Advertising: Overview (Brazil)

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A Practice Note providing a high-level overview of advertising laws, regulations, and standards in Brazil. It addresses the legal framework regulating the advertising industry in Brazil, including self-regulation, the enforcement of advertising laws, and consumer recourse for non-compliant advertising. The Note also highlights other relevant issues, such as freedom of speech, advertising to children, and intellectual property issues.

Businesses engage in advertising to promote their products and services. Advertising plays a key role in:

- Conveying important information to consumers about products and services, such as:
  - their attributes;
  - their price; and
  - how to obtain and use them.
- Increasing purchases and use of products and services.
- Creating and reinforcing brand image and brand loyalty.

Advertising can take place through different media, like print, radio, television, or online (including social media, websites, and email).

However, businesses do not have free rein to tout their products and services. Consumer protection laws and self-regulatory codes regulate advertising to prevent businesses from engaging in false, deceptive, fraudulent, and unfair practices.

This Note provides a high-level overview of many legal issues related to advertising in Brazil.

Legal Framework for Regulating the Advertising Industry

Brazilian rules on advertising are sparse. Some of the most relevant examples of norms (both binding and self-regulatory) regulating the advertising industry are:

- The Consumer Protection Code (*Código de Defesa do Consumidor*) (Federal Law No. 8,078/1990), which contains general provisions about advertisements. For example, the Consumer Protection Code:

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    - requires advertisements to be readily identifiable by consumers as advertisements;
    - requires the supplier of the products or services to retain information to support the claims made in its advertisements; and
    - prohibits abusive or misleading advertisements.

- The Advertising Self-Regulation Code (Conar Code) issued by the Advertising Self-Regulation Council (*Conselho Nacional de Auto-Regulamentação Publicitária*) (Conar). The Conar Code is not a legally binding norm, but is considered a guideline for good practice, and is commonly referenced by Brazilian courts. The Conar Code, among other aspects:
    - sets out general principles and provisions for all kinds of advertising, and certain rules (as annexes to the Code) that are specific to advertisements of certain types of products or industries;
    - sets out standards of decency (according to the target audience of the advertisement) and honesty; and
    - in common with the Consumer Protection Code, provides that advertisements must not generally rely on imposing fear or any kind of superstition, or incentivize acts of violence.

- The Brazilian Association of Data Marketing (*Associação Brasileira de Marketing de Dados)* (ABEMD) issued the Email Marketing Self-Regulation Code (*Código de Auto regulamentação para prática de E-mail Marketing*), containing best practices.

- The Digital Statute for Children and Adolescents (*Dispõe sobre a proteção de crianças e adolescentes em ambientes digitais*) (Federal Law No. 15,211/2025) (ECA Digital), which was enacted on 17 September 2025 and will come into force on 17 March 2026. The ECA Digital aims to protect minors in digital environments. It imposes significant restrictions on advertising directed at children and adolescents.

Other regulations and self-regulatory codes apply to specific advertisements or industries, including:

- A Resolution of the National Council for the Protection of Children and Adolescents (CONANDA) covering advertisements for products directed at children and adolescents (CONANDA Resolution No. 163/2014).

- A Federal Law imposing restrictions on advertisements for tobacco products, alcoholic beverages, medicines and therapies, and pesticides (Federal Law No. 9,294/1996 (known as the Anti-Smoking Law)).

- Norms from the Health Regulatory Agency (*Agência Nacional de Vigilância Sanitária*) (Anvisa) relating to advertisements for medicines (Resolution RDC No. 96/2008).

- Norms from the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*) (CVM) relating to the publicity of investment funds.

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- A guide from the Brazilian Association of Financial and Capital Markets Entities (*Associação Brasileira das Entidades dos Mercados Financeiros e de Capitais*) (ANBIMA), relating to advertisements for financial products.

There are also state and city-level laws that:

- Regulate marketing by phone calls, SMS, and email.
- Create opt-out registers, where consumers can enroll to ensure that they do not receive unwanted marketing calls or messages.

There is also legislation applicable to the relationship between advertisers, agencies, and communication media, and rules issued by professional entities. For example, the Bar Association restricts marketing activities by lawyers.

Additional Laws, Regulations, and Codes Governing Online Advertising

All rules relating to advertising in general are applicable to online advertising, and there are no additional laws or regulations specifically governing online advertising (see Legal Framework for Regulating the Advertising Industry). However, the Email Marketing Self-Regulation Code contains best practices for advertising by email, including:

- Ethical standards to be observed in email messages, for example, emails must be sent:
  - from an inbox that is part of the sender's own domain name;
  - to recipients that can opt in and opt out; and
  - with identification of the sender and the subject matter.
- Obligations applicable to the sender regarding:
  - data protection; and
  - publicization of a privacy policy on the sender's website.

In addition, online advertising must comply with Brazil's laws protecting consumer privacy and personal data. Federal Law No. 12,965/2014 (known as the Civil Rights Framework for the Internet Law) contains provisions about privacy and the use of personal data online (for example, it provides that the protection of users' privacy and personal data is essential for the use of the internet in Brazil).

In June 2025, the Brazilian Federal Supreme Court (STF) held that Article 19 of the Civil Rights Framework for the Internet Law (safe harbor provision) was partially unconstitutional. This provision states that internet application providers are generally not civilly liable for user-generated content unless they fail to take down infringing content when required to do so by a court order. The STF ruled that platforms can be held liable without a court order in various cases, including for paid content (such as

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advertisements by third parties). The full decision has not yet been published, so the full consequences remain unclear (for more information, see STF: STF define parâmetros para responsabilização de plataformas por conteúdos de terceiros (in Brazilian Portuguese only)).

All personal data, including consumer data used for direct marketing, must be processed in accordance with:

- Federal Law No. 13,709/2018 (known as the General Data Protection Law).
- Regulations issued by the Data Protection Authority (*Autoridade Nacional de Proteção de Dados*) (ANPD) that affect the activities of companies that use personal data for online advertising (for example, targeted advertisements, use of cookies, and email marketing).

Therefore, advertisers must comply with these regulations even though they do not contain specific regulations governing online advertising.

In October 2022, the ANPD issued Guidance on Cookies and the Protection of Personal Data (Cookies Guidance), which impacts direct marketing. According to the Cookies Guidance, "legitimate interest" from the company is not the most appropriate legal basis if data collected by cookies or other tracking technologies are used for direct marketing purposes. Instead, the ANPD considers that "consent" is a more appropriate legal basis.

As best practice, the Cookies Guidance recommends that companies engaging in direct marketing in Brazil provide to the data subject a "cookies management" mechanism. The data subject can use this to, for example, review permissions that they have granted, such as to revoke consent to the use of cookies for targeted ads. Consent must be an informed, unambiguous, and free indication of the data subject's agreement to the processing of their personal data for advertising purposes. Therefore, the Cookies Guidance recommends that the data controller records and documents all necessary requirements to show that the consent is unbiased, and that the data subject had all necessary information to provide their consent.

For more information about online advertising in Brazil, see Practice Note, Online Advertising and Marketing: Overview (Brazil).

Effects of Freedom of Speech and Expression Rights on Advertising

Advertising is generally considered to be "commercial speech," because the message conveyed is solely for economic gain. It does not fall within the scope of journalistic content, where the right to freedom of speech and expression is more prominent. Other works with cultural or informative purposes (for example, books, documentaries, and movies) are more substantially protected by rights of freedom of speech or freedom of expression. Using the argument of free speech to defend advertising content is not likely to be effective.

For example, the free speech argument would fail to justify the unauthorized use of a celebrity image for commercial purposes. Advertisers must obtain authorization to use images of people in their advertisements because the use is commercial and does not attract freedom of speech protection. (See Use of People in Advertisements.)

All commercial speech, including advertising, must comply with local laws, and cannot be false, misleading, illegal, or harmful to other people's rights. The Conar Code also provides that:

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- All advertising activity must respect human dignity, intimacy, social interest, national institutions and symbols, the constituted authorities, and the family unit.
- Advertisements must not favor or stimulate any kind of offense or discrimination of any nature.
- Advertisements must not contain anything that could induce criminal or illegal activities, or that could appear to favor, endorse, or encourage these activities.

Rules and Standards for Claims and Disclosures

Substantiating Advertising Claims

The Consumer Protection Code requires suppliers to keep records of information (including technical and scientific data) evidencing the claims made in any advertisement.

The Conar Code provides that:

- Advertisements must contain a true presentation of the product or service.
- Advertisers and agencies must substantiate all descriptions, claims, and comparisons relating to objective data or facts, and provide evidence of this when requested.

In 2023, the Superior Court of Justice (STJ) examined the practice of puffing. Puffing is the use of exaggerated expressions, for example, "the best" or "the world's best seller," to identify a product. The STJ held that this practice is legal, provided the exaggerated claims do not include false information about the product or service, because consumers are able to critically analyze exaggerated claims. (STJ, REsp 1759745/SP, 4a Turma do STJ, 29 March 2023.)

In a June 2025 decision, the São Paulo State Court of Justice (TJSP) held that the slogan "the best restaurant in Brazil," was not mere puffing, but an objectively measurable claim of superiority, which required robust proof for substantiation. According to the TJSP, unlike adjectives such as "unbeatable" or "irreplaceable," the expression "the best restaurant in Brazil" suggests concrete leadership over all other establishments in the country and therefore could not be used without support from verifiable data. This decision is significant because it draws a clearer line between puffing and misleading advertising, although it appears to adopt a stricter approach than the STJ (TJSP, Appeal 1083308-68.2024.8.26.0100.)

Offering and commercializing products under health surveillance in Brazil must comply with the regulations established by Anvisa. According to Anvisa, therapeutic claims (for example, claims that attribute healing properties or the ability to cure disease) are not permitted in the advertising of cosmetics, personal hygiene products, food products, food supplements, sanitizers, and other products regulated by Anvisa surveillance. These claims are exclusively reserved for pharmaceutical products.

A landmark STJ decision from August 2024 fundamentally altered the regulatory landscape for pharmaceutical advertising. In this decision, STJ's First Panel unanimously ruled that Anvisa exceeded its statutory authority by imposing advertising restrictions through Resolution-RDC No. 96/2008 that contradicted provisions of Law No. 9,294/1996. (STJ, Resp 2035645/DF.) Justice Regina Helena Costa, the rapporteur, emphasized that while the Constitution allows restrictions on commercial

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advertising of certain products to protect public health, such limitations must comply with the law. The STJ concluded that RDC No. 96/2008 imposed obligations beyond those authorized by federal legislation, particularly regarding prohibitions on indirect drug advertising in certain contexts and restrictions on the use of images of people using drugs in advertisements. The decision affirmed that Anvisa's jurisdiction over drug advertising:

- Is limited to matters related to health surveillance, as defined by Law No. 9,782/1999.
- Must comply with Article 220, paragraphs 3, II, and 4 of the Constitution and Law No. 9,294/1996.

In August 2025, the Federal Supreme Court (STF) held a public hearing to gather insights from public authorities, civil society, industry stakeholders, and academia regarding the Brazilian Association of Radio and Television Broadcasters' (ABERT) Direct Action of Unconstitutionality No. 7788 challenging Anvisa's advertising regulations. Despite the STJ ruling limiting Anvisa's authority, Conar's ethical guidelines for pharmaceutical advertising remain applicable and continue to guide industry practice.

The Brazilian Association of Technical Standards (*Associação Brasileira de Normas Técnicas*) (ABNT) has issued standards for substantiating claims of carbon neutrality. Entities must provide a "qualified explanatory statement" (QES) in support of any claim of carbon reduction or neutrality. The requirements for this statement are set out in item 10.5. of PR 2060:2022. Declarations relating to carbon neutrality and associated QESs must not:

- Suggest a carbon reduction that does not exist, either directly or by implication.
- Be presented in a manner that implies that they are endorsed or certified by an independent third-party organization, if they are not.
- Be made if, despite being literally true, they are likely to be misinterpreted or misleading as a result of the omission of material facts.

(Item 10.5.3., PR 2060:2022.)

The VCMI Claims Code of Practice recommends principles for credible climate mitigation statements in its Supplementary Guidance. These statements should set the right incentives for the target audience (not incentivize negative environmental behavior) and be:

- Clear to the target audience.
- Transparent.
- Traceable.
- Truthful and verifiable.
- Accurate.

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- Conservative.
- Relevant and not misleading.
- Informative.

Making Compliant Advertising Disclosures

An advertiser may need to use disclosures because:

- The Conar Code provides that all advertising must be transparent, and that the advertiser must make any necessary disclaimers to avoid being abusive or misleading.
- The Consumer Protection Code provides that all advertisements must be transmitted in a way that enables the consumer to readily identify them as advertising material.

However, there are no specific rules about the appearance and placement of disclosures. For example, it is good and common practice in online advertisements or banners to place tags such as "promoted" or "advertisement" in the banner itself, to comply with the regulations.

Conar has issued the Digital Influencer Advertising Guidelines, which contain several rules and good practices for commercial content on social media, including guidance on disclosures that digital influencers must post (see Native Advertising).

Procedures for Complaints Against Advertisements and Potential Penalties

If a customer believes that an advertisement is misleading or abusive, or infringes other regulations, they can:

- File an administrative complaint to enforce their consumer rights (for example, to receive a replacement product, a total or partial refund, or compensation). This complaint can be filed with:
  - a Procon, which is a city or state consumer protection agency; or
  - federal authorities (including the Brazilian Federal Consumer Protection Agency (*Secretaria Nacional do Consumidor*) (SENACON).
- File a court claim, especially in the small claims court. This is easy and inexpensive. Depending on the value of the claim, it can be done quickly, without any cost and without an attorney.
- File a complaint on a website, such as:
  - the government website, Consumidor.gov.br.

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- the private website ReclameAqui, owned by the company Obvio Brasil Software e Serviços S.A.

Many companies use these websites to interact with consumers.

An individual or a company can file a complaint with Conar. Conar's decisions (for example, recommending that an advertiser alters or removes an advertisement) are not generally binding. However, Conar can send information and its recommendation to a public authority for further action.

Failure to comply with the Consumer Protection Code can result in fines and in some circumstances imprisonment. The Consumer Protection Code establishes certain criminal offences, including:

- Making a false or misleading statement, or omitting relevant information about the nature, characteristics, quality, quantity, safety, performance, durability, price, or guarantee of products or services (Article 66).
- Making or promoting advertising that is known or should be known to be misleading (Article 67).

These offences may result in a criminal penalty of between three months and one year of imprisonment, in addition to the administrative penalties set out in the Consumer Protection Code.

A company can also file a lawsuit against a competitor for:

- Improper competitive advertising (false comparisons or comparisons made in ways that harm or tarnish a competitor or its products or services) (see Comparative Advertising).
- Ambush marketing.
- Trademark infringement (see Trademarks).
- Any other violations.

Regulations on Advertising Methods

Certain advertising methods are subject to guidelines, standards, and regulations that businesses must consider before engaging in these practices.

Product Placement

There are no specific provisions on product placement and editorial advertising. However, under the Conar Code, advertisers must make it clear that their advertisements are advertisements and not another type of content.

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Advertisements must be transmitted in a way that enables the consumer to readily identify them as advertising material (Consumer Protection Code). Therefore, all types of product placement and editorial advertising must be identifiable as advertisements. This identification can be done by including an explicit disclosure that the content is an advertisement.

Native Advertising

Native advertising is not specifically regulated but must follow the general guidelines of the Conar Code and the rules of the Consumer Protection Code.

A native advertisement must be identified as advertising and consumers must be able to distinguish promoted content from organic content.

Sponsored media posts can be considered native advertising. Therefore, all promoted content created by digital influencers or content creators should also follow the Digital Influencer Advertising Guidelines. This guidance includes several rules and good practices. The most relevant guidance concerns:

- Identifying the sponsored post as an advertisement.
- Making disclosures within the sponsored post itself, or using expressions such as "advertisement" (*publicidade* or *publi*), "sponsored post" (*postagem patrocinada* or *publipost*), or making other similar disclosures, giving consideration to the word that may be best understood by the followers to whom the communication is directed.

Articles in magazines or on websites that are derived from promoted content must inform the reader that this content is promoted. Advertisers must include a disclosure next to the content, or by other means (for example, including hashtags or a margin in the magazine) that clearly identify the content as promoted.

Outdoor Advertising

Billboards and other forms of outdoor advertising are regulated by the local municipal authorities in each city.

For example, in the City of São Paulo, Law No. 14,223/2006 (known as the Clean City Law), sets out rules on permitting, installation, and maintenance of billboards and outdoor advertising. Law No. 14,223/2006 prohibits the installation of billboards in many parts of the City of São Paulo. It also provides that outdoor advertisements must, among other things:

- Comply with health and safety measures to protect the public.
- Be kept in a good state of repair, in terms of stability, weather resistance, and visual aspects.
- Comply with the technical standards issued by the Brazilian Association of Technical Standards (*Associação Brasileira de Normas Técnicas*) (ABNT), or a technical opinion issued by the state public agency or the energy distribution company, on the distance between billboards and electric power distribution networks.
- Respect significant tree vegetation, as defined by the specific norms of the strategic city plan.
- Not impair the visibility of traffic signs, street names and numbers, and cultural objects.

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Many other Brazilian cities have also implemented laws to regulate or restrict billboards and outdoor advertising (or both).

Bait Advertising

Bait advertising means advertising goods and services that advertisers cannot supply, or for lower prices, and then directing consumers to other products, or more expensive ones. Bait advertising is illegal under Brazilian legislation that prohibits misleading and false advertising.

The Conar Code sets out standards of honesty, establishing that advertisements must not:

- Abuse the consumer's trust.
- Exploit the consumer's lack of experience or knowledge.
- Benefit from the consumer's gullibility.

The Consumer Protection Code provides that all advertising or offers bind the advertiser or supplier of the product or service. A supplier of products or services must honor the terms that were advertised, including product availability, price, and other conditions of purchase. (See Advertisements Creating Contractual Obligations.)

Subliminal Advertising

There are no specific provisions on subliminal advertising in Brazilian law. However, the Conar Code condemns any attempt to produce subliminal effects in advertising. If an advertiser attempts to produce subliminal effects, Conar may recommend that the advertising be changed or withdrawn.

Advertisements must be clearly identified and transmitted in a way that enables consumers to readily identify them as advertisements (see Product Placement), which can be interpreted as a legal prohibition of subliminal advertising.

Regulations on Advertising Content

Depending on the content of their advertisements, businesses may need to consider additional guidelines, standards, and regulations.

False and Misleading Advertising

The Consumer Protection Code prohibits misleading advertising. It defines misleading advertising as any advertisement presenting information that is partly or totally false, or that could mislead consumers about the nature, characteristics, quality, quantity, properties, origin, price, or any other feature of the product or service, including due to an omission of information from the advertisement. The use of false information can also be considered misleading.

The Conar Code also contains provisions against misleading advertising. These include a prohibition of the use of language or visual content that can, directly or indirectly, due to insinuations, omissions, exaggerations, or ambiguity, mislead consumers about:

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- The advertised product.
- The advertiser or its competitors.
- The nature of the product (natural or artificial), its origin (national or foreign), composition, and purpose.

The Conar Code also restricts or limits the use of certain expressions or claims to situations that cannot mislead consumers and where the claim can be substantiated (for example, claims that a product is being sold at a wholesale price or directly from the manufacturer).

Comparative Advertising

Federal Law No. 9,279/1996(known as the Industrial Property Law) prohibits acts of unfair competition, including:

- Publishing or disclosing false information about a competitor with the intent to obtain an advantage.
- Using fraudulent means to divert a competitor's customers to the accused party's advantage.

This law is construed as prohibiting, among other practices, false comparisons in advertisements, or comparisons made in ways that harm or tarnish a competitor or its products or services.

The Conar Code considers comparative advertising a global practice and explicitly accepts it, provided that the advertiser complies with certain principles and restrictions, for example:

- The aim of the comparison must be to clarify information for the benefit of consumers, or to protect them.
- The comparison must be based on objective factors. Subjective data or emotional or psychological factors are not a valid basis for comparison.
- The comparison must be substantiated.
- If made about consumables, the comparison must consider products manufactured in the same year, unless the comparison intends to show the evolution of a product.
- There must be no confusion with competing products or brands.
- The comparison must not be an act of unfair competition, tarnishing a competitor's image or product.
- The advertiser must not use the corporate image or prestige of a third party without justification.
- When comparing products that are not in the same price range, this must be clearly stated.

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There are many precedents on comparative advertising. These include cases where the STJ held that comparative advertising itself is not prohibited, and that it:

- Is compatible with consumer protection principles.
- Enhances the amount of information available to consumers.
- Fosters competition.
- Enhances consumers' freedom of choice.

(STJ, Resp 1794971/SP, 2a Turma do STJ, 24 June 2020.)

The STJ has held that comparative advertising can become an abusive and illegal practice if:

- Data is omitted or manipulated.
- The advertisement breaches disclosure conditions set by the competitor when disclosing data about the product or service used in the comparison.

(STJ, Resp 1794971/SP, 2a Turma do STJ, 24 June 2020.)

Using a third-party trademark to identify a product used in comparative advertising is not generally considered trademark infringement. However, this depends on the facts of the case. For example, it can be considered trademark infringement if the advertisement creates confusion as to the source of a product or its association with a brand.

Provided that certain rules and principles are followed, the advertiser is unlikely to face copyright-related issues.

The STJ has confirmed that the use of third-party trademarks in comparative advertising is legal, provided it complies with the following rules and principles:

- The comparison must not:
    - consist of an act of unfair competition;
    - tarnish a competitor's image or product; and
    - infringe antitrust law.
- The comparison must:
    - be objective;

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- be verifiable;
- not create confusion between competing products and brands; and
- indicate when the prices of the products compared are different.

(Resp 1668550/RJ, 3a Turma do STJ, 20 October 2017; Resp 1481124/SC, 3a Turma do STJ, 13 April 2015; Resp 1794971/SP, 2a Turma do STJ, 12 April 2022; Resp 1676750/SP, 3a Turma do STJ, 20 October 2017.)

Testimonials and Endorsements

The Conar Code provides specific rules about testimonials and endorsements.

Under the Conar Code, testimonials can be given by experts, famous people, and unknown people or consumers. For testimonials given by experts, the advertisement must:

- Relate to their expertise.
- Indicate the name of the expert and their qualifications.
- Be limited by the legal and ethical rules applicable to the expert's profession.
- Not give the impression that it reflects the opinion of the whole entity, association, or professional category to which the expert belongs.

For testimonials given by famous people, the advertisement must observe all guidelines of the Conar Code and must not be made in a manner that inhibits the consumer's critical evaluation of the product. An advertisement that attributes the success or fame of the person giving the testimonial to the use of the product is not permitted, unless this can be evidenced. An advertiser using the testimonial of a famous person must be aware of its responsibility to the public, otherwise the advertiser could be deemed as acting in bad faith.

For testimonials given by unknown, unexpert people or consumers:

- The advertisement must display the person's first and last names.
- Professional models and employees of the advertiser or of the advertising agency cannot pretend to be consumers.
- The testimonial must be restricted to the person's personal experience with the product and cannot relate to issues of a technical or scientific nature that are not compatible with the consumer's professional qualification.

The Conar Code considers that an endorsement can be made by a legal entity and must reflect that entity's official position on a certain subject. The recommendations are the same as for testimonials given by famous people.

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An advertiser or agency must prove the truthfulness of a testimonial if required to do so.

Use of People in Advertisements

An individual can request a prohibition on the unauthorized use of their name or image, if either:

- Their honor, reputation, or respectability is affected.
- The image or name is used for commercial purposes.

(Article 20, Civil Code (*Código Civil*) (Federal Law No. 10,406/2002).)

An individual can also claim:

- Compensation for damages, based on the amount that would have been paid if the individual had authorized the use of their name or image.
- Moral damages for unauthorized commercial use.

The STJ has clarified that compensation for unauthorized publication of a person's image for economic or commercial purposes (including in advertising) does not require proof of damage. Damage is deemed to have occurred by fact of the unauthorized use. (Binding Legal Precedent 403, STJ.)

While the economic or commercial use of an individual's name or image without authorization is prohibited by law, use in literary works and for informational or documentary purposes is allowed, according to the STJ (RESp 1.335.153/RJ, 4a Turma do STJ, 10 September 2013) and the Supreme Court (ADI 4815, STF's Panel, 1 February 2016). In these cases, freedom of speech and freedom of the press prevailed.

Advertisements Creating Contractual Obligations

All information contained in an advertisement of a product or service that is sufficiently precise, and communicated through any medium, creates an obligation on the supplier responsible for the information or advertising to honor the conditions of the advertisement (Consumer Protection Code). The advertisement forms an integral part of the agreement with consumers.

An advertiser must honor an advertised price or other conditions of the offer or advertisement, even if these are incorrect, unless consumers could clearly recognize this as a mistake (for example, if a price difference is significantly disproportionate to prices generally available in the market).

Industry-Specific Regulations

Some products are subject to specific advertising regulations, for example:

- Tobacco and cigarettes.

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- Alcoholic beverages.
- Medicines.
- Medical treatment.
- Pesticides.
- Foods for infants and young children.

Advertisements in these sectors must follow the restrictions set out in Federal Law No. 9,294/1996 and Federal Law No. 6,360/1976.

Anvisa rules apply to advertisements for:

- Medicines (Resolution RDC No. 96/2008).
- Foods for infants and young children (Resolution RDC No. 221/2002).
- Medicines that contain the active ingredient acetylsalicylic acid and use expressions that refer to the symptoms of other pathologies that resemble the symptoms of dengue fever, as a health interest measure and in special circumstances of risk to health (Resolution RDC No. 668/2022).
- Foods high in sugar, saturated fat, trans fat, and sodium content (Resolution RDC No. 24/2010).
- Beverages with low nutritional content (Resolution RDC No. 24/2010).

The Annexes to the Conar Code regulate special categories of advertisements for:

- Alcoholic beverages.
- Educational services.
- Job offers.
- Sale and rental of real estate.
- Investments, loans, and capital markets.
- Stores and retail.

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- Doctors, dentists, veterinarians, obstetricians, masseurs, nurses, hospital services, paramedics, para-hospitals, prosthetic products, and treatments.
- Food, beverages, juices, and similar drinks.
- Pharmaceutical products exempt from prescription.
- Tobacco products.
- Smoking cessation products.
- Self-employed professionals.
- Postal reimbursement or sales by mail.
- Tourism, travel, excursions, and hotels.
- Motorized vehicles.
- Beer and wine.
- Testimonials, certificates, and endorsements.
- Agricultural pesticides.
- Firearms.
- "Ices" (that is, alcoholic beverages that are mixed with water, juice, or soda) and similar beverages.
- Sustainability claims.
- Telecommunication services and mobile internet.
- Gambling.

The sports betting sector has been subject to comprehensive regulatory developments following the enactment of Law No. 14,790/2023. This law established the federal framework for fixed-odds betting operations in Brazil, including specific advertising requirements. In January 2024, Conar published Annex X to the Conar Code, which addresses betting and gambling. It provides that betting advertisements must be socially responsible and prohibits messages that pressure individuals into betting or encourage exaggerated, excessive, or reckless betting behavior.

In August 2024, the Secretariat of Prizes and Betting (*Secretaria de Prêmios e Apostas*) of the Ministry of Finance (*Ministério da Fazenda*) (SPA/MF) published five regulatory ordinances, including Ordinance SPA/MF No. 1,231/2024, which

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comprehensively regulates communications, publicity, advertising, and marketing activities relating to betting operations. Key provisions include:

- **Mandatory warnings.** Advertisements must display age restriction warnings ("18+" or "prohibited for minors under 18") and warnings about the risks of dependence and pathological gambling disorders.
- **Clear identification.** Content must be clearly identified as advertising content.
- **Disclosures.** Advertisements must display the operator's SPA/MF administrative authorization number.
- **Prohibited content.** Advertisements must not promote unauthorized betting categories, suggest easy profits, social success, or financial gain, encourage excessive gambling, or create a sense of urgency to bet.

On 19 November 2024, SENACON issued a precautionary measure ordering the immediate suspension of all fixed-odds betting advertisements that promote sign-up bonuses or advantages and those targeting children and adolescents. This order applies to all companies authorized by the Ministry of Finance to operate fixed-odds betting. Non-compliant companies face daily fines of BRL50,000.

There are also specific regulations on commercial promotions and free prize distributions in Brazil. Under Brazilian law, a commercial promotion or free prize distribution is defined as a marketing strategy comprising the free distribution of prizes through means such as sweepstakes, gift vouchers, contests, and other similar campaigns, to increase sales of products or services, and the promotion of brands or images. Commercial promotions and free prize distributions are mainly regulated by Federal Law No. 5,768/1971, Federal Law No. 14,027/2020, and Federal Decree No. 70,951/1972.

For more information on consumer sales promotions, see Practice Note, Consumer Sales Promotions: Overview (Brazil).

Restrictions on Advertising to Children

The Consumer Protection Code provides that advertisements that take advantage of a child's lack of judgment and experience are abusive.

Federal Law No. 8,069/1990 (known as the Child and Adolescent Statute) does not contain specific rules on advertisements targeted at children. However, it includes rules to protect children from any form of exploitation and provides that children and adolescents have the right to products and services that respect their condition as a developing person.

The ECA Digital prohibits the use of profiling techniques, including behavioral tracking and data-driven personalization, for commercial advertising targeting minors. The law also bans emotional analysis and the use of augmented reality, extended reality, and virtual reality (VR) technologies in advertising campaigns directed at children and adolescents. The ECA Digital will take full effect in March 2026, following a six-month grace period.

CONANDA Resolution No. 163/2014 regulates advertisements directed at children. This Resolution sets out norms for advertisements of products directed at children and teenagers. It illustrates strategies considered abusive by CONANDA when used to convince children to buy a product or service, including advertisements with:

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- Depictions of real children, child characters, children who host programs, cartoons, or celebrities that appeal to children.
- Songs aimed at or sung by children.
- Childish language, special effects, and excess colors.

This Resolution imposes restrictions that exceed those provided under federal legislation (for example, a general prohibition on advertising to children and depicting children in advertisements relating to products for children). Because of these restrictions, its validity is controversial, and it is challenged by advertisers and parts of the government.

The Conar Code contains specific rules for advertisements directed at children and teenagers. It provides that advertisements must not address an imperative consumer appeal directly to a child. It also sets out what is permitted in advertisements directed at children and teenagers. (Section 11, Conar Code.)

In a joint effort, the Public Prosecutor's Office in São Paulo, Conar, and Google created the Best Practices Guide for Online Advertising Targeting Children. Aimed at advertisers, agencies, content creators, and others, the document establishes guidelines for advertising and commercial communication materials that target children in the online environment. The guidelines provide that:

- Communication of advertising content must be made in a clear and accessible way, adapted to the age group of children and teenagers.
- Advertising content must not promote inappropriate items (for example, alcoholic beverages, tobacco, or firearms) or encourage dangerous behavior or harmful excesses.

Intellectual Property Rights Protections for Advertising

Copyright, trademark, and unfair competition laws are the most common ways to protect advertisements in Brazil.

Copyright

Copyright protection is mainly provided by:

- Federal Law No. 9,610/1998 (known as the Copyright Law), which regulates the protection of intellectual works.
- Federal Law No. 9,609/1998 (known as the Software Law).

Brazil is also a signatory to several conventions on the protection of copyright, including the Berne Convention for the Protection of Literary and Artistic Works 1886.

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Copyright protection is inherent in the creation of intellectual works, and registration is not necessary to enforce rights against third parties (Federal Law No. 9,610/1998). Intellectual works are defined as, among other types of work:

- Literary, artistic, or scientific works.
- Musical compositions (with or without lyrics).
- Audiovisual works, including cinematographic works, photographic works, drawings, and paintings.

This definition means that copyright can be used to protect certain types of advertisements, for example, audiovisual content, songs, jingles, photos, images used on billboards, and posters.

Advertising slogans are not necessarily protected by copyright under national law because they may not be considered intellectual works, especially if they consist of common elements of phrases.

Trademarks

Trademarks are registered with the Industrial Property Office (*Instituto Nacional da Propriedade Industrial*) (INPI). They are protected under Federal Law No. 9,279/1996.

Unregistered trademarks are only protected in very specific situations, for example in cases involving well-known trademarks. In some cases, the owner of an unregistered mark can file a claim based on unfair competition or passing off when the mark is used by a third party (often a competitor) for its own benefit or to the detriment of its competitor.

Federal Law No. 9,279/1996 prohibits acts of unfair competition (see Comparative Advertising), including:

- Using fraudulent means to divert, for a person's own or a third party's benefit, another person's clientele.
- Using or imitating another's advertising expression or sign in such a way as to create confusion between products or establishments.
- Using another's commercial name, establishment title, or insignia, or selling, exhibiting, or offering for sale, or maintaining in stock, products that refer to them.

Brazilian law protects the commercial name of companies once they have been registered with the local board of trade. However, this protection is narrower in scope than trademark protection.

Slogans cannot be registered as trademarks with the INPI, since signs or expressions used only as a means of advertising are not registrable (Federal Law No. 9,279/1996). The INPI often rejects trademark applications that it deems to be mere advertising signs or expressions.

A company cannot use a competitor's trademark in a way that infringes it, harms it, or tries to pass it off as its own.

Unfair Competition

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The legal provisions against unfair competition can apply to the protection of advertising. Federal Law No. 9,279/1996 provides that unfair competition practices (for example, trying to divert another's clientele for a party's own benefit, or for the benefit of a third party, by fraudulent means), are a crime.

Therefore, if advertisements are not identified as being advertisements, competitors can argue that this harms consumers and competitors, since the advertised products could have a "non-organic" or "false" relevance. Unfair competition can also be argued if, for example, an advertiser uses its competitors' trademarks and slogans to attract consumers.

Slogans are not necessarily protected by copyright under national law. If a slogan created by a company (or a similar slogan) is reproduced or used by a competitor, the company that created the slogan can request the competitor to cease its use based on unfair competition. Federal Law No. 9,279/1996 prohibits acts of unfair competition (see Comparative Advertising), including:

- Using fraudulent means to divert, for a person's own or a third party's benefit, another person's clientele.
- Using or imitating another person's advertising expression or sign in such a way as to create confusion between products or establishments. This can include using a competitor's slogans to fraudulently attract customers.

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