



Agência Nacional de Vigilância Sanitária (ANVISA) v. Philip Morris Brasil Ind. Com. Ltda.

Agência Nacional de Vigilância Sanitária (ANVISA) v. Philip Morris Brasil Ind. Com. Ltda., No. 2009.02.01.006674-2, Tribunal Regional da 2a Região [Regional Federal Court of the 2nd Region] (2009).

Country: Brazil

Region: Americas

Year: 2009

Court: Tribunal Regional da 2a Região (Regional Federal Court of the 2nd Region)

Health Topics: Controlled substances, Tobacco

Human Rights: Freedom of expression, Right to health

Facts

ANVISA (National Agency for Health Surveillance), brought action seeking a review of the lower court's decision allowing Phillip Morris to refrain from placing the health warnings on the packaging of its tobacco products as required by Resolution 54/2008. The plaintiff alleged that failure to follow the tobacco-control regulation requiring tobacco companies to place a warning on the packaging of the company's tobacco products constituted a violation of article 220 of the Brazilian Constitution, which aims to protect the health of citizens and the environment. Philip Morris argued that the label requirements imposed by ANVISA went beyond simply warning consumers as to the side effects and provoked such disgust on the consumer that the warning would prevent the consumer from purchasing the product. Therefore, Philip Morris would be placed in an economic disadvantage before other companies. Philip Morris also argued that the requirement of these warning was a violation to their freedom of expression.

The higher court determined that the regulations issued by ANVISA (National Agency for Health Surveillance) complied with the articles of the Brazilian Constitution and met the goal to protect the health of the Brazilian population and the environment without going outside its scope. The Court ordered Phillip Morris to immediately place warnings on the harms caused by the tobacco consumption on the packaging of its products.

Decision and Reasoning

The Court held that ANVISA had acted within the scope of its mandate when ANVISA issued Resolution 54/2008 requiring tobacco companies to place health warnings on their tobacco products. The Court founded its decision on on right to health and environmental health as protected by the Brazilian Constitution in paragraph 4 of article 220.

The Court held that the images required by the Resolution did not constitute a violation of the freedom of expression. The Court concluded that the Resolution complied with the previous resolution issued to regulate tobacco products and that both were in line with international documents adopted by WHO countries.

Decision Excerpts

(...) A motivação da RDC nº 54/08, ao menos neste juízo provisório, se adequa e é coerente com a ideia de proporcionar um alerta e advertir a população potencialmente consumidora de tabaco quanto aos malefícios do cigarro (conforme previsão contida no § 4º, do art. 220, da Constituição Federal) e, simultaneamente, apresentar mecanismos de defesa da população contra a propaganda do cigarro e o incentivo ao fumo (CF, art. 220, § 3º, II). A circunstância de as imagens se revelarem impactantes, fortes, repulsivas, provocadoras de aversão, com efeito, representa o estrito cumprimento dos comandos constitucional e legal existentes acerca do tema.

A Constituição da República é clara ao afirmar que: "Compete à lei federal [...] estabelecer os meios legais que garantam à pessoa e à família a possibilidade de se defenderem [...] da propaganda de produtos, práticas e serviços que possam ser nocivos à saúde e ao meio ambiente" (art. 220, § 3º, inciso II), além de indicar expressamente que: "A propaganda comercial de tabaco, bebidas alcoólicas, agrotóxicos, medicamentos e terapias estará sujeita a restrições legais, nos termos do inciso II [...], e conterá, sempre

que necess rio, advert ncia sobre os malef cios decorrentes de seu uso  (art. 220,   4 ).

(...)

4. Para terminar, cumpre salientar que as alega es sobre a efici ncia das imagens ou sobre a necessidade de seu agravamento, bem como sobre falhas metodol gicas das pesquisas realizadas pela ANVISA, s o impr rias, seja porque ao Judici rio compete apenas examinar a constitucionalidade/legalidade dos atos administrativos da Ag ncia, sem possibilidade de simplesmente impor o que lhe pare a mais conveniente (art. 2  da CF); seja porque a verifica o de eventuais falhas metodol gicas exigiria   acaso se considerasse relevante o asserto   prova t cnica, por envolver conhecimentos de estat stica.

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