICIPALITY

The Brazilian Copyright Collecting Society (ECAD) filed suit against the Municipality of Ribeirão Grande for an alleged failure to pay public performance fees for the use of musical works in two events organized by the city.

In the 2023 judgment, the court upheld the lower court's decision affirming that ECAD has the legitimacy to demand payment for public performance of musical work even if author/rights holder is not affiliated to the entity or performs the musical work himself. Furthermore, the court found that public performance fees are due regardless of the commercial purpose of the event.

This case underscores ECAD's active role in protecting copyright and reflects the Brazilian case law on the matter.

(TJSP, Lawsuit #1002822-95.2022.8.26.0123, ESCRITÓRIO CENTRAL DE ARRECADAÇÃO E DISTRIBUIÇÃO ECAD vs. PREFEITURA MUNICIPAL DE RIBEIRÃO GRANDE)

LIABILITY OF CELEBRITIES AND INFLUENCERS FOR PUBLISHED CONTENT

The Brazilian Association of Milk Producers (Abraleite) filed a lawsuit against nationally known actor for the release of a video on social media where he criticizes milk consumption and alleged animal cruelty in the dairy industry. Abraleite claims the video posted by the actor in collaboration with a non-governmental organization (Mercy for Animals) contains false information and seeks relief to remove the video and R\$100,000 (approximately USD \$18,900) in compensation for collective moral damages.

This case, expected to be decided in 2024, could set a significant precedent in Brazil concerning influencer liability for the information and endorsements they share on social media.

(TJRJ, Lawsuit #0828353-64.2023.8.19.0209, ABRALEITE ASSOCIACAO BRASILEIRA DOS PRODUTORES DE LEITE vs. MARCIO GARCIA MACHADO)

ATTACHMENT

COMPLAINTS

In this Section, you will find our free translation of CONAR Public Case Report on each of the cited cases, as published at www.conar.org.br.

ARTIFICIAL INTELLIGENCE

Case No 134/23

Title: VOLKSWAGEN E ALMAPBBDO - VW BRASIL70: O NOVO VEIO DE NOVO

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Volkswagen do Brasil

Decision: Complaint denied D

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SUMMARY

Campaign commemorating the 70th anniversary of Volkswagen do Brasil attracted complaints from consumers at Conar and strong repercussions in the press and social networks - against and in favor - by using hybrid generative artificial intelligence resources to recreate the figure of singer Elis Regina, who died in 1982, singing the song "Como nossos pais" together with her daughter, Maria Rita. The campaign, entitled "VW Brasil 70: the new came again" was created by AlmapBBDO and published on social media profiles (Instagram and Youtube).

The representation was opened to verify two main points:

- whether it was respectful and ethical to use it in Elis's advertisement, and
- whether explicit information about the use of such a tool was required to compose the ad.

Twenty-one members of the 7th Chamber participated in the virtual judging session, including the Speaker of the House, who only votes if there is a need for a tie-breaker. The process was processed with the adversarial process and ample defense, through a manifestation of the advertiser and the agency.

The collegiate unanimously considered, following the opinion of the rapporteur, the

question of disrespect to the figure of the artist unfounded, since the use of her image was made with the consent of the heirs and observing that Elis appears doing something she did in life.

Regarding the information on the use of the tool, indicating that it is content generated by artificial intelligence, the directors considered the various recommendations of good practices on the matter, as well as the absence of specific regulations in force, and ended up concluding, following the councilor who authored the dissenting vote, by majority (13 x 7), also for the filing of the complaint, determining the record that transparency is a fundamental ethical principle and that, in the specific case, it was respected, considering that the use of the tool was evident in the advertising piece.

Additionally, following the concerns about the impacts of the use of artificial intelligence in the creation of advertising content, a motion was approved for the direction of Conar to monitor and discuss cases and recommendations.

Read the full vote of the rapporteur, Luiz Celso de Piratininga Jr.

This is an ex officio representation, offered by Conar, based on consumer complaints, for the examination of the campaign "VWBrasil70 - The new came again", based on articles 1, 3, 6, 8, 15, 19, 27, 34, 37 and Annex "Q" of the Brazilian Code of Advertising Self-Regulation.

As described in the initial, the complaints sent submit to the Ethics Council the examination of a relevant question about the use of technological tool and Artificial Intelligence (AI) for the creation of advertising content, bringing a deceased person back to life to participate in advertising.

It is known that Artificial Intelligence has

widespread and large-scale implications that are transforming societies and economic sectors, bringing benefits and risks, and its ethical use is crucial for the direction of these innovations.

Regarding the use of the image of a deceased person, which is part of the right of personality, it is regulated by the legal framework in force, which provides that family members are entitled to protect them and, consequently, to consent to their use. However, there is no specific rule about creating a fictitious context attributing movement, speech, gestures, expressions, and statements to the deceased person, through a technique also known as Deepfake.

What exists are important ethical recommendations for the use of Artificial Intelligence, anchored in the preservation of the autonomy of the human being, of the people impacted and affected by it. Thus, in addition to the important recommendation of ostensible information about the fictional nature of the content, its creation would require full consent of the person portrayed. It should be noted that, under the Civil Code, heirs are considered to be the guardians of the deceased person's legacy, which would include such consent.

The complaints, however, point precisely to the violation of autonomy, arguing that the artist's own consent would be necessary, also denouncing the possibility that the fictitious context has altered the expression of her personality, according to the various historical notes made by consumers. Moral, ethical and social duties to the deceased, in particular to artists, were thus mentioned.

In addition, social impacts of such displacement are presented. According to the article on the subject, with a statement by the

Intelligence at the University of São Paulo (USP), Glauco Arbix: "[...] there are many risks in using AI in a non-transparent, informed, or conscious way, especially when there is a spatial shift or attribution of untrue statements to the person portrayed. [...] The finitude of life is rooted in social history. Even for those who believe in life after death, it is something that is always more inaccessible and distinct from what we see now, for which we are not ready as a society."

Finally, one of the complaints mentions the possibility of such use causing confusion between fiction and reality for some, especially children and adolescents, a question to be examined in light of the provisions of articles 27 and 37 of the CBAP.

Thus, the matter was submitted to the Conar Ethics Council for careful analysis of the present case, examining whether or not the use of a technological tool to bring a deceased person back to life is ethical, as carried out in the advertisement in question, in light of the provisions of the above-mentioned articles of the Code, in particular the principles of respectability -, in this case, respect for the personality and existence of the artist - as well as the principle of truthfulness.

DEFENSE

Preliminarily, in a joint defense, the represented Volkswagen do Brasil and Almap/BBDO Publicidade:

They contest the validity of the present representation regarding the questioning of the use of the image of the late artist Elis Regina in the campaign, because, legally, they say, the exclusivity of Elis Regina's personality rights belongs only to her successors (who granted the necessary authorizations to the Represented).

They justify that such questions should be

personal right provided for in a specific law, a right that is not related to the activities and purpose of Conar.

They claim that the application of visual effects is a widely used technological resource with unquestionable knowledge of the market and consumer acceptance.

Finally, they point out that there is no regulation imposing the adoption of any conduct, caveat or disclaimer in advertisements that employ such technology.

After the preliminary aspects, the defense presented credentials and a brief history of the companies, and then focused the ad according to its creative content, produced with the use of digital technology known as Deepfake: an unprecedented virtual duet between the artists Elis Regina and Maria Rita, her daughter, singing the composition "Como nossos pais" (written by the composer and singer Belchior), at the same time that they drive Kombis, side by side, in a scene of leisure and pleasure.

The campaign, they point out, was motivated by the seventieth anniversary of the Volkswagen brand in Brazil and for the relaunch of the Kombi, one of the automaker's iconic vehicles in a 100% electric version - named ID.Buzz.

Throughout the virtual duet, the film presents "scenes of various vehicles in different events of celebration and conviviality, highlighting the transition of generations and the fact that, despite the natural evolution of human beings and technologies, cycles repeat themselves, emphasizing the idea that success passes from generation to generation, in this case, from the mother to the daughter and from the old Kombi to the new Kombi. Nothing more!"

The defense emphasizes the fact that "the characters at no time comment on the benefits

of the vehicles, their technical characteristics or performance, nor do they give any testimony about the product or the brand."

Regarding the use of digital technology, the defendants offer a history of campaigns that have used such tools to revive personalities virtually, arguing that the use of Deepfake technology is lawful and should be seen as another technical evolution for the creation of virtual images, and can be considered illicit only if the content created infringes the rights of third parties and/or promotes an illicit message (or when specific law considers it abusive).

Since the specific legislation (which would be the legal framework) on the use of AI, at the federal level, is in progress in the National Congress and that so far there is no obligation or even formal guidance that information should be provided about the use of artificial intelligence resources in advertising, the advertisement, As alleged by the defense, it is totally regular, and there is no need to speak of any change in its positive content, considered respectful and healthy in the sense of social and family life.

Regarding the right to use this type of image, the defense cites Article 5 of the Federal Constitution, which preserves the personality rights attributable to individuals; as well as focusing on articles 12 and 20 of the Civil Code, from which it appears that the heirs are the ones entitled to protect the exploitation of the image rights of deceased persons, despite the fact that there are no specific rules in Brazilian law that categorically deal with the transferability to the heirs of such rights. And that, in this case, there is due contractual and public consent on the part of the heirs, and it is uncontroversial that there is no irregularity or abuse in the use of the singer's image in advertising, even if through the use of digital

technology.

With regard to the political aspect brought up in the complaint, the defense states that there is no political or ideological connotation in the context of the campaign, which is why it refrains from making further considerations on this point.

VW and Almap, based on the articles of the Code cited in the representation, especially article 37, state that there is no reason to consider the advertisement inappropriate for minors, children and adolescents.

Nor is there any need to speak of an affront to the principle of respectability. For there is no favoring or encouragement of any kind of offense, discrimination, or encouragement of illegal activities in the advertisement.

Nor is there any evidence of disrespect for the dignity of the human person, intimacy, social interest or the nuclear family. Quite the contrary, the ad carries a positive message that in no way impacts the singer's legacy and good name, and its content was approved and authorized by her heirs, all within the limits of the law.

Finally, there is no irregularity in the advertisement; there is no legitimacy of the complaining consumers to question the use of Elis Regina's image, this being the exclusive right of the singer's heirs; Considering that the discussion related to personality rights is outside the scope of action of this D. Council and that there is no law or standards establishing rules for the use or identification of artificial intelligence in advertising; whereas the use of artificial intelligence and digital effects in advertising has been a long-standing practice without any caveats or clarifications, and consumers are accustomed to this type of practice; and that the vast majority of

consumers approved the advertisement, not agreeing with the position and interpretation of the complaining consumers, the represented parties respectfully request that the filing of the representation be recommended, as recommended by article 27, item I, paragraph "a" of the Internal Regulations of this Council.

That's the report.

OPINION AND VOTE

First of all, we want to thank Conar's legal and operational staff for their usual dedication and support. The work has been intense.

According to the broad legal context that involves the use of Generative Artificial Intelligence, as it has been called, and its legal consequences, it is worth noting that self-regulation is based on the need for advertising to comply with the laws in force, as expressed in article 1 of the Code. This approach of mixed control - self-regulation as an additional layer with normative provisions and ethical examination based on the necessary compliance with the rules in force - is widely consolidated and occurs in the vast majority of countries gathered in the International Council for Advertising Self-Regulation.

That said, we believe that regardless of what we deliberate, the ad in question has already fulfilled a very relevant mission by offering us this opportunity to reflect on the facts that rocked the virtual resurrection of our eternal Elis Regina in the context of advertising ethics.

Even before we go into the merits of the complaints, given the profusion of digital technologies based on Generative Artificial Intelligence that has sprouted daily, it is important to classify the audiovisual production of the commercial in question, in its specificity, as the result of a kind of Hybrid Artificial Intelligence, a term that has been used by

experts to distinguish products generated from the balanced mix between Artificial Intelligence tools and touch human, as in the present case, whose aesthetic result was planned and executed by a full, human team, with technological uses of Artificial Intelligence for the reconstruction of the image of the character's face (interpreted live by an actress) and the synthesis of the singer's own voice. That's what it's all about.

Thus, we relativize the role of technology in this context: if the representation of the singer in the advertisement were produced, for example, by a lookalike (hypothesis provided for in the Code), by a Hollywood make-up or mask or even by old hyperrealistic digital techniques, the discomfort would probably persist. In other words, we are not judging here *stricto sensu* the Generative Artificial Intelligence itself, but the result of a representation of the image of the singer Elis Regina, with a high degree of verisimilitude. Without any prejudice that the deepening of the idea about the use of this technology has already been deserving.

In view of this, we delimited the object of the complaints that were sent to Conar, in some blocks.

The first aspect of the complaint to be addressed is a prerequisite for the approach of the others, as it demands judgment as to respect for the autonomy and dignity of the deceased personality portrayed. The basic questions are: could the image of the deceased person be represented in the commercial? Considering so, it would be appropriate to extend the question: was such a representation made in a respectful manner?

For this reflection, whose basis of the Code is found in articles 19 and 34 (which deal with autonomy, dignity and respectability), we seek

support in the current legislation.

The right to image is recognized as fundamental and inviolable (Article 5, item X, of the Federal Constitution). Therefore, its use requires consent. The Civil Code, on the other hand, establishes (in the sole paragraph of articles 12 and 20) that, in the case of a deceased person, the heirs are entitled to defend such right.

In any case, it is essential that we check the ad for the novelty of the use in question. Although the hypothesis of synthesizing images of personalities with unprecedented movements and gestures does not have a specific provision in the legislation, of the general principles of the legislation in force, in particular the provisions of articles 12 and 20 of the Civil Code, it is possible to assume the assumption in the case that this use is included in the scope of the right to image, whose defense is attributed to the heirs. We understand that the limits of the transferability of digital heritage, memory and existential heritage is a matter to be better dealt with by law, with interpretation and application by the Judiciary. Although considering it to be a new use, here the parameter is stipulated based on the legal doctrine on the subject and, in particular, on the ethical examination of the matter.

It should be noted that at least two bills were presented in the National Congress based on the discussions of the advertising campaign in question, which lead to the same solution: the express legal provision that the use of the image of a deceased person through Generative Artificial Intelligence requires the prior and express consent of the person in life or, in the absence of such consent, that of the closest relatives, as occurred in this case, according to the information provided by the defense of the defendants.

We assume this assumption regarding the admissibility of the use of the image of a deceased person in an advertisement, based on the consent of their heirs (recognized as guardians of the deceased person's legacy), which includes the virtual acting generated by Artificial Intelligence. We note that the use of an image of a deceased person is not new in the audiovisual industry, which has been anchored in the consent of the heirs, in the absence of testamentary disposition to express the will of the deceased.

Understood as admissible, was the representation of the image of the singer Elis Regina projected in a respectful way? Before answering the question, it is necessary to resolve an objection raised by the defense.

Preliminarily, the defendants contested the legitimacy of the consumer complaints, pointing out that only the heirs would be entitled to complain about the violation of the use of the deceased person's image. However, we do not agree with this point of view, given the fact that article 34, letter "b" of the Code clearly opens up the possibility of analyzing consumer complaints for possible disrespectful use of the image of a deceased person. According to Article 34: the "Code condemns advertising that: b. offends the religious convictions and other susceptibilities of those who descend from or are in any other way related to deceased persons whose image or reference appears in the advertisement".

In addition to article 34, letter "d" of Annex Q, on witnesses, according to which "the Advertiser who uses the testimony of a famous person must, under penalty of being deprived of the presumption of good faith, bear in mind his responsibility towards the public".

In other words, as a figure of maximum

artistic expression, a true Brazilian cultural heritage, it is natural that fans, friends and the public, in general, can legitimately exercise the complaint about the aspects of the ad that somehow bothered under the ethical criterion.

In this sense, it is worth analyzing whether the virtual creation of the character Elis Regina, in a fictitious situation, attributing to her movement, singing, gestures and expressions, through a technique also known as Deepfake, disrespectfully altered her personality, according to her artistic and personal memory.

We understand, as to respectability, that the advertisement at no time negatively presented the image and memory of Elis Regina, whose virtual performance remained within acceptable limits, given that she appears all the time singing alongside her daughter a song that was part of her repertoire, without verbalizing any opinion, impression or information and much less any type of statement about the Volkswagen brand or its products. on the contrary, what is denoted is the use of currently available technology to respectfully reproduce gestures, appearance and voice consistent with the person/personality of Elis Regina, and it is not necessary to conclude that such characteristics permeate the collective memory of the late artist.

Despite the absolute respect for the opinions brought in the complaints, such statements do not contain concrete elements that could lead to the limitation of the artistic-musical content of the advertising piece in question. For this opinion, we consider that the recontextualization of the artistic work applied to the objectives of the Volkswagen brand is absolutely legitimate and does not violate any ethical principle.

Thus, we proceed to the examination, on

the merits, of the questioning about the True Presentation and the analysis of the need for information (warning, signaling) about the nature of the synthetic content.

In its article 27, the Code determines that every advertisement must contain a true presentation of the product offered, with emphasis on § 9 on testimonials, according to which "the advertisement will contain only personalized and genuine testimonies, linked to the past or present experience of the person who gives the testimony, or of the one whom the deponent impersonates".

From this perspective, it is essential to discern what is a true presentation of the product and the advertising format used for such a true presentation of the product. Therefore, it is appropriate here to deal with the advertising language and its specificities so that there are no doubts as to the interpretation of article 27.

The interweaving (amalgamation) between the symbolic elements of culture and consumer products is nothing new in the advertising environment. Such symbolic elements, which make up the national culture in all its extension and richness, are, a priori, the raw material of the advertising discourse, without which creative argumentation would simply not be possible. This intrinsic characteristic is what defines and distinguishes advertising language as an artistic expression in the context of the market economy. The advertisement in question demonstrates this aspect with propriety.

The logic of advertising is explicit in terms of the purpose of entertaining the attention of the public to which it is addressed and, thus, encouraging consumption through ostensive communication. There are no ulterior motives. The intention is only one and is recognized

by all those who participate in this dynamic (advertisers, agencies, media and consumers): to favor the differentiated and positive perception of brands, products and services (and, if possible, the engagement of the public) in order to boost sales results. The rationale is economic: according to a recent study by Deloitte, at the request of Cenp, each real invested in advertising in 2020 generated eight reais for the Brazilian economy. And advertising creation, in the context of commercial freedom of expression, has always been the "soul of the business".

The present case represents very well this intersection between culture and economy. The journalist and professor Eugênio Bucci brings a significant passage in his book *The Superindustry of the Imaginary*, a work of remarkable value for the understanding of the current communicational moment, in which he quotes the French philosopher Roland Barthes: "the philosopher, who admired cars - and died run over by a laundry truck in 1980 -, said [...] About the car: ? Am I referring to a creation of the time [...] consumed by its image, rather than its use, by an entire people who appropriate through it an absolutely magical object?"

I dare say that consumption through the image of the automobile (as well as of an infinity of articles) has as its reason (or unreason) the healthy role played by advertising in the creation of bonds through ludic imaginaries, its main specificity. In fact, as one of the founding techniques of the creative economy, commercial advertising assumes, as a presupposition, the ability to innovate: to present its arguments in an unusual way.

Therefore, not only, but essentially, advertising is structured as a playful language. A space in which practically everything is allowed, as long as it respects the ethical purposes

(established by the legislation in force, notably the CBAP) and, of course, the true presentation of the products and services that sponsor it, in a wide spectrum of benefits and rational and emotional identities.

In my view, the case portrayed here fulfils this role.

Apparently, the represented parties dared in their respective competences to produce and disseminate the propaganda in focus, and as it could not be otherwise, it is natural that demonstrations for and against arise in the face of such an act.

Volkswagen and Almap are two important institutions in the advertising market. Both have maintained concrete commitments to the development of the national automotive industry and to high-quality advertising, since the 60s, when Alex Periscinoto, partner of Alcântara Machado (founder of Almap), took over the creation of Volkswagen's campaigns (aired when the JK Government was promoting the development of road transport in Brazil).

More than that, Volkswagen can be seen as a brand that had advertising creativity and the quality of its vehicles as a determining factor for its great international prestige. The advertisements of its vehicles have always signaled a standard of excellence in the communication environment.

The commercial "VWBrasil 70 years - The new has come again" was no exception.

The announcement is true when it articulates the concepts of tradition and innovation, taking advantage of the company's seventieth anniversary in Brazil to launch the new model of the Kombi vehicle.

As a creative argument, it articulates the concepts of tradition and innovation

through the image of singers Elis Regina (past generation) and Maria Rita (current generation), mother and daughter, singing in duet the composition *Como nossos pais*, while driving the models - old and new - of the Kombi; this duet takes place in the midst of documentary scenes that have the function of activating the affective memory of people, families, etc., in relation to the Volkswagen brand and its products, remembering that the brand truly has been or has been part of the lives of Brazilians for many generations and that, by virtue of its ability to innovate, it transmits this affection and trust from generation to generation, making the new happen (which "always comes", expressed in Belchior's lyrics), again. We understand, for all these reasons, that the true presentation of the product actually occurs, in this case, no matter how playful the advertising piece may be considered.

Still with regard to the interpretation of the principle of truthful presentation and transparency as an ethical precept, we consider its examination to be more complex, in particular regarding the need to include a sign in the piece informing about the synthetic nature of the content, due to the lack of specific provision applicable to this type of technology.

We know that this case has given rise to a series of questions about the ethical use of these technological tools now available to all. The decentralized creation of content provided by the connectivity and use of social networks, as well as the sophistication of the tools for the production of such content, ended up enhancing the present discussion, giving it the fears of the amplification of harmful uses.

Following the unfolding of this discussion, there are several opinions and guidelines that propose the obligation of preventive signaling regarding the use of Artificial Intelligence in

the universe of communications, applicable to multiple contexts in which this type of technology may appear, including advertising (as in the case of the excellent Guide on the Impacts of Generative Artificial Intelligence on Advertising published by the ABA and also in the case of the Guide launched by the World Federation of Artificial Intelligence. Advertisers, as well as in bills in progress in the National Congress).

Therefore, it is appropriate here to suggest adherence to these guidelines for the adoption of such signage, providing clear information about the presence of Artificial Intelligence systems in the ad, as a way to minimize any type of risk that may exist in the assimilation and understanding of the piece.

Finally, we analyze the issue from the perspective of the possibility of such use causing confusion between fiction and reality for some, especially children and adolescents, as established by article 37.

In this case, we assume that the advertisement does not contain elements that could mislead the children's audience, both for the reasons already pointed out pertinent to the legitimacy of the advertising language, and because of the evidence that the commercial is not directed to this segment of the audience.

Therefore, on the basis of Articles 1, 3, 6, 8, 15, 19, 27, 34, 37 and Annex Q of the Code, assuming the premises that: the announcement is lawful as regards respect for the autonomy and dignity of the personality portrayed; the ad did not disrespectfully alter his personality; the advertisement meets the requirements for the true presentation of the product; the advertisement does not contain elements that may mislead the children's audience, we suggest its alteration specifically with regard to

the provision of accurate information about the presence of Artificial Intelligence systems in the content of the play.

That's the vote.

In time, in view of the repercussion and concern generated by this case, I also propose a motion to the Board of Directors of Conar, in order to analyze the convenience of establishing a monitoring and discussion body about the consequences, limitations and ethical, technical and normative implications brought in the wake of advances in technologies involving generative or hybrid artificial intelligence, as it has done in so many other matters that have deserved special attention, alongside the national and international entities that are working on the subject.

Luiz Celso de Piratininga Jr.

Reporting Member

DISSENTING VOTING RECORD,
REPRESENTATION NO. 134/23

I hereby adopt a report drawn up by the honourable rapporteur of the above-mentioned case, in which there is a detailed reference to the allegations of the complaint and the defence.

However, I disagree with him regarding the recommendation for changes related to signaling the use of the technological tool.

Noting from the outset the correctness and excellence of the vote, by expressing a detailed examination of the aspects of the creation of the advertising message and the legitimate and appropriate use of the image of the iconic singer Elis Regina, I clarify below the divergence presented here.

Two points have been indicated as central in

this representation:

I) Whether the use of a video with the singer's image would have been legitimate and respectful, which required the analysis of the observance of legal precepts and self-regulation related to the autonomy and dignity of the personality portrayed; and

II) Whether the advertisement complied with the principles of truthfulness, transparency and the right to adequate information.

With regard to the first point, I fully agree with the vote of the rapporteur, considering that the use of the singer's image was legitimate and respectful, bearing in mind the consent of the guardians of her legacy - the heirs - and considering that the use was absolutely consistent with her memory and activity carried out in life, of unforgettable and unique artistic performance and musical presentation.

With regard to the second aspect, after long discussion and accurate analysis, I believe that the case in question should be examined in the light of the legal context and self-regulation, legal certainty and, above all, the impact of the announcement.

Although I consider the discussions on ethical principles related to the use of Artificial Intelligence in the creation of audiovisual content to be fundamental, recognizing the challenges and the relevant role that this Council has in guiding the diffuse guidelines currently existing on the matter, I do not believe that the campaign deserves attention under the aspects of veracity and transparency, both in terms of the offer, the as well as the creative and fictional elements.

Due to the singer's own notoriety, and the public knowledge of her early departure from this world, the use of technology in this case is unequivocal. Despite the criticism - which is part

of the democratic system - the ad recreates a scene that, if it weren't for technology, the public would never have been able to experience.

And there is not, at any time, any hint of deception or lack of transparency, given that the technology here is used solely and exclusively to

recreate Elis Regina doing what - and how - she did in life, without deviations.

The principle of transparency, which should prevail in all communications and relations with consumers, is present in this particular case, and the caveat about the creative process of the advertisement is unnecessary and ineffective. For this reason, I respectfully disagree with the honorable reporting counselor regarding the recommendation to signal the use of the technological tool, also recommending on this point the filing of the representation, based on the provisions of article 27, item I, letter 'a', of Rice.

In recommending archiving, I consider the absence of specific regulations capable of mandatorily imposing such insertion, which requires an even more careful analysis of the specific context of the advertisement in the light of the ethical principles of advertising, namely, transparency, truthful presentation and the right to information, which I do not find to have been infringed.

Last but not least, I would like to mention two points that have been emphasized in the discussion of the case.

The principle of transparency is fundamental for the use of technological resources in advertising, calling the attention of those involved in the creative chains, to observe it centrally.

And, following the Rapporteur's proposal, in view of the concerns about the impacts of

ALCOHOLIC BEVERAGES

Case No. 252/22

the use of artificial intelligence in the creation of advertising content, I join the proposal for a motion to the direction of Conar to monitor and discuss cases and recommendations that can guide the actors involved and provide legal certainty in the exercise of their activities and in the safeguarding of rights.

Ana Paula Cherubini

Title: BROWN FORMAN - TUDO PRONTO PARA O JOGO

Plaintiff of the Claim: Conar by own initiative

Advertiser and/or Advertising Agency: Brown Forman Beverages Worldwide Comércio de Bebidas

Decision: Recommendation of suspension of advertisement and warning to advertiser S W

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SUMMARY

In this representation, Conar's management questions advertisements on TV and social networks for alcoholic beverages that are not in accordance with the schedules recommended by the Code. Although the products presented fall under Annex T, which deals with the advertising of ices and similar beverages, they carry the Jack Daniel's brand, a high-content beverage, whose advertising is governed by Annex A.

In its defense, the advertiser considers the advertisement ethical precisely because the beverages advertised, which have an alcohol content of 5%, are typically those provided for in Annex T and, therefore, should be exempt from complying with the rule of placement in more restrictive time slots. It also informs that there was a failure in not enabling the restricted access tool on social networks, which has already been corrected.

The rapporteur did not accept these and other arguments of the defense, considering clear the recommendation of media planning aimed mainly at adult advertising. He also pointed out the failure to activate restrictive access on social networks and the mention of the word "whiskey" on the packaging of the two products advertised. "The average

consumer, not an expert on the subject, may easily think that this is a version of whiskey from the traditional American brand and be misinterpreted by the visual elements," he wrote in his vote.



All in all, the rapporteur considers that the recommendation in Annex T, according to which in the case of mixed beverages bearing the same brand and other expressions of beverages included in Annex A, the restrictions and recommendations set out therein will prevail have been violated. It therefore voted to suspend the ad, as part of its media plan, with the application of a warning to Brown Forman. His vote was accepted unanimously.

Case No. 042/23

Title: Aurora, Premium e Revista Engarrafador Moderno – Jose Cuervo – Bebedouro de Tequila no Carnaval de Salvador

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Aurora Bebidas e Alimentos Finos, Premium Produções, Criações Artísticas e Eventos e Revista Engarrafador Moderno

Decision: Recommendation to modify or correct the advertisement and sending a warning to advertiser  

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SUMMARY

Consumer sent a complaint to Conar, against advertisements for the drink Jose Cuervo, from Aurora Bebidas e Alimentos Finos, disseminated on the social networks (Instagram) of Premium Produções and Engarrafador Moderno magazine and also on point-of-sale equipment at an event during the Carnival of Salvador.

According to the complaint, the ads present videos with explicit and irresponsible consumption of alcoholic beverages, in addition to not presenting clear advertising identification or phrases recommending responsible consumption.

Premium and Aurora defended themselves, claiming that they had not disrespected the ethical-advertising rules and that they had suspended the display of advertisements that showed the ingestion of the drink. On the other hand, the Modern Bottler Magazine did not comment, although duly cited by Conar.

The rapporteur considered in his vote that, in the case of the disclosure of an event with the participation of an alcoholic beverage brand, the recommendations of the Code should be

taken into account, as dictated in Annex A. Thus, in the disclosures made by Premium, the pieces should bring the phrases of social responsibility and not show scenes of consumption of the Jose Cuervo drink. He considered that Aurora, as a sponsor of the event, is also responsible for the promotional material of its own brand, together with the promoter of the event. For this reason, the profile of the Jose Cuervo brand should bring in its posts and reposts the same warning and safety phrases. For this reason, he proposed the amendment, aggravated by a warning to Aurora and Premium, highlighting Conar's concern regarding the essence of the action - a drinker with alcoholic beverages - which conflicts with the guidelines of not promoting promotional ideas or advertising that encourage the excessive or irresponsible consumption of alcoholic beverages.

The rapporteur ended his vote considering that the posts of the magazine Engarrafador Moderno do not require repairs because they are editorial in nature. His vote was accepted unanimously.

Case No. 083/23 - in ordinary appeal

Title: Diageo - Chegou Johnnie Walker Blonde

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Diageo Brasil

Decision: Recommendation to modify or correct the advertisement 

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SUMMARY

Consumer complaint is aimed at an advertisement for the presentation of Johnnie Walker whiskey displayed in outdoor media, considering that the piece presents a model with a young appearance, thus there is a possible violation of Annex A of the Code, which provides that people who are or appear to be under 25 years of age should not appear in an advertisement for alcoholic beverages. The complaint also considers that advertising may go beyond the restrictions provided for advertising in outdoor media, according to which

Because they reach all age groups, without the technical possibility of segmentation, the messages conveyed in Outdoor Media and similar (...) will be limited to the display of the product, its brand and/or slogan, without consumer appeal, maintaining the need to include the "warning clause".

In its defense, the advertiser proves that the model is over 25 years old and considers that this is easily noticeable. It also considers that it has fully complied with the recommendations of the Code for advertising of this kind.

In the first instance, for agreeing with the terms of the complaint, the rapporteur proposed the suspension aggravated by a warning to Diageo, which he unanimously

followed.

The Councilors present at the judging session detailed the vote: suspension for the excess of images in outdoor media, extrapolating the restriction of Annex A, and warning about the approach used, to remove doubts about the appearance of people over 25 years of age in the models used in campaigns.

Diageo appealed, arguing that the initial decision brought subjective arguments. He recalled his various educational initiatives in favor of responsible consumption, socioeconomic inclusion and promotion of diversity, among others, and reaffirmed his initial arguments regarding the age of the model and correspondence to the recommendations of the Code.

The appellate court rapporteur accepted the defense's arguments regarding the model's age. Regarding the possible extrapolation in the use of elements in advertising alcoholic beverages in the medium, she wrote: "I think it is important to point out that in my view the ad does not contain irregularities in the sense of inducing the appeal to consumption, on the contrary. The piece was made with all the care, the model is older and appears to be over 25 years old, there is a warning clause, there is no image, slogan or figurative element that in any way induces consumption. However, since the product is an alcoholic beverage, there are always precautions that we must observe, that the interpretation must be the most restrictive. In view of this, I cannot escape the responsibility and my duty as an advisor to this Ethics Council, that considering the product advertised and that the piece under discussion was made available in indoor outdoor media, item 6 of Annex A should be applied. In none of them was there a model, but only an art or landscape. Thus, I understand that there is no problem

for the advertiser to use its logo. However, although the Code does not expressly prohibit the use of additional elements that make up the creative construction of brands to display the product, it is clear that the advertisement must be limited to the display of the product, its brand and/or slogan. It's one thing to have the art itself and another to use a model. Furthermore, I understand that the use of a model is different from art or mere setting, since in the general rule of Annex A there is no limitation such as the one that exists in item 6. Thus, I understand that the objective was in fact to differentiate and I understand that, even in this sense, it has been the interpretation of the advertising market, so much so, that very few precedents of this Council involving outdoor media in which there was a model in the advertisement have been located".

For this reason, the rapporteur accepted Diageo's alternative request to recommend the amendment, so that the restriction provided for in Annex A in relation to outdoor media is observed, including mentioning Representation No. 191/19, a precedent in which it was decided to amend in a case that had as its object a very similar advertisement also aired in outdoor media, including from the same advertiser.

His vote, for the amendment, was followed by a majority.

DIGITAL INFLUENCERS

Case No. 069/23

Title: MSC COMÉRCIO DE ACESSÓRIOS (BY IK) E GABI BANDT - E SE EU CONTAR PRA VOCÊS QUE EU CONSEGUI QUALQUER ÓCULOS DA MINHA COLEÇÃO MAIS UM ÓCULOS DE BRINDE POR R\$ 50?]

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: MBC Comércio de Acessórios and Gabi Brandit

Decision: Recommendation to sending a warning to advertiser 

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SUMMARY

Ads on the social media profile (Instagram) of influencer Gabi Brandit promoting MBC Comércio de Acessórios' eyewear line attracted a consumer complaint, due to poor advertising identification, a rule that is the starting point for the ethical compliance of advertising in the medium, according to the Digital Influencer Advertising Guide. In addition, the complaint questions the veracity of the promises, given that several consumers accuse the non-delivery of the purchase.

The influencer Gabi Brandit sent a defense, in which she informs that, due to what she defined as a systemic instability on Instagram, she chose to publish the ad without proper signaling. As for the questioning about the veracity of the offer, the influencer disclaimed any responsibility.

The advertiser MBC Comércio de Acessórios (by IK) did not send a defense to Conar, even though it was aware of the representation.

The rapporteur agreed with the terms of the consumer's complaint and rejected the arguments of the influencer's defense, noting that the product disclosed is the result of a collaboration between her and the advertiser,



the products bearing the name Gabi Brandit. "It is concluded that both parties have burdens in the advertisement in question, since the project establishes a bond of responsibility between the brands," wrote the rapporteur in his vote, for the warning to MBC Comércio de Acessórios (by IK) and Gabi Brandit, being unanimously accompanied.

Case No. 105/23

Title: EPE NEGÓCIOS DIGITAIS (FATURANDO COM O INSTA) E PAULA FREITAS - LIKE FOR MONEY

Plaintiff of the Claim: Conar by own initiative

Advertiser and/or Advertising Agency: Epe Negócios Digitais (Faturando com o Insta) and Paula Freitas

Decision: Recommendation of suspension of advertisement and warning to advertiser.  

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SUMMARY

Conar's board of directors proposed representation against ads on social networks (Instagram) in the format of stories and on a website, disclosing the sale of a cell phone application, an advertising campaign under the responsibility of the advertiser Epe Negócios Digitais (Billing with Insta) and the influencer Paula Freitas. The possible deception of the categorical and unrealistic promises of high and quick financial gains ("profiting only by clicking on social networks"), corroborated by the influencer's testimony, was denounced.

In addition to the potential deception about the promised gains, the Ethics Council was submitted to examine the possible irregularity due to the disclosure of improper practice, inauthentic engagement on social networks, which may violate the provisions of the Guide to Advertising by Digital Influencers, which provides that interaction and commercial testimonials on social networks must be genuine and truthful. It was also questioned the deficient advertising identification and the presence of a series of emerging appeals considered as embarrassments to the evaluation and decision by the consumer, especially in online purchases, such as the use of conspiracy arguments (presentation as a

secret), urgency, scarcity, pressure, fear and exploitation of a scenario of vulnerability, with statements such as "Think with me, if your mother or father had a serious illness today you would have enough money to help you or worse, If your son or daughter had a problem, would you have the money to help?"

The defense of Epe Negócios Digitais considers the advertising purpose of the ad to be evident. On the merits, it considers the questions proposed by the representation to be subjective, and it is not possible to objectively establish which advertisements fit or not in its writing.

On the other hand, the defense of influencer Paula Freitas considers that the advertiser is responsible and has in its possession the factual, technical and scientific data that support the message and that there is no allusion to promises of high remuneration, nor exaggerations about the nature of the service or working conditions. It concludes by informing that the influencer, not being advised by an advertising professional or an agency, does not have knowledge or guidance on Conar's recommendations and ethical standards.

These and other allegations of the defenses brought to Conar did not move the rapporteur. She considers that there is no evidence or any proof that the promised result is real, both in the ads and in the defenses, and notes the use of notoriously false and misleading image resources, such as screenshots of bank statements or posing as an "Instagram partner" app, purposely leading the consumer to error, abusing their trust and lack of knowledge to benefit from their gullibility and exploiting anxiety, fear and disturbance.

The rapporteur also noted that influencer Paula Freitas uses her network and the trust

acquired from her followers to give her own testimony that she used the application and obtained the extra income promised in the offers, expanding the repercussion of the product with unproven facts and data, in addition to encouraging the purchase of likes - that is, - false engagement, violating the guidance of the Digital Influencer Advertising Guide.

Therefore, the rapporteur concluded with the recommendation of suspension aggravated by warning to Epe Negócios Digitais (Invoicing with Insta) and Paula Freitas. His vote was accepted unanimously.



It was determined by the Ethics Council to register the preliminary brought in defense, leaving explicit the responsibility of the influencer, about the content created and disseminated by her, and must, alongside the advertiser, respect the consumer legislation and the rules of the Brazilian Code of Advertising Self-Regulation.

Case No. 072/23

Title: MONEY LOOKS, VEGA DIGITAL, DAVI MATEUS, EMILY GARCIA, KERLINE, MARIANA MENEZES, NADJA PESSOA, PÉTALA BARREIROS E YANKA BARREIROS, TENDO A SHEIN COMO TERCEIRA INTERESSADA - AVALIE E GANHE AGORA MESMO" E "VOCÊ PODE GANHAR PELO MENOS SEIS MIL REAIS POR MÊS APENAS DANDO SUGESTÕES SOBRE AS ROUPAS DA SHEIN"

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Money Looks and Vega Digital (advertisers) and Davi Mateus, Emily Garcia, Kerline, Mariana Menezes, Nadja Pessoa, Pétala Barreiros and Yanka Barreiros (influencers and influencer), with Shein as a third party interested.

Decision: Recommendation of suspension of advertisement and warning to advertiser.  

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SUMMARY

The promises of earnings and statements above, present on the social networks (Instagram) of several influencers promoting the offer of paid service from Money Looks and Vega Digital attracted a complaint from a consumer, who questions the absence of any basis or proof of veracity. The whistleblower believes that the advertising pieces disrespect recommendations of advertising ethics and Conar's Guide to Advertising by Digital Influencers, including deception, the practice of inauthentic engagement and poor advertising identification. Because it was mentioned in the ads, Shein was included in the representation as an Interested Third Party.

Four of the influencers defended themselves, claiming to have complied with the briefing sent by the advertisers. They consider themselves misled and report that they have suspended

their participation in the campaign. Influencer José Davi da Silva (Davi Matheus) said that his recommendation of the Money Looks platform was made as a user, but that he stopped using it when he better understood its functionality and that he will no longer recommend it.

The advertiser Vega Digital said in its defense that it had removed the Shein brand from its ads and defended the fairness of the services offered by it, without further explanation. The company Shein, on the other hand, manifested itself at Conar defining the offer of advertisers as "fraud".

The rapporteur did not accept the defense arguments of influencers and advertisers, considering the ads misleading and abusive, using false testimonials from influencers about the use of the advertisers' app and disrespecting the recommendations of the Guide.

The rapporteur wrote in her vote: "some influencers brought as an argument that they only follow the briefing and have no management over the content. In fact, commonly, the advertiser is the one who defines what is talked about by influencers. However, it is up to the influencer (or any contracted party) to ensure that the activity carried out by them is lawful and in accordance with the Code. It was evident that the briefing received did not comply with both applicable consumer legislation and the Code, by expressly stating that the advertising communication should not be identified. The influencers should have refused to provide their services under such conditions. The influencer has the minimum duty of diligence in the provision of their services and it is noted that in this case, such duty was not fulfilled".

It concluded with the recommendation of

Looks and Vega Digital and Davi Mateus, Emily Garcia, Kerline, Mariana Menezes, Nadja Pessoa, Pétala Barreiros and Yanka Barreiros. His vote was accepted unanimously.

Case No. 074/23

Title: BRAIP INTERMEDIações & NEGÓCIOS E EMILY GARCIA - OPINIÕES LUCRATIVAS

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Braip Intermediações & Negócios and Emily Garcia

Decision: Recommendation of suspension of advertisement and warning to advertiser.  

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SUMMARY

The complaint that motivated this representation came from a consumer, against ads on social media profiles (Instagram) and website, under the responsibility of the advertiser Braip Intermediações e Negócios and the influencer Emily Garcia, proclaiming categorical promises of high financial gains, which would not be effectively fulfilled. The consumer alleges that she made a prior registration, made the payment and met the stipulated goals, but did not receive any response from the advertiser.

On Braip's website, the offer of a tool called "Profitable Videos" is presented, with the promise of earnings just by watching and evaluating videos over the internet. The representation also questions the presence of a series of emerging appeals considered as embarrassments to the evaluation and decision by the consumer, especially in online purchases, with the use of arguments of conspiracy, urgency, scarcity and pressure. In addition, the advertising released by influencer Emily Garcia does not present a clear identification of its advertising nature, being inserted among the other content on the channel, which can generate confusion about the nature of the post, whether commercial or editorial.

Braip expressed itself in the lawsuit, alleging that it is only a payment platform, and it is not responsible for the objective advertisements of this representation. There was no defense by the influencer, even though she was regularly cited.

The rapporteur fully supported the complaint and noted that the advertiser's website was taken down. He proposed the suspension aggravated by warning to Braip Intermediações & Negócios and Emily Garcia. His vote was accepted unanimously.



The counselors present at the trial session of the Sixth Chamber decided to record that, although it has alleged its illegitimacy, the advertiser indicated in the representation is being kept in the records, so that it takes the appropriate measures, according to the role it has in this chain of supply and advertising of the product and the need for attention and the adoption of measures related to the role it plays, by being notified of possibly irregular disclosures and offers, and in the face of reports of harm to consumers.

Case no. 251/22

Title: ROSA SELVAGEM E INFLUENCIADORA MENOR DE IDADE - NÃO SABE O QUE FAZER PARA TIRAR MANCHAS ESCURAS?

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Rosa Selvagem Brasil and underage influencer

Decision: Recommendation to modify or correct the advertisement and sending a warning to advertiser  

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SUMMARY

A consumer complaint motivated this representation, aiming at an advertisement of responsibility of the advertiser Rosa Selvagem, based in Recife, published on the social networks of an influencer of less age, for considering that there was deficient advertising identification and absence of proof of the results presented, the lightening of dark spots on the skin and treatment of folliculitis.

Rosa Selvagem sent a defense to Conar, considering that the offer of a discount coupon in the ads would be enough to expose its advertising nature. Regarding the benefits disclosed, he added an opinion poll that would demonstrate the veracity of the promises.

The rapporteur draws attention in her vote to the large number of followers that the advertiser and the influencer have. "I understand that both have great responsibility in the correct and conscious production of the advertising message and in the observance of the principle of transparency advocated by the Brazilian Code of Advertising Self-Regulation and the Digital Advertising Guide for Digital Influencers," she wrote in her vote. "As clearly described in the Guide, it is essential to clarify

the posts the relationship between advertisers and agency. The absence of advertising identification or information on the connection with the advertiser and agency can make the message partial (missing essential data), harming the consumer's evaluation of the purchase decision."

The rapporteur recalls that, according to the Guide, the disclosure of websites, offers and coupons for discounts, promotions and the marking of the brand's profile are not considered sufficient to clarify the relationship between the influencer, the advertiser and the agency. For all this, he recommended the warning both to those responsible for the underage influencer and to Rosa Selvagem and also for the alteration of the campaign. His vote was accepted unanimously.

Case no. 243/22

Title: SEARA E INFLUENCIADORA MIRIM - MARGARINA PRIMOR - DIA DAS CRIANÇAS

Plaintiff of the Claim: Conar by own initiative

Advertiser and/or Advertising Agency: Seara Alimentos and child influencer

Decisão: Recommendation to modify or correct the advertisement 

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SUMMARY

This representation, proposed by Conar's management, questions whether an advertisement on a child influencer's profile on social networks (Instagram) on the occasion of Children's Day can incur in the violation of the Code's recommendations, by making use of children's vocalization to present direct appeals and suggestions of exaggeration in the consumption of the product, especially due to the various exhortations to consumption and the suggested recipe, with a strong appeal to children.

Those responsible for the child influencer sent a defense to Conar in which they allege that the advertising, in addition to being clearly identified as such, at no time does it encourage consumers to use margarine in excessive quantities nor does it appeal to underage consumption, considering that the influencer participates in the action only demonstrating the product together with her mother. It gathers data according to which only 2% of the child influencer's audience is made up of teenagers between 13 and 17 years old.

Seara said in its defense that the focus of the action was to produce "a simple recipe that can be executed by the child with parental supervision in order to celebrate - together

with friends and family - this special date". He denied that there was an incentive to excessive consumption of brigadeiro prepared with margarine and reaffirmed the mostly adult audience profile of the child influencer's page.

In the first instance, the Sixth Chamber unanimously decided on the recommendation of suspension, following the rapporteur's proposal.

She began her vote by considering the advertisement regular in relation to its correct identification as advertising and also absent of imperative appeal or encouragement to the exaggerated consumption of food. However, it identified non-compliance with the clause of Article 37 of the Code, which reads as follows:

"Advertisements should reflect special care in relation to safety and good manners, and also refrain from:

f. use children and adolescents as models to vocalize a right appeal, recommendation or suggestion of use or consumption, admitted, however, their participation in the pertinent demonstrations of service or product".

The rapporteur wrote in her vote: "The defenses argue that the use of the influencer in the lawsuit was only her participation in the demonstration of the product. This is not the case. By making the brigadeiro recipe alone, the child influencer is recommending and suggesting a use of the Primor product, that is, its use as a component of the recipe. This suggestion is clear in the following excerpt: 'The ingredients we are going to use. Chocolate powder, condensed milk and of course Primor'. There's no need to say that she's just demonstrating the product. Her mother acts only to put the brigadeiro on the stove, so all the suggestion of using Primor to make the brigadeiro recipe is made by the

child influencer. The fact that the influencer's audience is adult does not change the fact that the advertising was targeted at children. The analysis to be carried out by Conar should be carried out based on what was the address of the action, that is, who the advertiser and influencer were evoking when they made the communication. It is clear that it was the children's audience because of the date (Children's Day) and questioning whether they like to cook with their parents. The fact that the influencer's audience is mostly adult only represents that eventually this action will not reach the expected audience. However, its content was addressed to children. Thus, the analysis of this action should be as protective as possible and consider the articles of the Code based on the care to be addressed to children."

There was an ordinary appeal filed by Seara, but the initial decision was confirmed by a majority vote by the Special Appeals Chamber, following the proposal of the rapporteur of the second instance. She saw no reason to change the initial decision, considering that there had been an appeal of consumption voiced by a minor, even admitting the subtlety of the script when referring to Primor within the context of the execution of a traditional Brazilian recipe. "There was not only a demonstration, but an appeal for consumption, emphasizing the use of the product countless times and, in the case of a food product, care must be even greater," she wrote in her vote.

Seara appealed the recommendation again, taking the case to the Plenary of the Ethics Council. This time, some of his arguments were accepted.

The Councilors present at the judging session decided to change the announcement with a majority of votes, as shown below:

- 19 votes to change the ad;
- 10 votes for amendment and warning;
- 5 votes for suspension.

The rapporteur who voted the winning vote justified the recommendation for the amendment because she understood that Seara's advertising was not disapproved in all the aspects questioned, and its amendment is sufficient to clarify that the disapproval refers to the exhortation to consumption voiced by the underage influencer, for example with the phrase: "(...) cannot be missing from our table" and others that may suggest an appeal to consumption vocalized by it, also ratifying the changes that the defense volunteered to implement.

Case No. 201/23

Title: Sambawin and child influencer

Plaintiff of the Claim: Conar upon consumer complaint

Advertiser and/or Advertising Agency: Sambawin and child influencer

Decision: Recommendation of suspension of advertisement and warning to advertiser **S W**

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SUMMARY

An ad starring a child influencer on his social networks (Instagram) promoting the game of the advertiser Sambawin attracted consumer complaints. According to him, it is a game of chance, constituting flagrant disrespect for the legislation in force on the date of the complaint, according to which it is forbidden to disclose advertising in the segment that has the participation of children and adolescents or that is directed at them.

There was no defense by the advertiser even though she was regularly cited. The father of the child influencer, on the other hand, informed in an email to Conar that he did not know that his son was committing something irregular, that he was suspending Sambawin's disclosures of his son's account and that this would not happen again. Instagram, which was also cited in the lawsuit by Conar, presented its internal policies and said that gambling advertising content should have been submitted for its approval, which did not happen. It informs you that the contents have already been taken down.

The rapporteur proposed the suspension of the announcement, considering that it violates several recommendations of the legislation and Conar. It also proposed a warning to the advertiser Sambawin, for hiring minors to advertise its products. His vote was accepted unanimously.

CAUSE MARKETING ADVERTISEMENT

Case No. 004/23 - in ordinary appeal

Title: SOUZA CRUZ, TENDO O UOL COMO TERCEIRO INTERESSADO - CIGARROS ELETRÔNICOS

Plaintiff of the Claim: Conar Superior Council

Advertiser and/or Advertising Agency: Souza Cruz, with UOL as an interested third party

Decision: Recommendation to modify or correct the advertisement **M**

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SUMMARY

This representation originated in a letter sent by the 6th Consumer Justice Prosecutor's Office of the Public Prosecutor's Office of the State of São Paulo, questioning an alleged advertisement "Electronic Cigarettes", published on the UOL website, under the responsibility of Souza Cruz - Bat Brasil. As provided for in Conar's Bylaws, in the event of a complaint by a public authority, it is assumed by the entity's Board of Trustees.

The Attorney General's Office questions whether the alleged advertisement meets the recommendations of the Code with regard to its identification with advertising and whether it discloses a product that does not comply with the laws of the country - Anvisa resolution and federal law prohibit the commercialization, importation and advertising of electronic devices of any type for smoking - and whether it encourages illicit activities, in this case, the use of so-called electronic cigarettes.

UOL is part of the representation as an interested third party, in response to the express request made in the complaint, having presented a defense in which it considers that the content disclosed on its website is adequately signaled and identified as advertising, under the format "branded content".

Souza Cruz, on the other hand, explained in its defense that the scope of the ad was to foster the debate about the regulation of electronic cigarettes, through the dissemination of informative texts, fearing that Conar is being used as an instrument to promote censorship of freedom of expression. On the merits, the defense considers that it did not promote advertising, that it did not offer electronic cigarettes and that the images used do not have brand elements. It also stated that it does not sell the product in Brazil and that the link provided in the ad no longer presents the content.

The lower court rapporteur rejected the arguments of Souza Cruz's defense that it is not advertising, because it does not offer the sale of the product. "The advertising purpose of selling is not only perceived in its form and content, but in the relationship between them and them with the context in which they are inserted," he wrote in his vote. "The boundary between journalistic and advertising information has to be crystal clear. After all, the journalistic-informative text enjoys the prerogative of touching on certain subjects, advertising does not. And this is not censorship, as claimed by the defense. Censorship, in advertising, is to prevent a lawful product from being fully disclosed, not to prevent a product considered illegal from having its disclosure prevented."

For the rapporteur, since it is clear that it is an advertisement - as explained by UOL's manifestation - and since the legislation prohibits the dissemination of advertisements for electronic cigarettes, there is no other way than to consider the case as unethical advertising. For this reason, he proposed the suspension aggravated by warning to Souza Cruz. His vote was accepted unanimously.

The advertiser appealed the decision,

repeating its initial arguments, that it is important to discuss the issue.

The appellate court rapporteur began his vote by agreeing that the material object of this representation is of an advertising nature, taking into account the fact that Souza Cruz sells electronic cigarettes in countries where they are tolerated.

He disagreed, however, with the conclusions of the lower court, pointing out that it constituted advertising of a cause, and not of a product. For this reason, it voted to dismiss the complaint in relation to these and other issues related to the advertisement that discloses the text of the discussion on the regulation of electronic cigarettes.

Regarding the banner that leads to the ad, the rapporteur understood that it has the characteristic of product advertising. For this reason, he proposed the amendment, "so that they refrain from using images and calls that may configure product advertising, without prejudice to the use of the format for the presentation of content that effectively corresponds to the claimed scope, of invitation to debate". It was joined by a majority vote.

Case No. 169/23

Title: ABRANET
-#NÃO MEXANOPARCELADO SEM JUROS - OS
GRANDES BANCOS QUEREM ACABAR COM AS SUAS
COMPRAS PARCELADAS SEM JUROS

Plaintiff of the Claim: Brazilian Federation of Banks, Febraban, Itaú Unibanco, Banco Bradesco and Banco Santander

Advertiser and/or Advertising Agency: Brazilian Internet Association, Abranet

Decision: Recommendation to suspend the broadcasting of the advertisement 

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SUMMARY

Febraban and the banks Itaú, Bradesco and Santander filed a lawsuit with Conar against Abranet's advertising campaign on TV, website and social networks because they consider that it disseminates untrue information by imputing to banks support for the extinction of interest-free installments on credit cards, under study by the Central Bank in the midst of the debates on the bill on debt renegotiation launched by the Federal Government. called "Desenrola Brasil".

According to the complainants, there is no basis for such information, other than to exploit consumers' sense of fear and lack of knowledge. Abranet's campaign, according to the complaint, would not have provided any clarification or legitimate subsidy, not contributing to the information and science of consumers on the subject, limiting itself to the inflammatory tone and the imputation of untrue information, associated with the encouragement to share it with the largest number of people, amplifying the negative impact. A public note was attached to the complaint in which Febraban states that there is "no intention to put an end to

purchases in installments on credit cards." The note mentions that, among the analyses of the causes of interest rates practiced in the country, there would be studies pointing to the higher incidence of default in long-term installment purchases, mentioning the need to rebalance the cost and risk of credit. He emphasizes, however, that none of the models under study would be based on the assumption that the current model would be broken.

The complaint recalls that "cause advertising" is capitulated by the Brazilian Code of Advertising Self-Regulation, being subject to the legal system and ethical principles, having the same obligations of truthful presentation and prohibition of abusiveness of other advertising modalities.

An injunction to suspend the advertisements was granted by the presidency of Conar, based on articles 29, 30 and 31, paragraph I, of the Internal Regulations of the Ethics Council, for the verification of the plausibility of violation of the principles of the Code, as well as the configuration of the urgency requirement.

Abranet asked for the injunction to be reconsidered, considering that the campaign would not contain misleading information and pointing out that Febraban's own note would be contradictory in relation to its title, by mentioning "studies indicate the need for measures to rebalance the cost and credit risk", without such studies being presented. It also considers it to be salutary to disclose different positions and discussions that impact the consumer's purchasing capacity. Despite these and other arguments by Abranet, the injunction was confirmed.

This was followed by a conciliation meeting promoted by Conar, which, however, was unsuccessful. Febraban filed a complaint of

non-compliance with the injunction.

No new arguments were presented by Abranet's defense.

The rapporteur of the representation confirmed in her vote the recommendation to suspend the campaign. She wrote in her vote: "the discussion is underway to reduce the interest on the revolving credit card. Such a discussion should cover the composition of such interest, which indicates the relevance of the public debate on the issue. There is in the records the correlation made by representatives of the banking sector between such revolving interest and the modality of interest-free installments on the card, having been mentioned 'rebalancing', 'redesign of the model', 'limitation of the number of installments', among the topics discussed".

Regarding a comparative reference on the subject, the rapporteur quoted an excerpt from an article by the Advertising Standard Authority, an English advertising self-regulatory body, which points out: "(...) Certain types of claims, such as those made by pressure groups, charities or activists, are likely to promote one point of view over another. These groups are not required to present a balance between arguments for and against in their advertisements, and the Code states that the ASA does not arbitrate between conflicting ideologies. If marketers are obviously expressing views about their beliefs, the ASA is unlikely to intervene unless the parties mislead or offend (Lydd Airport Action Group, 27 June 2007). However, marketers are still expected to ensure that their claims are accurate and supported by evidence (Friends of the Earth Ltd, 10 July 2019, and Both Lives Matter, 2 August 2017)." Available in:

<https://www.asa.org.uk/advice-online/matters-of-opinion.html>

For the rapporteur, the categorical statement about actions and intention to end the interest-free installment payment on the credit card, imputed to the large banks, present in the denounced ads, was not proven by the advertiser, being divergent from the official position disclosed by the sector, in a note from Febraban, motivating the recommendation for the suspension of the ads. His vote was accepted unanimously.



CHILDREN AND TEENAGERS

Case no. 264/22 - in ordinary appeal

Title: AMAZON - MASTUBRATION TOYS

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Amazon Serviços de Varejo do Brasil

Decision: Recommendation of suspension of advertisement and warning to advertiser  

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SUMMARY

Consumer complained to Conar about an advertisement for an adult product inserted in the children's toys page on the Amazon marketplace.

The advertiser defended itself, alleging that there was an error of responsibility on the part of the seller in the categorization of the product. It informs that the ad was removed as soon as it received the notification from Conar.

The decision of the first instance was based on the understanding expressed by the author of the winning vote, that the marketplace is responsible for the information disclosed, even if inserted by a third party, as in the case in question. The vote states: "Even though the advertiser has indicated in its defense that it has judged in the STJ (REsp No. 1.383.354/SP) protecting platforms from third-party liability within its marketplace environment, Conar does not address the consumer relationship between end customer, partner seller and platform. The purpose of this body is to regulate advertising and the advertising rule applies to the advertising platform, since this body does not deal with the origin of the product, quality assurance, etc."

The vote continues to point out that it is inappropriate to insert the adult product advertised in an environment that, due to the

theme of the other products advertised (toys), impacts minors.

That said, the Ethics Council decided by a majority of votes for the recommendation of suspension aggravated by a warning to Amazon, as it understands that the question raised here - the protection of the child - requires extra care.

The advertiser appealed the decision, but saw it upheld by a majority vote by the second instance. The rapporteur of the appeal explained his recommendation: "there is no argument that the error is made by a third party. Although the input of the information is from the seller, it is clear that the ad itself, on a search screen with several other products generated by the advertiser itself on its platform, is indeed an advertisement of this and it, therefore, is subject to the rules and implications of the Code. In this sense, Amazon itself admits in its defenses that it counts on and is dedicated to improving automated and human mechanisms for reviewing and controlling this type of situation, which clearly did not work for this case."

The appellate court rapporteur continues: "In view of this, there is no room for the argument that all precautions would have been adopted and that this is sufficient to exempt the advertiser. In a world in which Amazon is inserted, of artificial intelligence, machine learning, delivery of products by drones, among others, it cannot be admitted that it is not capable of developing a technology or minimum internal processes that can previously verify and prevent this type of exposure".

Case No. 119/23 - in ordinary appeal

Title: CERVEJARIAS KAISER BRASIL (AMSTEL) - O OVO DE PÁSCOA QUE EU QUERIA

Plaintiff of the Claim: Ambev

Advertiser and/or Advertising Agency: Cervejarias Kaiser Brasil (Amstel)

Decision: Recommendation to suspend the broadcasting of the advertisement 

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SUMMARY

Ambev represented at Conar against a post published on a social media profile (Instagram) of Amstel beer, which is the responsibility of Cervejarias Kaiser Brasil. The ad, aired on the eve of Easter, shows a chocolate egg filled with a bottle and a can of the beer, with the title above. The complaint mentions the direct allusion to children's toys and gifts associated with alcoholic beverages, a product prohibited to minors and in advertising of which any association with the children's universe is frontally disapproved by advertising ethics. The rapporteur of the first instance of the representation recommended an injunction to suspend the petition until its judgment.

In its defense, Cervejarias Kaiser Brasil considers the piece to be just a joke associated with a promotion linked to Globo's BBB program, having been aired exclusively on the Amstel brand profile, in which access is conditioned to an age gate.

These and other arguments of the defense prevailed in the trial session. By majority vote, it was decided to archive the representation, following the proposal of the councilor who authored the winning vote. In her opinion, considering that all the precautions provided for in Annex P, which deals with the advertising

of low-alcohol beverages, were adopted, and that the content, by itself, would not arouse the attention of the children's public, since the reference used would not belong exclusively to this universe.

Ambev appealed the decision and, in the Special Appeals Chamber, saw its arguments prevail. By unanimous vote, it was decided to suspend the announcement, following the proposal of the rapporteur of the second instance.

He cited a central precept of the ethical rules for advertising in general aimed at children and adolescents - "the naivety and credulity, the inexperience and the feeling of loyalty of minors will be respected". He wrote in his vote: "this concern about the impact that an advertisement of alcoholic beverages on children and adolescents may have, regardless of age gate mechanisms, warnings and broadcasting times, is a concern that has to be of all of us, and even more so of the brands that advertise these drinks". The rapporteur cited data from CISA - Center for Information on Health and Alcohol, which show that experimenting with alcoholic beverages before the age of 15 increases the risk of addiction by four times. The report also identifies that 34.6% of students aged 13 to 17 had drunk their first alcoholic beverage under the age of 14, and for girls, this number increased to 36.8%.

Case nº 050/23

Title: CAMPARI DO BRASIL - CAMPARI TONIC FEAT - SIMPLES E ORIGINAL

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Campari do Brasil

Decision: Recommendation to sending a warning to advertiser 

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SUMMARY

Campari alcohol ads inserted in game apps (Alien Invasion and Earth Inc.) with age ratings for people over 10 and 9 years old, attracted consumer complaints to Conar. The non-targeting of alcohol advertising to minors is a basic precept of advertising ethics.

The advertiser presented its defense, alleging that the communication, executed through programmatic media, would have been intended only for consumers registered in the Rappi application database, for people over 18 years of age. Still, to avoid further questioning, the defense informs that Campari decided to take the broadcast off the air.

For the rapporteur, the disrespect for the recommendations of the Code, for the protection of children and adolescents in the advertising segment in question, is indisputable. He noted that the development and consolidation of programmatic advertising allows advertisers a high degree of control over the audience and the vehicles in which an ad may appear. "There is a set of techniques that can provide the desired protection and safety of children and adolescents, even if the ad is displayed on an online gaming website," the rapporteur wrote in his vote. "Considering the nature of programmatic media buying, it is

always incumbent on each advertiser to provide evidence demonstrating that the campaign strategy in question has taken into account the risks of showing an ad to anyone under the age of 18 and what strategies are in place to mitigate that risk. This may include campaign information, techniques used, statements from the providers of the solutions used, as well as other lawful means of proof that each advertiser deems useful to demonstrate its care with the duty to protect children and adolescents. It will be up to the judge to assess, in the specific case, whether the adoption of the measures brought is sufficient to parameterize the risk of displaying the ad to the protected public in the face of other available options."

He went on to say: "In the present case, I emphasize that the mere fact that the ad is displayed in a gaming application is not, in the judgment of this rapporteur, sufficient to define the violation of the provision, provided that the advertiser demonstrates that there are, in the context of the purchase of programmatic media, other instruments that are sufficient to properly mitigate the risks of displaying the content in relation to the child and adolescent audience. It so happens that in the present case, not only were those subsidies not sufficiently funded, but by decision of the advertiser the said campaign was taken off the air."

The rapporteur concludes by recommending a warning to Campari do Brasil, so that it adopts the necessary precautions so that the placement of advertising is carried out in accordance with the rules of advertising ethics, and, in particular, if programmatic media is used, it is responsible for maintaining evidence in order to demonstrate compliance with said standards. His vote was accepted by a unanimous or majority vote.

Case No. 176/23

Title: PEPSICO - PARTIDA ONLINE NÃO TEM PAUSE

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Pepsico do Brasil

Decision: Recommendation to modify or correct the advertisement 

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SUMMARY

Consumers complained to Conar about a Pepsico campaign aired in sponsored space and on the brand's profile on social networks (Youtube and Facebook). According to the complaint, the advertisement presents an example of potentially uneducative and harmful behavior, encouraging excessive use of screens and uninterrupted engagement in online games, including to the detriment of social and family contacts, while disallowing requests for moderation by parents, and may contradict the recommendation of the Code in its section 11, which gathers recommendations for the advertising of products and services to children and adolescents.

The advertiser informed in its defense that it does not agree with the complaint, considering that the ad is absolutely within the limits accepted and usually practiced by the advertising market. The expression "Online match has no pause" would not present the use in the plural or any expression that would be able to lead to the understanding that it would be an intense game routine, translating only that the pause is invincible and when it happens, Toddy would be the solution: "Online match has no pause, but when it does, it's time for Toddy!".

According to the defense, the media planning

was conceived and structured to reach the adult audience, not targeting minors, not presenting any content that involves children and adolescents or that may violate the necessary precautions to comply with the guidelines of advertising ethics.

These and other arguments did not convince the rapporteur. According to him, the claim that the advertising messages would not present content involving children and adolescents does not stand up to analysis, citing data collected on the Pepsico website. He recalls that the World Health Organization (WHO) formally recognized, in early 2022, addiction to video games and electronic games as a disease.

The rapporteur wrote in his vote: "if the WHO recognized addiction to electronic games and video games as a 'disease' and the advertiser itself recognizes as its target audience, children between 13 and 17 years of age, there is no doubt that the expression: 'What's up, gamer. How many times have you had your match interrupted by parents, crushes or friends? It's time to change this' can expose parents to situations of embarrassment, in addition to being an incentive to confront parents and good manners, also discouraging positive social values such as contact with friends and the practice of group and outdoor activities."

The rapporteur also identified a stimulus to the uncontrolled use of electronic games and video games in disagreement with the express guidance of the WHO and an imperative stimulus to consumption, insofar as he suggests that the only case that "justifies" a break in his "online match" would be to take a Toddy. It concluded by recommending that the advertising messages be changed so that they do not contain any stimulus to parents' confrontation and do not discourage the practice of outdoor activities and socializing

with friends, also emphasizing the importance of healthy eating. His vote was accepted unanimously.

Case No. 077/23

Title: WWART TACTICAL - COLETE TÁTICO INFANTIL

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Wwart Tactical Comércio de Equipamentos

Decision: Recommendation to modify or correct the advertisement and warning to advertiser  

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SUMMARY

An advertisement on the website of Wwart Tactical, a company that sells weapons, advertises what it defines as a "Children's Tactical Vest". In the descriptive text, he explains that it is "a real tactical vest for his little warrior", with magazine holders and handcuffs and a "little holster". A young child illustrates the ad.

In its defense, the advertiser informs that the vest is only a garment, not having a ballistic plate. It considers that the advertisement does not mention firearms and that the site is frequented only by adults and that it offers pressure guns and airsoft.

The rapporteur was not convinced by the defence's arguments. He justified in his vote: "there is no express prohibition in the legislation on the sale of war vests to children and adolescents. It is a product that can circulate freely in the trade. But advertising that uses the image of minors and their potential consequences are contrary to the provisions of advertising control and child protection in the Brazilian legal system." He voted to change the ad, with the exclusion of the image of the child in the content offered, being unanimously accompanied.


COPYRIGHT AND PLAGIARISM

Case nº 155/22 - in ordinary appeal

Title: HNK - FYS CONTÉM MENOS MARKETING

Plaintiff of the Claim: Lactalis do Brasil

Advertiser and/or Advertising Agency: Heineken Brasil

Decision: Recommendation to suspend the broadcasting of the advertisement. 

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SUMMARY

Videos posted on Heineken's social media profiles (Facebook and Instagram) promoting soft drinks have attracted complaints from Lactalis, alleging that they violate and disparage Parmalat's Mammals campaign, which has been running since the 1990s. Instead of children, the reported videos show adults dressed as mammals. In the background, although the rhythm of the jingle refers to the music of the original campaign, the lyrics say that "cuteness in advertising is a marketing thing" and that Fys does not use any of this to convince the consumer, because it has "less sugar and less marketing". At the end, to reinforce the association with the Parmalat campaign, the question "Have you taken it?" is replaced by a "Burp?".

A conciliation meeting promoted by Conar did not result in an agreement, after which an injunction was granted until the judgment of the representation.

In its defense, the advertiser argued the use of parody, without depreciating the Lactalis brand, which was not even mentioned in the videos. The defense further claimed that the products are not competitors.

The rapporteur of the first instance fully agreed with the complaint, recommending the suspension of the videos, which was

unanimously followed.

Heineken appealed the decision, repeating its arguments, but these did not convince the appellate court rapporteur. He began his vote by making clear the legitimacy of the use of parody in advertising. "What is at issue here is not the right to use this resource, but rather the way in which it was used," he wrote in his vote. Agreeing with the initial decision, he proposed the suspension, which was again accepted unanimously.

Case No. 222/22 - in ordinary appeal

Title: DPA BRASIL - NOVA CAMPANHA NESFIT@

Plaintiff of the Claim: Danone

Advertiser and/or Advertising Agency: DPA Brasil

Decision: Complaint denied 

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SUMMARY

Danone represented at Conar against the campaign of competitor DPA Brasil, promoting the Nesfit line on TV and internet. Danone considers that there is too much similarity in message, scenes and music between the campaign that is the subject of this representation and another, of its authorship, previously broadcast, to promote the Activia line of probiotic products.

The complaint also questions claims of performance of DPA Brasil's product. There was a recommendation by the rapporteur for an injunction of suspension, since the conciliation meeting promoted by Conar did not result in an agreement.

In its defense, the advertiser contested the competitor's arguments, considering it to be "routine" in advertising of this kind to show the denounced scenes. Still, he considers that the scenes are distinct enough to avoid confusion among consumers, including the continuous exposure of his product's brand.

The rapporteur accepted the defense's arguments, including revoking its preliminary recommendation. For him, the details of the films are not the fulcrum of the discussion. "The essence is that both commercials explore the theme of routine and that is what we must focus on," he wrote in the rapporteur, accepting the thesis that the structure of the films follows

the practice of the segment.

The rapporteur also accepted the defense's arguments on the performance of the product, concluding with the recommendation to close the case, which was unanimously accepted.

Danone appealed the decision, but its arguments did not prevail in the appellate chamber, which unanimously accepted the opinion of the rapporteur of the appeal, who did not make any corrections to the initial decision.

Case No. 117/23 - in ordinary appeal

Title: FERRERO - KINDER TRONKY - UMA DELICIOSA PAUSA NA SUA ROTINA

Plaintiff of the Claim: Nestlé Brasil

Advertiser and/or Advertising Agency:: Ferrero do Brasil

Decision: Complaint denied D

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SUMMARY

Nestlé questioned at Conar whether competitor Ferrero incurred irregular advertising when promoting its Kinder Tronky product, alleging infringement of principles of the Copyright Code. According to the complaint, the campaign aired on social networks (Instagram and Facebook) and institutional page would use elements present in previous Nestlé ads, promoting Kit Kat, whose claim, used around the world, is "Have a break. Have a break, have a Kit Kat". The expressions are registered by Nestlé with the INPI.

In its defense, the advertiser argues that the language used in the campaign follows the standard of the Kinder line, ensuring that the consumer recognizes that it is a Ferrero product and that, therefore, it would have no relationship with the Nestlé product.

These and other arguments of the defense convinced the rapporteur of the first instance. Considering that there had been no disrespect for the recommendations of advertising ethics, he proposed the archiving of the representation, which was unanimously accompanied.

Nestlé appealed the decision, but it was unanimously upheld by the appellate chamber, following a proposal by the appellate court rapporteur.

SOCIAL RESPONSIBILITY AND DECENCY

Case No. 253/22

Title: TEREOS - RESPEITO NA MEDIDA - VAMOS JUNTOS MUDAR O FUTURO DA CULINÁRIA BRASILEIRA

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency:: Tereos Açúcar e Energia Brasil

Decision: Recommendation to modify or correct the advertisement "Social Experiment" and complaint denied regarding the other questions M D

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SUMMARY

A consumer alleges that a Tereos ad, published on a profile on social networks (YouTube) and on a website, despite the meritorious intention of combating prejudice, ends up serving as a trigger for negative experiences, especially by exposing the child protagonist of the ad to the question: "What if I told you that the name of this candy is tita de nega?".

According to the defense, the Advertisement does not violate any provision of the Code, on the contrary: it is based on the values and principles defended by advertising ethics, seeking to be an effective and responsible initiative of awareness and social impact. The defense reports that the challenge proposed by the advertiser is to disassociate, from the rich history of Brazilian cuisine, biases that, even if unintentionally, contribute to gender and racial stigmatization.

The rapporteur wrote in her vote: "the advertisement in question proposes a reflection for the whole society, a strategy that has been widely used in recent advertising of various brands and products. Like any proposal for reflection, it causes discomfort, questions

and doubts in its audience, as it touches on very important issues, especially in a country like ours where sexism and racism are structural and, therefore, hide and camouflage themselves in every corner; in concepts, names and expressions that are widely repeated and that go 'unnoticed' in our daily lives. Proposing a closer look at this 'symptom' of sexism and racism that invades our routines disguised as history and tradition seems to me to be absolutely positive."

He goes on to say: "with regard to the choices of execution of the campaign (in this case more specifically the video of the ad in question, which features children as protagonists), I understand that the advertiser made the right choices: it sought support in the literature on the subject and support from institutes related to the causes; chose to script the video, minimizing any kind of discomfort or inadvertent exposure of the actors and actresses involved; He chose to represent children as an important part of this conversation and as driving forces of the changes that need to be put into practice in our society, but he did so in a careful way, with the knowledge of the families and the children themselves about the use of the terms and the discussion that would be proposed."

The rapporteur understands that the advertisement sins only in the attempt to appear to be something spontaneous, since it calls itself a "Social Experiment", leading to the erroneous interpretation that there would be no previously idealized script and, in this aspect, ends up infringing the Brazilian Code of Advertising Self-Regulation. Therefore, she recommended that this specific point be modified and that the other questions be archived.


His vote was accepted unanimously.

Case No. 030/23

Title: SUSSURRA BOUTIQUE - VOLTA ÀS AULAS SUSSURRA BOUTIQUE SENSUAL

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Sussurra Boutique Artigos Eróticos

Decision: Recommendation of suspension of advertisement and warning to advertiser  

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SUMMARY

An advertisement in outdoor media with the above title and illustrated with a photo of a banana with lipstick marks advertises a boutique of erotic articles. The ad, aired on the streets of Joinville (SC), attracted complaints from consumers, who considered it completely inappropriate, taking into account both the association with education and the fact that it is accessible to any type of public, including minors.

In its defense, the advertiser informs that the ad was aired before the back-to-school period and that it conducts lectures on sex education. On the merits, it considers that the announcement does not go beyond the recommendations of the Code.

The rapporteur did not agree with the terms of the defence. "It is clear and widely accepted in society that sex education should be valued and practiced from a certain age in childhood and especially in adolescence," he wrote in his vote. "However, it is necessary to take into account the most appropriate forums for debates and exposure of content. What is seen very naturally by some generates tremendous discomfort in others and, therefore, the way of communicating must be careful not to generate too much distance from important and sensitive

topics. The right context and care in relation to the correct targeting of advertising to the target audience must be observed." He concluded by recommending a warning to Whisper Boutique, which was unanimously followed. Their vote was supplemented by the recommendation to suspend the suspension, the latter by a majority vote.

DISCRIMINATION

Case No. 244/22

Title: MINISTÉRIO DA SAÚDE E AGU - TRAVESTI, NÃO DEIXE A SUA SAÚDE PARA DEPOIS. FAÇA O TESTE DE AIDS

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Ministry of Health of Brazil and Attorney General's Office, AGU

Decision: Recommendation to suspend the broadcasting of the advertisement S

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SUMMARY

This representation aims at a campaign disseminated in external media (poster) displayed in a health center in Armação dos Búzios (RJ), under the responsibility of the Ministry of Health. According to the complaint received from the consumer, the reference made in the main text of the advertisement may contribute to the discrimination and stigmatization of the LGBT population, hurting the dignity of this group of people and reinforcing the context of prejudice and violence that surrounds them.

The Ministry of Health presented a defense, informing about the objectives of the campaign, which emphasized and encouraged the early diagnosis of HIV and the secrecy and confidentiality of testing. He ended by informing that the campaign is no longer running.

The rapporteur began her vote by citing the great prejudice and violence that transvestites, transsexuals and people who identify with LGBTQIAP+ suffer in Brazil, despite transphobia being a crime. On the merits, she agreed with the complainant consumer. "The announcement, despite having as its agenda a very important subject, as it is really necessary to make the entire population aware of the

FOOD COMPOSITION

Case No. 043/23

Title: HABIB ´S - NOVA LINHA VEGETARIANA HABIB ´S - O SABOR DO HABIB ´S AGORA FEITO DE PLANTAS

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Alsaraiva Comércio, Emp. Imob. e Part. (Habib ´s)

Decision: Recommendation to modify or correct the advertisement 

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SUMMARY

Conar received more than fifty complaints from consumers against Habib's campaign on its website and social networks (Instagram and Facebook) with the above appeal, for not informing that, in addition to plants, some of the products advertised have eggs, milk and butter in their formulas.

In its defense, the advertiser argued that its product line is vegetarian and not vegan, which is duly highlighted in the advertising pieces and that, in view of the manifestations observed on the internet, it undertook a campaign to clarify this characteristic of the line.

The rapporteur partially accepted the arguments of the defence, considering that there was no nuance of deception in the campaign. However, considering the campaign's target audience - people who do not consume meat - he suggested the change, to exclude the terms "made from plants" and the like, including in the names of the products.

His vote was accepted unanimously.

importance of testing, should not have done it in this way, in which existing stigmas and prejudices are reinforced, by making a clear association of AIDS with transvestites," she wrote in her vote, recalling that AIDS is a disease that can affect any type of person and not just transvestites or people from the LGBTQIAP+ group.

Considering that the announcement violates several articles of the Code, she voted to suspend it, being unanimously accompanied.

Case No. 189/22 - in extraordinary appeal

Title: ZERO CAL - BEM NATURAL

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Hypera (Hypermarcas)

Decision: Recommendation to modify or correct the advertisement 

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SUMMARY

Consumer considers that the advertisement of the sweetener Zero Cal may mislead as to its composition, by highlighting that it contains a natural sweetener, called Erythritol, however, in addition to it, it would also contain the sweetener additive Sucralose, which cannot be defined as natural. The advertisement that is the object of this representation appears on the website and on the product label.

Hypermarcas defended itself, considering that the labeling of the product does not infringe the provisions of the health authorities and the Code of Ethics-Advertising, much less has the power to generate confusion, as it only highlights that the natural sweetener is in greater quantity in the product, without failing to inform that it contains sucralose, both on the front label and on the back of the package. In addition, at no time is the product advertised as being made exclusively with the natural sweetener.

The rapporteur of the first instance, however, upheld the complaint, recommending that the marketing campaign be altered, including the label, so as not to generate confusion about the composition and characteristics of the product. His vote was accepted unanimously.

Dissatisfied, Hypermarcas appealed the decision, repeating its initial arguments and

considering that the recommendation went beyond the terms of the complaint, by including the product label.

These and other arguments of the advertiser were partially accepted by the appellate chamber which, unanimously, decided to change the packaging label within 180 days and the advertisements, and to archive the recommendation to replace the expression "Natural Good", which would be the name of the product line. In both cases, the recommendation of the rapporteur of the appeal was accepted by unanimous vote.

The advertiser filed an extraordinary appeal against the decision, considering that it did not take into account the health legislation. For Hypermarca, if Conar's recommendation were adopted, the Ministry of Health's determination would be contradicted. On the merits, it reiterates that it has complied with its duty to present its product in strict compliance with the regulatory technical standards, with due responsibility, with the correct description that the sweetener is composed of both erythritol and sucralose.

The rapporteur of the extraordinary appeal agreed in her vote that the packaging of the product is in perfect compliance with the legislation and that the information on the presence of sucralose is duly informed. However, she considered that, for the lay consumer who accesses the product's website and comes across claims of a healthier product, with emphasis on the name of the product, the information brought and confirmed by the advertiser itself that, in addition to the natural ingredient, the product contains an artificial ingredient in its blend, is not clear.

Thus, weighing the content of the considerations and decisions previously

MEDICATIONS AND AESTHETIC PROCEDURES

Case No. 095/23

Title: CELLERA E MEU DIA DE TRABALHO - CETOBETA

Plaintiff of the Claim: Conar by own initiative

Advertiser and/or Advertising Agency: Celleria Farmacêutica

Decision: Complaint denied D

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SUMMARY

An advertisement for Celleria's drug published on the influencer's profile Meu Dia de Trabalho on social networks (TikTok) contradicts the legislation and recommendation of the Code and its Precedent of Jurisprudence No. 2, according to which ethical medicines - those that can only be marketed with a medical prescription - cannot be advertised in mass media.

In its defence, Celleria claims to be completely unaware of the advertising initiative and not to have authorised or contracted it.

The rapporteur accepted the terms of the defence and proposed that the representation be dismissed. His vote was accepted unanimously.

After the deliberation, the councilors of the Fourth and Fifth Chambers approved a motion to the Board of Directors of Conar, so that the TikTok platform, the competent authorities, in particular Anvisa, and the associations representing the professional category - Federal Council of Pharmacy, Brazilian Association of Pharmacy and Drugstore Networks and Brazilian Federation of Associative and Independent Pharmacy Networks - are officiated, informing them of the decision and the concern expressed and of the importance of analyzing the adoption of the appropriate measures in the face of the

rendered, considering the possible impact of the advertisement on the consumer public, the rapporteur recommended the partial maintenance of the previous decision, by changing the advertisement published on the product's website, ensuring clarity, transparency and ostensiveness in the information about the ingredients and the presence of artificial sweeteners associated with the natural ingredient with regard to the liquid product, Considering that the other products in the line do not have sucralose in their composition. His vote was accepted unanimously.

By majority vote, the Plenary of the Ethics Council decided by motion to the board of directors of Conar, in the sense that the convenience of opening an ethical representation to examine the use of the appeal "Natural Good" in the advertising of the product Zero Cal Erythritol liquid is analyzed, considering that in the composition of the product there is the presence of natural sweetener - erythritol -, as well as artificial sweetener - sucralose -, having recommended that such diligence be extended to the examination of advertising of similar products in the segment.



content disclosed on a social network profile, even if it is based on information that it does not constitute advertising contracted by the advertiser, but involving the disclosure of commercial brands of medicines for sale under medical prescription, whose legislation and regulations in force provide for the prohibition of disclosure in mass communication vehicles, which should, therefore, remain restricted to journals aimed at physicians and other professionals authorized to prescribe drugs.

Case No. 018/23 - in ordinary appeal

Title: CREMESP E AGÊNCIA BRICK - SE ALGO DER ERRADO VOCÊ VAI PARAR NAS MÃOS DE UM MÉDICO

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Conselho Regional de Medicina de São Paulo and Cremesp

Decision: Recommendation to modify or correct the advertisement and sending a warning to advertiser  

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SUMMARY

A campaign of the Regional Council of Medicine of the State of São Paulo, Cremesp, created by the Brick Agency and published on social networks (Instagram, Facebook, Youtube and LinkedIn), attracted a complaint at Conar of the Regional Council of Pharmacy of the State of São Paulo, CRF-SP. The complaint alleges that the campaign can be misleading, leading to the understanding that only the medical profession would be able to perform aesthetic procedures, regardless of the degree of invasion of these.

According to the complaint, the allegation of private activity of the medical profession would not be true, considering that Federal Decree No. 20,931/32 establishes that non-surgical invasive procedures can be the responsibility of professionals from other areas of health, as long as they are non-invasive. The campaign ads are illustrated by images of people with injuries and deformities on their faces.

In its defense, the Brick agency claims that the campaign aims to make the population aware of the risks of performing medical procedures with unqualified professionals, coinciding with the tenth anniversary of the Medical Act law. On the merits, it states that the campaign is true and based on real cases,

with no intention to frighten, but rather to inform and educate the public. In addition, the ads make no reference to pharmacists or the activity.

These arguments were reaffirmed in the defense sent by Cremesp. The intention of the ads is, in a pedagogical way, to warn the target audience about the risk of performing procedures that are private to doctors. He considers that the pieces would not have the power to induce or imply that only doctors can perform aesthetic procedures, even stating the opposite.

The first instance rapporteur recognized the importance of the topic, considering the risks of errors in aesthetic procedures. However, it recommended the suspension of the campaign due to the way it was conceived, considering it exaggeratedly impactful and likely to frighten the public, which contradicts recommendations of advertising ethics.

The rapporteur wrote in her vote: "without going into the issue that is already being widely debated in the Judiciary, about the possibility of performing more or less invasive procedures by professional categories other than doctors, considering the context of the announcement and the way in which the message 'if something goes wrong...', as well as 'require the presence of a doctor'? was constructed, it ends up acquiring a tone of threat to the consumer, making him really believe that such procedures are exclusive to the medical profession, which, according to the documents and legal texts brought to the records, does not seem to me to be the case". His vote was accepted unanimously.

The Judging Chamber determined that the recommendation be accompanied by an additional record, that it is aimed at the specific campaign object of the representation, in the

way it was presented, due to confusion and inappropriate appeals, and there is, therefore, no restriction related to the dissemination of awareness and care campaigns to be adopted by consumers, liberality initiatives by sectoral entities, considered relevant.

Anuncio and the agency appealed the decision, repeating the arguments of alert and didactic approach of the campaign, with its objective being to promote the safety of patients and the proper application of the law, seeking to avoid procedures carried out by unqualified people, in order to protect the health and well-being of the population.

The Special Appeals Chamber decided, by majority, following the proposal of the author of the dissenting vote, for the amendment, so that the advertisements are modified, in text and image, in order to eliminate the confusion caused in the advertisements, between aesthetic procedures and medical procedures, having been highlighted the relevance of the campaign and the fundamental awareness of the consumer for the choice of qualified professionals. However, it was found that the content of the campaign, confirmed even by references to the indexing keyword (hashtag), ends up causing confusion between medical procedures, exclusive to the respective professional category, and aesthetic procedures in general.

On the other hand, the recommendation of warning to Cremesp and Brick Agency, formulated by the rapporteur of the ordinary appeal, was unanimously accepted, in view of the non-compliance with the recommendation of the 1st instance.

TRUTHFULNESS

Case No. 078/22

Title:: "IFood, BENJAMIM COMUNICAÇÃO E SOCIAL QI - SQI E MII FERREIRA: "NÃO BRECA MEU TRAMPO", "FACA NA CAVEIRA", "MII FERREIRA - EU SOU BOA, BOA DE BOCA, BOA DE GARFO, COLHER E FACA! RS"

Plaintiff of the Claim: Conar by own initiative

Advertiser and/or Advertising Agency: iFood

Decision: Complaint denied 

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SUMMARY

This representation was opened on an investigative basis after a complaint from a consumer, for alleged use of spurious advertising technique and dissemination of posts and comments on social networks (Facebook, Instagram and Twitter) through profiles that would supposedly be the responsibility of iFood and the agencies Benjamim Comunicação e Social QI - SQI. The posts would simulate organic content from users, defending positions related to topics related to app delivery people.

After hearing the parties, the representation was transformed into litigation, limited to posts that clearly had an advertising purpose for iFood on the Twitter profile of "@MiiFerreira6", by mentioning the brand and commercial offers.

The companies cited defended themselves by stating, in summary, that they had no relationship with the profile and the posts in question, which would be the result of spontaneous action of the accused "@MiiFerreira6" profile.

In delimiting the object, the rapporteur discussed the multifaceted nature of the case, which would involve the denunciation of an astroturfing action, presenting the concept as "a deceptive practice used in marketing,

advertising, politics and public relations, by which a popular movement or public opinion seems to arise spontaneously and organically, but in fact is being orchestrated by an organization with an interest in shaping public opinion. The term comes from AstroTurf, a brand of synthetic grass designed to look like natural grass, hence the metaphor: it looks like a genuine grassroots movement, but it's artificial. Astroturfing can take many forms, such as hiring people to post online reviews praising a product or attacking its competitors, creating fake social media accounts to generate artificial buzz, or paying for seemingly independent endorsements. These tactics can be used to create the impression of broad support or opposition to a specific idea or product, influence public opinion, or manipulate consumer behavior," the rapporteur explained in his vote.

He goes on to indicate that these allegations, however, are beyond the scope of Conar and were resolved through the TAC entered into by iFood, Benjamim and SQI with the MPF and MPT, by which the companies assumed a series of obligations without, however, acknowledging the practice of any illegality.

With regard to the posts on the indicated profile, even though he detected elements indicating that they would not constitute spontaneous content, the rapporteur considered that, in view of the absence of proof of responsibility of the companies in the disclosure of such posts and considering similar precedents in the Ethics Council, which privilege what is declared by the companies about interactions with influencers, There would be no way to recommend any disapproval or penalty to the companies. The rapporteur also proposed a communication to the author of the "@MiiFerreira6" profile, warning him about

the lack of transparency about the authorship and nature of his posts.

His vote was accepted unanimously.

Case No. 238/22 - in ordinary appeal

Title: UNILEVER - COMFORT, CAMPANHA #1

Plaintiff of the Claim: P&G do Brasil

Advertiser and/or Advertising Agency: Unilever Brasil

Decision: Complaint denied D

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SUMMARY

P&G represented at Conar against a campaign in several media outlets by competitor Unilever, more specifically against claims of superiority of Comfort - "Brazil's most beloved fabric softener" and "N.1 in Brazil in fabric softeners".

According to the complaint, such allegations do not hold up from the research used by the advertiser. An attempt at conciliation promoted by Conar was unsuccessful. The rapporteur then granted an injunction to suspend the first claim, considering that the research that gave rise to it does not support such an allegation.

In its defense, Unilever said it had suspended the use of the claim "... most beloved..." and that he considers it ethical and properly informed in the campaign to support the claim "N.1...".

In the first instance, the Ethics Council, unanimously, followed the vote of the rapporteur, for the maintenance of the preliminary suspension of the claim "... most beloved..." and for the filing of the complaint in relation to the other claim, recognizing its regularity both from the perspective that the expression "N.1" can be used in various contexts and not only indicating a sales leader, and with respect to the adequacy of the disclaimer to contain information from the research and respective support, since it appears in the advertisement 100% of the

time.

P&G appealed against this recommendation, but it was confirmed by a unanimous vote of the Special Appeals Chamber, which followed the understanding of the appellate court rapporteur.

Case No. 178/23

Title: "UNILEVER BRASIL - O SEGREDO DOS PERFUMES QUE NUNCA ACABAM"

Plaintiff of the Claim: P&G do Brasil

Advertiser and/or Advertising Agency: Unilever Brasil

Decision: Recommendation of suspension of advertisement and warning to advertiser S W

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SUMMARY

P&G represented at Conar against competitor Unilever's campaign in several media, publicizing the presentation of the fabric softener Confort with the above claim, which it considered untrue and lacking in any proof. A conciliation meeting promoted by Conar did not result in an agreement.

In its defense, the advertiser considers that it has made use of the puffing technique, which is normal in advertising and incapable of misleading the consumer. In addition, it considers that there is technical support for the claim, either because of the product's ability to create olfactory memory, or because of the technology used, of perfume microcapsules with melanin structure. The defense attached supporting documents to its arguments.

The rapporteur considered that the promise made by Unilever is the "perpetual" extension of one of the main objectives of the advertised product category: the guarantee of eternal perfume. He wrote in his opinion: "the advertiser seeks to justify the validity of the claim by claiming that there would be permanent effects by adducing that olfactory memory would bring the sensation that the fragrance would perpetuate itself over time. It so happens that, in order to bring categorical

statements of essential characteristics of the product in advertising, it would be necessary to present their respective proofs. In this case, the advertiser presented laboratory documents, stating that the fragrance would last for at least one hundred days on the fabric after washing. So, even though it lasts for a long time, it can't be said that the perfume doesn't end. The term 'never', in addition to being complete, is definitive and without room for interpretation."

That said, the rapporteur voted for the suspension aggravated by a warning to Unilever for the unethical use of an attribute relevant to the category. It was joined unanimously.

Case No. 090/23

Title: CHAT MONEY - CHATGPT: NOVA INTELIGÊNCIA ARTIFICIAL DO ELON MUSK ESTÁ PAGANDO 50 DÓLARES POR DIA

Plaintiff of the Claim: Conar by own initiative

Advertiser and/or Advertising Agency: Chat Money



Decision: Recommendation of suspension of advertisement and warning to advertiser

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SUMMARY

Conar's management proposed representation against ads of responsibility of the advertiser Chat Money published on the website and in sponsored insertion in the skippable in-stream format on social networks (Youtube) with promises of high financial gains, amid a series of appeals seen as embarrassments for the evaluation and decision-making by the consumer, especially in online purchases. such as the arguments of conspiracy, urgency, scarcity, and pressure - "if you have landed on this page for some reason you can take advantage of the opportunity to have one of the remaining 34 accesses to Chat Money", for example.

In advertising, the nature of the offer, presented only as an artificial intelligence tool, is not clear, leaving even more doubts about the plausibility of the high financial results proclaimed. In addition, public figures, such as entrepreneur Elon Musk, are quoted and shown in images, with the use of fake celebrity endorsements, in an attempt to give greater credibility to the offer.

Despite being regularly cited by Conar, the advertiser did not present a defense.

The rapporteur has upheld the complaint.

For him, it is evident that the ad violates the Brazilian Code of Advertising Self-Regulation by exploiting consumer confidence, their inexperience and lack of knowledge on the subject, among other problems. It concluded with the recommendation of suspension aggravated by a warning to Chat Money. His vote was accepted unanimously.

SHAMEFUL BEHAVIOR

Case No. 225/22 - in ordinary appeal

Title: BURGER KING - NÃO LAMBA ESTA TELA

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: BK Brasil Oper. e Asses. a Restaurantes (Zamp/Burger King)

Decision: Recommendation to modify or correct the advertisement 

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SUMMARY

BK Brasil's campaign, promoting a Burger King sandwich, sought engagement, inviting consumers to lick the TV screen while the movie is shown and post the image accompanied by a hashtag. The campaign, aired on TV and social media, generated complaints from consumers, who considered that it invites them to vexing behavior. One of the complaints received by Conar also alludes to the fact that the hashtag can lead to content that no longer meets the care of children and adolescents. The campaign was publicized in a commercial on TV Globo and on a social network profile (Facebook), promoting user engagement through a hashtag on social media (Instagram).

BK Brasil's defense considered the campaign obviously playful, and it was not necessary for the consumer to actually lick the screen, the mere simulation being enough to activate the game. BK vehemently denied the possibility of an association between its hashtag and erotic content, noting that the campaign's media planning targeted adults.

The rapporteur accepted the defense's last argument and recommended that the complaint be closed. Regarding the complaint about encouraging vexatious behavior, he followed the criticism of consumers. "I believe that suggesting that a person lick their TV

AMBUSH MARKETING

Case No. 247/22 - in ordinary appeal

Title: "CERVEJARIA PETRÓPOLIS - PETRA ORIGEM PURO MALTE" E "LEITE DE PETRA"

Plaintiff of the Claim: Ambev

Advertiser and/or Advertising Agency: Cervejaria Petrópolis

Decision: Recommendation of suspension of advertisement and warning to advertiser **S** **W**

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SUMMARY

Ambev's complaint motivated this representation, against a campaign on social media profiles (Instagram, LinkedIn and Youtube) and website of competitor Cervejaria Petrópolis, aired on the eve of the 2022 FIFA World Cup Qatar, with references to the event.

According to the complaint, Cervejaria Petrópolis engaged in ambush marketing, violating the exclusivity rights of Budweiser, Ambev, by associating its brand with the World Cup and the games of the tournament, as well as the exclusivity rights of Brahma, also of Ambev, with the Brazilian National Football Team.

At Conar, the practice is provided for in article 31 of the Brazilian Code of Advertising Self-Regulation, which reads as follows:

Article 31

This Code condemns undue and illegitimate advertising revenues, obtained by means of "hitchhiking" and/or "ambush", through invasion of the editorial or commercial space of a media outlet.

Sole paragraph

Advertising profits obtained through the use of any artifice or ruse are considered undue and illegitimate; without support in a regular

and post it on their social network in exchange for a prize, can indeed lead to situations of embarrassment, not to mention the concern with hygiene, aggravated in this still pandemic period, especially since communication can be easily accessed by children and adolescents," the rapporteur wrote in his vote.

He proposed the change, so that the communication is clear regarding the conditions of the promotion, in relation to the fact that it is not necessary to reach the actual means to qualify for the award. He also suggested greater care in the access of children to the campaign, and should disseminate it on digital channels chosen for the appropriate age group. His vote was accepted by a majority.

There was an ordinary appeal filed by the advertiser against the initial decision, but it was unanimously confirmed in the second instance, and the chamber followed the proposal of the rapporteur of the appeal.

contract entered into between legitimate parties, providing for a lawful object; without the prior agreement of the Media and the other rights holders involved.

There was a conciliation meeting promoted by Conar. As no agreement was reached, the rapporteur recommended an injunction to suspend it until the judgment of the representation.

Cervejaria Petrópolis defended itself, explaining the creative contours of the campaign and denying disrespect for the recommendations of advertising ethics, understanding that mentions that could eventually be associated with the World Cup, such as "Middle East" and "morning game" would not constitute a parasitic association or undue advantage to the Petra Origem brand.

The defense also explained that "Petra's Milk" was a fictitious product, just a creative way to highlight the brand, which was duly signaled in the advertising pieces.

These and other explanations from the defense did not sensitize the lower court rapporteur, for whom "even though he did not directly mention the Qatar 2022 World Cup event or made any mention of the tournament's football games, the association is obvious and evident," as he wrote in his vote. He also mentioned the use of fictitious products. "Even though the ? Petra's milk? If it was a fictitious product and not offered for sale to the final consumer, it is a fact that it was distributed to influencers in the Six-Pack that publicized the campaign and widely highlighted in the press as a 'launch', as if it were a real product," said the rapporteur. "This conduct deserves condemnation regardless of the context of ambush marketing already analyzed, since the presentation of the

pack containing beer (category of alcoholic beverage) together with milk goes against all the principles of responsible consumption of alcoholic beverages."

The rapporteur concluded with the recommendation of suspension aggravated by a warning to Cervejaria Petrópolis, which was unanimously accompanied.

There was an ordinary appeal filed by the advertiser, but the initial decision was unanimously confirmed by the appellate chamber, following the proposal of the rapporteur of the second instance.

Case No. 191/23

Title: CERVEJARIAS KAISER BRASIL - SÓCIO-TORCEDOR AMSTEL - A TORCIDA DE TODAS AS TORCIDAS

Plaintiff of the Claim: Ambev

Advertiser and/or Advertising Agency: Cervejaria Kaiser Brasil (Amstel)

Decision: Recommendation to modify or correct the advertisement 

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SUMMARY

A complaint filed by Ambev with Conar motivated this representation, against advertisements for Amstel beer, from Cervejaria Kaiser Brasil, published in banners (programmatic advertising) on a news site and which associate the brand with several soccer clubs sponsored by Ambev's Brahma beer.

The ads invite consumers to register for the promotion "Amstel Fan Member - The cheering of all fans", with appeals such as "Hail, Corinthian nation", "Hail, São Paulo tricolor"; "Hail, Athletic supporter"; "Hail, tricolor carioca" and "Hail, Colorado fan", followed by "Join the biggest crowd of all" and "Enjoy exclusive benefits" and associated with an image of Amstel beer and an e-commerce button. Ambev considers the advertising action of the competitor unethical, unfair and violates the rights of the official sponsor Brahma, related to the association with the football clubs alluded to in the banners. An injunction was granted by the rapporteur of the representation.

The advertiser defended itself in Conar, denying the motivation for the complaint and informing that it is an official sponsor of the championships of the South American Football Confederation, Conmebol, and that the action

object of this representation is related to these competitions, involving the men's and women's Libertadores da América, among others. The "Amstel Supporter Membership" promotion is part of the campaign. The defense understands that the partnership between the advertiser and Conmebol is evident in the advertising pieces and stresses that badges, brands, mascots and any other symbol of the teams were not used in the campaign.

The arguments of the defence did not convince the rapporteur. For her, the fact that Amstel is the sponsor of CONMEBOL does not seem to guarantee her broad right to associate her brand with the soccer teams sponsored by Ambev, much more outside the context of the CONMEBOL championships.

The rapporteur wrote in her vote: "Although there is nothing irregular in the promotion carried out, it really seems to me that the call to action used, making express mention of football clubs sponsored by another brand, goes beyond the limits of Amstel's sponsorship, and may actually confuse consumers and lead them, unduly, to believe wrongly in the existence of an association between Amstel and the clubs of its fans, which sets up the practice of ambush marketing. Mainly because it is not possible to identify in the banners any reference to the CONMEBOL championships".

The rapporteur concluded with the amendment, so that the advertisements clearly indicate and contextualize that Amstel is the sponsor of the CONMEBOL championships and that they refrain from making the call of the clubs and their fans outside the context of the sponsorship of CONMEBOL and associated championships. His recommendation was approved unanimously.

SUSTAINABILITY CLAIMS

Case No. 255/22

Title: CAO A CHERY - TIGGO É BRASIL

Plaintiff of the Claim: Conar, por iniciativa própria

Advertiser and/or Advertising Agency: Caoa Chery Automóveis

Decision: Complaint denied D

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SUMMARY

Conar's management proposed this representation, against a TV ad promoting Caoa Cherry's model, for fear that it would disregard the recommendations of the Code, especially its Annex U, which deals with sustainability appeals in advertising. In the advertisement, scenes of the vehicle transiting on the sandy strip of the beach and in the water are shown, which can pose a risk to fauna and flora. The complaint recalls that in several municipalities in Brazil it is forbidden to traffic vehicles on the beaches.

In defense, the advertiser considers its ad respectful of both legislation and advertising ethics and that the film only highlights characteristics of the model, an SUV.

The rapporteur accepted these and other arguments of the defence. "Although nowadays it is debatable the impact that vehicle traffic can have on the ecosystem of beaches, forests and waterfalls, at first this is still not considered a practice that, by itself, objectively damages the environment, being the practice authorized and legal in several locations and, eventually, prohibited according to the rules of some municipalities", She wrote in her vote, for the dismissal of the representation, in which it was unanimously accompanied.

Case No. 025/23

Title: BRASKEM E GLOBO, COMO TERCEIRO INTERESSADO - A BRASKEM ENTROU NO BBB PARA INCENTIVAR UM FUTURO CADA VEZ MAIS SUSTENTÁVEL

Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Braskem with Globo Comunicação e Participações as third party interested

Decision: Complaint denied D

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SUMMARY

A group of consumers living in Maceió, a city impacted by an environmental disaster that occurred in 2018, sent a complaint to Conar, for considering misleading the content of merchandising actions promoted by Braskem in the 2023 edition of Globo's Big Brother Brasil program.

In the understanding of consumers, the company is responsible for the environmental disaster, which affected more than 15 thousand households in the city and caused a loss of more than 15 billion reais. As the problems remain unsolved so far, consumers understand that claims used in lawsuits are misleading, such as "an increasingly sustainable future" and "if everyone combines correctly, everyone helps the planet".

Braskem defended itself, informing that since the accident, it has been taking socio-environmental remediation measures and that it has created a program to support the affected population. It also reported that it has made adjustment agreements with the Public Prosecutor's Office, which are being fully complied with, including the payment of indemnities, adding proof of its allegations to

the process. Globo did not comment on the lawsuit, even though it was aware that it was cited as an Interested Third Party.

The rapporteur voted to shelve the representation. She understands that the environmental disaster caused by Brasken does not prevent it from creating an awareness and recycling program, as was the case with the campaign included in the program. His vote was accepted unanimously.

It was determined by the collegiate that judged the representation the record of the delimitation of Conar's competence, being stated that it does not extend to the examination of the regrettable facts that occurred in Maceió or the company's measures in the face of the reported tragedy. It was considered that the advertising campaign under examination was delimited and focused on the information of the recycling program, through the proof of the effective establishment of such program, and its corresponding disclosure in the advertising campaign, in a specific way, thus considered regular.

Case No. 109/23 - in ordinary appeal

Title: ALESAT COMBUSTÍVEIS - DAQUI PRA FRENTE, ENERGY!

A Plaintiff of the Claim: Consumer

Advertiser and/or Advertising Agency: Alesat Combustíveis

Decision: Recommendation to modify or correct the advertisement 

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SUMMARY

A consumer reported to Conar a campaign by Alesat Combustíveis for possible disrespect for the recommendations of Annex "U" of the Code, which deals with the use of sustainability appeals in advertising.

Advertised on websites and social media profiles (LinkedIn, Instagram and YouTube), the ads advertise fuel that offers sustainability and savings benefits - 30% less pollutant emissions and at least 7% savings in consumption - without clear and accessible information or sources that certify such advantages. In addition, the use of the "seal" and the UN symbol was questioned, since it was not clear which certifications would actually be attesting to it.

The advertiser defended itself, alleging that all the information presented in the advertisements has pertinent scientific proof presented by reputable and globally recognized bodies, attaching them to the ethical process.

In the first instance, the Ethics Council decided on the amendment, following the vote of the rapporteur, who recalled that, according to Annex "U", the information, in addition to being true, needs to be easily accessible and understandable by consumers, with data and arguments that can support the appeal

for sustainability. He detailed the necessary changes, including in the formulation of the sentences and the prohibition of the use of the UN logo or even verbal reference, due to lack of authorization.

Alesat Combustíveis appealed the decision, informing that even before the decision, it was already working to provide clearer information to consumers and that it had already stopped using the UN logo.

The rapporteur of the ordinary appeal did not, however, see the need to repair the initial vote. "In the opinion of this rapporteur, when it comes to a subject as sensitive and complex as sustainability, whose deep and technical understanding is not within the reach of a large part of the population, we must be very careful to keep the information simple, accessible and consistent and this is not being practiced by the advertiser, which violates Annex 'U'", She wrote in her vote, in which she detailed the necessary changes:

clarify that the reductions in fuel consumption are up to 7% and not at least 7% reduction, in all channels where the campaign was advertised;

With regard to the emission of pollutants, they should provide consumers with clear information about them and easily accessible to the consumer in this aspect, as well as on their website with the respective comparisons made.

His vote was accepted unanimously.

COMPARATIVE ADVERTISING

Case No. 229/22

Title: "SUMICITY - E AÍ, MUITO COMBO HOJE? CLARO! EU VIVO EMPURRANDO TELEFONE FIXO E TV POR ASSINATURA PARA ELES" E "ECONOMIZE ATÉ R\$ 1.500 AO ANO COM A INTERNET E SOLUÇÃO DE TV DA SUMICITY"

Title: Claro

Advertiser and/or Advertising Agency: umicity Telecomunicações

Decision: Recommendation to modify or correct the advertisement 

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SUMMARY

Claro represents in Conar against two advertisements of the competitor Sumicity" released on social network, offering telecommunications service in the states of Rio and Espírito Santo.

According to the complaint, the above claims express an evident negative association with Claro's brand and may induce the consumer to believe that savings are possible without presenting a basis or objective criteria for comparative advertising or proof of the alleged value of savings.

In a conciliation meeting promoted by Conar, Sumicity committed to remove from the air the film that directly alludes to Claro, but not in relation to the other film, in view of which the rapporteur recommended the preliminary suspension of the announcement.

In its defense, Sumicity denies unethical comparative advertising, arguing that its ads are based on the same audiovisual content as competitors' solutions, through different service modalities, thanks to technological advances. On the merits, it considers its promises to be true and the services compared

to be equivalent.

The rapporteur begins his vote by recalling that the main concern of the Code in relation to comparative advertising is to ensure that it is carried out between related services, in an objective and easily proven manner. And the defense, in the rapporteur's view, was successful in these aspects. He considered, however, that the parts can be improved, with the addition of more information that allows the consumer to carry out his own verification". For this reason, it proposed changing the claims that mention savings, with the inclusion of details of the comparative data. His vote was accepted unanimously.

As for the advertisements that refer to the Claro brand or to the package of services called "combo", the Ethics Council recommended the ratification of the commitment signed by Sumicity, in conciliation negotiations, in order to definitively suspend the advertisements object of this representation with such reference, which has already been withdrawn.

Case No. 123/23

Title: RECKITT BENCKISER HEALTH - CHEGOU NUROMOL - A EVOLUÇÃO NO COMBATE ÀS DORES DE CABEÇA

Plaintiff of the Claim: Sanofi Medley Framacêutica

Advertiser and/or Advertising Agency: Reckitt Benckiser Health Comercial

Decision: Recommendation to modify or correct the advertisement 

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SUMMARY

Sanofi Medley considers that the claims "Nuromol has arrived" and "No other common analgesic has proven to be more effective", present in advertising on social networks (Instagram) under the responsibility of Reckitt Benckiser Health, may induce the consumer to relate the product to superior efficacy against headache compared to drugs from other manufacturers. The complaint considers that the studies that would substantiate the allegations, as stated in the disclaimer of the ads, would not allow such claims, including the fact that the product has been available since 2021, in addition to not meeting the standards of the health authorities.

A conciliation meeting promoted between the parties by Conar did not result in an agreement, after which the rapporteur granted an injunction to suspend the publication of the advertisement until the judgment of the representation.

Sanofi Medley defended itself, considering the questioned allegations to be true, both in relation to the innovation represented by the drug association and in relation to its efficiency, having commented on the study brought by the complainant and others. It reinforces that

all the criteria of comparative advertising have been observed and that the advertisement is truthful and enlightening to the consumer, insofar as it brings objective elements, proven by scientific research, without establishing confusion between brands, nor promoting unfair competition, nor depreciation of third-party brands.

In her vote, the rapporteur considered that the claim "Nuromol has arrived" and the expression "new" are no longer justified after two years on the market, even contradicting Anvisa's rule, RDC 96/2008, which provides that it is forbidden in the advertising of medicines to advertise them as new after two years have elapsed from the date of beginning of their commercialization in Brazil. Therefore, it recommended that this claim be amended.

Regarding the claim "No other analgesic...", the rapporteur considered that the technical analysis discussed by the parties is quite substantial, but recalled that in the Brazilian market there are drugs or associated drug formulas that were not part of the review that supported the disclaimer of Reckitt Benckiser's product. Therefore, it considers that it is not possible to assert the claim, so it has proposed the amendment as well.

With regard to the association of the greater efficacy of the medicine in relation to headache, the rapporteur believes that, once the amendment is made, there will be no disagreement in the disclosure that this is an evolution in the fight against headaches, because in this statement there is not a comparison with other products, but a technology developed with the innovative combination of two drugs in a single medicine.

His vote was accepted unanimously.



**KASZNAR
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**ADVERTISING LAW:
YEAR IN REVIEW
Volume 2**

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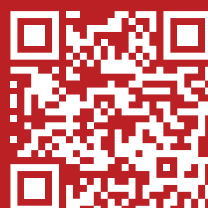
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