

Luiz Leonardos  
Maurício Leonardos  
Flávio Leonardos  
Filipe da Cunha Leonardos  
Gustavo Leonardos  
Gabriel Francisco Leonardos  
Denise Leite de Oliveira Dale  
Elisabeth Kasznar Fekete\*  
Gustavo José Ferreira Barbosa  
Eduardo Colonna Rosman  
João Luís d'Orey Facco Vianna

☆

Tomaz Francisco Leonardos\*\*

☆

Ana Lucia Mamede Carneiro  
Antonio Carlos Ramos  
Cláudio Roberto Barbosa\*  
Fernanda Burin Leonardos  
Gabriela Muniz Pinto  
Liz Starling  
Louise Prutchi  
Marcelo Canellas Leite  
Marcelo de Oliveira Muller  
Otto Banho Licks  
Ricardo Cardoso Costa Boclin  
Ronaldo M. Varella Gomes  
Rosane Rego Tavares da Silva  
Sonis de Moraes Souza  
Tatiana Almeida Silveira

\* São Paulo  
\*\* of Counsel

**RIO DE JANEIRO OFFICE**  
RUA TEÓFILO OTONI, 63 / 10TH FLOOR  
CENTRO  
20090-080 – RIO DE JANEIRO – RJ  
BRASIL

TEL.: 55 (21) 2136-4100  
FAX : 55 (21) 2136-4200  
E-MAIL: momsens@leonardos.com.br  
WEBSITE: www.leonardos.com.br

**SÃO PAULO OFFICE**  
AV. NOVE DE JULHO, 3.147 / 11TH FLOOR  
JARDIM PAULISTA  
01407-000 – SÃO PAULO – SP  
BRASIL

TEL.: 55 (11) 2122-6600  
FAX : 55 (11) 2122-6633  
E-MAIL: momsensp@leonardos.com.br

**POSTAL ADDRESS**  
P. O. Box 21214  
AGÊNCIA PRAÇA MAUÁ  
20110-970 – RIO DE JANEIRO – RJ  
BRASIL

## New Brazilian Regulations on Advertising of Food & Beverages

Dear Sirs,

The Brazilian National Agency for Sanitary Regulation – ANVISA issued in the Federal Official Gazette of June 29, 2010 a Resolution (Res. 24/2010) which restricts the advertising of **high in fat, salt and sugar (HFSS) food and of beverages with low nutritional value**. The food & beverage industry has now a 180-day term to adjust their advertising campaigns to the terms of said Resolution.

As per the terms of the Resolution food is any substance — drinks inclusive — proper for human ingestion, except for tobacco or other substances with sole cosmetic or medicinal purposes.

Food is to be considered with:

- (i) **high sugar** when its composition contains 15g or more of sugar per 100g (or 7,5g per 100 ml);
- (ii) **High saturated fat food**, namely food containing in 100g of its composition an amount equal or higher than 5g saturated fat (or 2,5g per 100ml);
- (iii) **High trans fat food**, namely food containing in 100g / 100 ml of its composition an amount equal or higher than 0,6g of trans fat; and
- (iv) **High salt food**, namely food containing in 100 g / 100 ml of its composition an amount equal or higher than 400mg of salt.

The Resolution is aimed at restraining potential harm caused by direct or indirect encouragement of unhealthy habits especially among children, thus preventing obesity and chronic diseases related thereto.

The advertiser is to display a warning message alerting to the risks resulting from the ingestion of **large amounts** of any of the HFSS products or drinks with low nutritional value, in the following terms:

“The (brand) contains high quantity of (name of the nutrient) and, if ingested in large amounts, increases the risk of obesity and heart diseases”.

The product itself is not subject to any restriction for sale, but the aim of the new regulation is to discourage the ingestion of improper amounts in unbalance to healthy nutrition standards.

In printed ads, the warning message has to be displayed in visible size and color, in a manner as to contrast with the background of the ad and cause the same visual impact as the advertising piece itself.

In case of an audio- or audiovisual ad, the main character or speaker must speak out the warning message. In the absence of a main character or speaker, a green warning panel in white letters must be displayed on full screen.

Also, free samples and other promotional material related to

HFSS products must contain the above cited warning. Furthermore, the resolution **prohibits** the use of any misleading images and expressions in relation to the origin, nutrition facts or quality of the product or which could, in any other manner, mislead consumers into believing that the product has a better nutritional value than it actually does.

Ads are therefore prohibited to:

- I. Assert or suggest that a HFSS product or a drink with low nutritional value is nutritionally complete or that it is apt to replace a regular meal, unless there is scientific evidence thereof ;
- II. Assert or suggest that a HFSS product is a guarantee of good health or that it is essential to child growth, unless there is scientific evidence thereof;
- III. Discourage exclusive or complementary breastfeeding in 6-months babies or older;
- IV. Assert or suggest that HFSS products containing dietary fiber are apt to replace natural sources of said element; and
- V. Assert or suggest that a HFSS product is healthy or that it might improve health.

The food industry has been given a 180-days term to adjust their advertising campaigns to the new ANVISA ruling under penalty of being subject to a fine, that may vary from US\$ 1,130.00 to US\$ 846,900.00, depending on the degree of the violation.

The lack of compliance with the terms of the new Res. 24/2010 configures sanitary violation as per Section 10 of the Act no. 6.437/77. According to said act, other possible penalties applicable to the infringement of the resolution are prohibition of advertising; sales and advertisement restraints; and the obligation to display a rectifying message.

The herein commented Resolution reflects the work of the special committee created by the ANVISA in 2005 and follows the world wide trend to regulate food advertising, especially when targeted at children. During the preparative work of such Committee, it was open a public consultation to various sectors of the society (food companies, non-governmental organizations, school boards, health oriented organizations etc), having the Committee received and analyzed 254 collaborative reports of these groups.

As a matter of fact, the terms of the Resolution are to be considered mild if compared with the Bill pending examination on the Brazilian National Congress. Nevertheless, the regulated sector in subject, namely, the food industry and the advertising companies, will most likely raise constitutional issues in the sense of questioning the legislative competence of the ANVISA in connection with this matter in order to defend their self-regulatory rights.

With a view to strengthening the standpoint of their self-regulatory proficiency, 24 large companies of the food and drink sector in Brazil have signed in 2009 a statement in which they (i) set some limits to advertising and promoting in schools food products to children under 12 years old and (ii) commit themselves to encourage, when applicable, the adoption of healthy habits, such as of a balanced diet and the practice of sports.

Although there is still room for debating Res. 24/2010, fact is that same is currently in force and shall be enforceable against any company that does not timely adjust its advertising patterns to those established in the new ruling.

Should you wish to receive any additional information about this matter do not hesitate to address your enquiries to your regular contact person in our firm, or to Gabriel F. Leonardos ([GFLeonardos@leonardos.com.br](mailto:GFLeonardos@leonardos.com.br)) and/or Roberta O. Mendes ([ROMendes@leonardos.com.br](mailto:ROMendes@leonardos.com.br)).

**GFLeonardos**