

Legal Extranet

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Brazil



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General Legal Overview:

Some categories of advertisements are regulated by law, namely:

- Abortive substances;
- Weapons;
- Tobacco Products;
- Alcoholic Beverages;
- Medicine and therapies; and
- Agricultural Products.

Advertising in Brazil is regulated by the Brazilian Self-Regulating Advertising Code. But it is also important to point out the fact that other statutes also apply to advertising.

Advertisements for abortive substances or for the payment of products and/or services with international currency are prohibited by Brazilian Law, as per Article 20 of Law 3,688 of 1941, and article 22, XVIII of the Consumer Defense Code, respectively.

Also, the Consumer Defense Code (Law No. 8,078 of 1990), in Articles 36, 37, 38, 56 and 60, regulates abusive and questionable advertisements.

Basic Guide to Intellectual Property rights in the Territory:

Copyrights

Copyrights are governed in Brazil by Law No. 9,610, of 1998, and protection to copyrighted work is granted regardless of prior registration.

The term of protection of copyrighted materials is 70 years counted from January 1st of the year after to the author's death.

In addition, please note that software is also protected by way of copyright under the terms of the Brazilian Software Law (Law No. 9,609 of 1998).

Trademarks

Trademarks are visually perceptive symbols used to distinguish and identify products and services of different sources.

In Brazil, Trademarks can be registered with the Brazilian Patent and Trademark Office (the Brazilian PTO).

Under the Brazilian legislation regulating Industrial Property (Law No. 9,279 of 1996), there are three different types of Trademarks:

- Product or service mark: Distinguishes a product or service from another that is identical or similar, from a different source;
- Certification mark: Attests the conformity of a product or service with certain technical norms or specifications, especially as regards its quality, nature, the material and the methodology employed; and
- Collective mark: Identifies products or services originating from members of a certain entity.

The duration of a Brazilian Trademark Register is 10 (ten) years, counted from the date of its grant. Said term is renewable for successive periods of equivalent duration.

Unfair Trade Practices, Passing Off, Unfair Competition, etc.

The Industrial Property Law (Law No. 9,279 of 1996) provides on Crimes against Industrial Property from articles 183 through 210.

Article 195 of the aforementioned Law, which regulates only Crimes of Unfair Competition, establishes the conditions and situations in which this crime occurs, in addition to imposing penalties.

As for passing off, it is reprovved by the Brazilian Copyright Law, which states, in article 102, that “the holder whose work is fraudulently reproduced, disclosed or in any way used, may require the seizure of the copies or the suspension of the disclosure, without prejudice to the possibility of indemnification”.

Image Rights:

Image Rights

The rights of a person to his own image, generically called Image Rights, are assured under article 5.V and 5.X of the Brazilian Constitution and article 20 of the Brazilian Civil Code.

Image rights are comprised within the scope of the rights of personality, are of a non patrimonial nature, and address a person’s legitimate interest in protecting his image in circumstances pertaining to his private life.

The personal nature of image rights has led to a restrictive interpretation as to the scope of juristic acts pertaining to their use, such as licenses and authorizations. In the event an image license is given for the sole purpose of exploring one’s image on television, the reproduction of the same image on another means of communication has been held unlawful. Thus, it is important that an image license should spell out all the means of communications in which one’s image can be exploited. Licenses of a generic nature which do not establish a specific term for execution may be revoked by the licensor at any time.

Case Law not only recognizes image rights but also provides a broad interpretation of their content. The infringement of image rights may take place indirectly, by means which do not necessarily correspond to the mere reproduction of a person’s photographic representation.

Image rights, as construed by the Superior Court of Justice, are held to be comprised of (i) a moral content, because they stand as personality rights; and (ii) a patrimonial content, not only as a result of a party’s right to authorize their use for pay, but of a party’s right to stop unauthorized usage based on unjust enrichment. As a consequence, an infringer’s obligation to redress arises simply from unauthorized use of the personality right, it being unnecessary to prove that actual damage occurred or that the infringement was intentional.

BRAZILIAN ANTI-SPAM COMMITTEE

Web link: <http://www.brasilantispam.org>

CONAR - BRAZILIAN SELF-REGULATING ADVERTISING COUNCIL

Web link: www.conar.org.br

NONE AVAILABLE

NONE AVAILABLE

Comparative advertising	01 March 2005
Alcohol	01 March 2005
Coupons	01 March 2005
Data Protection/Privacy	01 March 2005
Direct Marketing	01 March 2005
E-mail	01 March 2005
Financial products and services	01 March 2005
Gaming & Betting	01 March 2005
Motors	01 March 2005
Pharmaceuticals	01 March 2005
Prize Promotions	01 March 2005
Sponsorship	01 March 2005
Tobacco	01 March 2005
Health & Beauty	01 March 2005

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Activity	Comparative advertising	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	There are no specific laws on comparative advertising in Brazil, but the unauthorized use of a registered trademark by third parties is prohibited under the Brazilian Industrial Property Law (Law No. 9,279 of 1996).	
General self-regulatory framework	The Brazilian Self-Regulating Advertising Code, in Section 7 (Article 32 and all its items), regulates comparative advertising.	
Restrictions to the activity	The primary purpose of Comparative Advertising shall be the clarification or the consumer's protection; it will have as its basic principle the objectiveness of the comparison, since subjective information, psychological or emotional information does not constitute a valid basis for comparison by consumers; the purported or implemented comparison must be capable of being supported by evidence; in the case of goods the comparison must be made with models manufactured in the same year and no comparison shall be made between products manufactured in different years, unless it is only a reference to show evolution, in which case the evolution must be clearly shown; there shall be no confusion between the products and competitor's brands; there shall be no unfair competition, denigration of the product's image or another company's product; there shall be no unreasonable use of the corporate image or goodwill of third parties; whenever the comparison is made between products of different price ranges, that shall be clearly informed in the advertisement.	
Restrictions to the media	<i>Cinema</i>	No specific regulation.
	<i>Direct Mail</i>	No specific regulation.
	<i>E-mail</i>	No specific regulation.
	<i>Web</i>	No specific regulation.
	<i>Outdoor</i>	No specific regulation.
	<i>Press</i>	No specific regulation.
	<i>Radio</i>	No specific regulation.
	<i>SMS</i>	No specific regulation.
	<i>TV</i>	No specific regulation.
Last updated	01 March 2005	

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Subject	Alcohol	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	Advertisements for Alcohol are governed by Law No. 9,294 of 1996 and Law No. 10,167 of 2000	
General self-regulatory framework	Advertisements for Alcohol are also governed by the Brazilian Self-Regulating Advertising Code.	
Restrictions to the activity	The Brazilian Self-Regulating Advertising Code states that the advertisement of alcoholic beverages must show the product's characteristics and not induce to its consumption. According to the legal provisions, the labels on the bottles of alcoholic beverages must contain the following warning: "Avoid excessive consumption of alcoholic beverages".	
Restrictions to the media	<i>Cinema</i>	According to the Brazilian Self-Regulating Advertising Code, Advertisements for alcoholic beverages that are usually consumed during meals, such as beer and wine, are allowed from 9:30 PM to 6 AM, and are not be subject to this time period, if the movie is directed to the adult public only.
	<i>Direct Mail</i>	No specific regulation.
	<i>E-mail</i>	No specific regulation.
	<i>Web</i>	Allowed, but must be posed on sites directed to the adult public.
	<i>Outdoor</i>	Allowed, provided that the advertisement may only present the product's slogan, meaning that it will not induce the consumers to use it.
	<i>Press</i>	Allowed, but the advertisement must contain a warning notice, as described above.
	<i>Radio</i>	Allowed from 9PM through 6AM, provided the advertisement may not associate its products to any Olympic sport. Also, this kind of advertisement may not be related to driving or make the consumer believe that the product will increase his/hers sexuality.
	<i>SMS</i>	No specific regulation.
	<i>TV</i>	According to the Brazilian Self-Regulating Advertising Code, advertisements for alcoholic beverages that are usually consumed during meals, such as beer and wine, are allowed from 9:30 PM to 6 AM.
Restrictions to the public	<i>Children and adolescents</i>	According to the Brazilian Self-Regulating Advertising Code, advertisements for alcoholic beverages of all kinds may not lead the consumers to believe that the product is appropriate for minors or use slang, or any other resource generally employed to call the attention of children, sparking their interest. In addition, please note that all the artists in the advertisement must be and look older than 25 years old.
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Activity	Coupons	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	There is no specific legislation on advertising with coupons; however, if it involves the free distribution of prizes, the same regulations of Prize Promotions will apply.	
General self-regulatory framework	There is no specific self-regulatory provision on advertising with coupons.	
Restrictions to the activity	Since there are no specific legal provisions concerning this kind of advertising, the general rules should be applied.	
Restrictions to the media	<i>Cinema</i>	No specific regulation.
	<i>Direct Mail</i>	No specific regulation.
	<i>E-mail</i>	No specific regulation.
	<i>Web</i>	No specific regulation.
	<i>Outdoor</i>	No specific regulation.
	<i>Press</i>	No specific regulation.
	<i>Radio</i>	No specific regulation.
	<i>SMS</i>	No specific regulation.
	<i>TV</i>	No specific regulation.
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Activity	Data Protection/Privacy	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	The Brazilian Civil Code (Law No. 10406 of 2002), regulates, in articles 18 -20, the use of third-party names, stage names, and images. Please note as well that the Brazilian Federal Constitution states, in article 5, that the right of privacy is inviolable and that indemnity is assured in case of moral injury or material damage.	
General self-regulatory framework	The Brazilian Self-Regulating Advertising Code regulates the protection of privacy, including the protection of the privacy of celebrities, in articles 34 and 35.	
Restrictions to the activity	The advertisements shall not use images or sayings of living persons, unless their prior, express consent has been obtained; they shall not disrespect the religious beliefs and other susceptibilities of persons descending from or related to deceased persons whose image or reference appears in the advertisement; they shall not show disrespect for the dignity of the human being and the family institution; they shall respect any private property and its limitations. In addition, the Brazilian Civil Code provides that, if an unauthorized use of the image of a person is intended to serve commercial purposes or affects his/ her honour, good standing, or respectability, that person will be entitled to the payment of damages.	
Restrictions to the media	Cinema	No specific regulation.
	Direct Mail	No specific regulation.
	E-mail	No specific regulation.
	Web	No specific regulation.
	Outdoor	No specific regulation.
	Press	No specific regulation.
	Radio	No specific regulation.
	SMS	No specific regulation.
	TV	No specific regulation.
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Activity	Direct Marketing	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	There is no specific legislation on Direct Marketing.	
General self-regulatory framework	There is no specific regulation.	
Restrictions to the activity	Since there are no specific provisions on this kind of advertising, the general rules should apply.	
Restrictions to the media	Cinema	No specific regulation.
	Direct Mail	No specific regulation.
	E-mail	No specific regulation.
	Web	No specific regulation.
	Outdoor	No specific regulation.
	Press	No specific regulation.
	Radio	No specific regulation.
	SMS	No specific regulation.
	TV	No specific regulation.
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Activity	E-mail	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	No specific legislation.	
General self-regulatory framework	Self-Regulating Code of Ethics and Electronic Messages Best Practices of the Brazilian Anti-Spam Committee.	
Restrictions to the activity	There are no specific laws, in Brazil, governing e-mail advertising. Nevertheless, the Self-Regulating Code of Ethics and Electronic Messages Best Practices, establishes several rules on commercial practices via electronic messages, especially SMS and Instant Messenger. Said Code defines spam as the activity of sending electronic messages and digital direct mailing that cannot be classified as electronic marketing or a newsletter. According to article 4, the ethically correct electronic message must have: • An identifiable sender; • A commercial, institutional or publicity related lettering; • Signature containing the legal name and electronic address of the sender; • Visible "Opt-in" and "Opt-out" messages; • Name of Publicity Agency or Direct Marketing responsible for the message; • Name of Trademark or Announcer responsible for the message. Please note that consumers must be given an opportunity to refuse the receipt of commercial electronic messages. To do so, the consumers need only request, at any time, the exclusion of their names from the sender's contacts database (article 6).	
Restrictions to the media	<i>Cinema</i>	No specific regulation.
	<i>Direct Mail</i>	No specific regulation.
	<i>E-mail</i>	No specific regulation.
	<i>Web</i>	No specific regulation.
	<i>Outdoor</i>	No specific regulation.
	<i>Press</i>	No specific regulation.
	<i>Radio</i>	No specific regulation.
	<i>SMS</i>	No specific regulation.
	<i>TV</i>	No specific regulation.
Upcoming changes	There are several Bills addressing the control of spam messages on the Internet, computer nets that are available to consumers, via SMS, etc. They are the following: No. 2423 of 2003; No. 2186 of 2003; No. 367 of 2003; No. 757 of 2003; 1692 of 2003; No 279 of 2003; No. 7093 of 2002; and No. 6210 of 2002.	
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Subject	Financial products and services	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	There is no specific legislation on the advertising of financial products and services.	
General self-regulatory framework	The Brazilian Self-Regulating Advertising Code covers the advertising of financial products and services.	
Restrictions to the activity	The advertising of financial products and services, such as loans, investments and the bond market, must: • Respect the right of information of the investors, shareholders, etc., which means that they must be informed of all important details required for a thoughtful decision; • Maintain the sale / agreement confidential, to respect the customers' privacy; • Establish, if the advertisement presents a projection or estimate of future results, the basis on which the estimate was produced, informing the customer if the taxes were duly included in the projection; • Value the informative and educational nature of its message and avoid propositions that might lead the consumers to confusion.	
Restrictions to the media	<i>Cinema</i>	No specific regulation.
	<i>Direct Mail</i>	No specific regulation.
	<i>E-mail</i>	No specific regulation.
	<i>Web</i>	No specific regulation.
	<i>Outdoor</i>	No specific regulation.
	<i>Press</i>	No specific regulation.
	<i>Radio</i>	No specific regulation.
	<i>SMS</i>	No specific regulation.
	<i>TV</i>	No specific regulation.
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Subject	Gaming & Betting	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	Gambling is not only prohibited in Brazil but also considered a crime under articles 55, 56 and 57 of the Criminal Code (Law 3,688 of 1941).	
General self-regulatory framework	No specific rule.	
Restrictions to the activity	Article 57 of Law 3,688, of 1941, provides that it is prohibited to "publicize, in newspapers or any other media outlets, radio, cinema, or otherwise, not even simulated, any advertisement, advice or any lottery extraction results, where the circulation of tickets would be illegal". Please note that Lotteries are, in Brazil, a State monopoly.	
Restrictions to the media	Cinema	Prohibited.
	Direct Mail	Prohibited.
	E-mail	Prohibited.
	Web	Prohibited.
	Outdoor	Prohibited.
	Press	Prohibited.
	Radio	Prohibited.
	SMS	Prohibited.
	TV	Prohibited.
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Subject	Motors	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	There is no legal regulation in Brazil on the advertisement of motors.	
General self-regulatory framework	The advertising of motors is covered by the Brazilian Self-Regulating Advertising Code.	
Restrictions to the activity	According to the Brazilian Self-Regulating Advertising Code, the advertising of automotive vehicles must not lead consumers to error regarding the specific characteristics of the product, such as speed, performance, comfort and safety. Please note, as well, that the aforementioned Code does not allow advertisers to promote this kind of product in situations that suggest its unsafe utilization, i.e., in disrespect of road signalizations, speeding, non-use of safety accessories, such as the seat belt, etc.	
Restrictions to the media	<i>Cinema</i>	No specific regulation.
	<i>Direct Mail</i>	No specific regulation.
	<i>E-mail</i>	No specific regulation.
	<i>Web</i>	No specific regulation.
	<i>Outdoor</i>	No specific regulation.
	<i>Press</i>	No specific regulation.
	<i>Radio</i>	No specific regulation.
	<i>SMS</i>	No specific regulation.
	<i>TV</i>	No specific regulation.
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Subject	Pharmaceuticals	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	The advertising of Pharmaceuticals is covered by: Law No. 9,294 of 1996, Law No. 6,360 of 1976, and Resolution No. 102 of 2000 of ANVISA (National Health Surveillance Agency).	
General self-regulatory framework	The advertising of Pharmaceuticals is covered by the Brazilian Self-Regulating Advertising Code.	
Restrictions to the activity	Prescriptive medications may be promoted among professionals duly qualified to prescribe such products, but may not be promoted to the general public. All advertisements for over-the-counter (OTC) pharmaceuticals, shall not: - Compare its products, directly or indirectly, with other drugs of the same purpose unless those comparisons are based on and proved by clinical studies; - Announce drugs that have been marketed for a period of two years as if they were new; - Cause neither anxiety or fear, or suggest that someone's health will be affected if the drugs are not utilized; - Suggest that there are no side effects or use expressions such as "harmless", "safe" or "natural product" unless they are duly registered with the National Agency of Sanitary Vigilance (ANVISA).	
Restrictions to the media	<i>Cinema</i>	General Rules apply.
	<i>Direct Mail</i>	General Rules apply.
	<i>E-mail</i>	General Rules apply.
	<i>Web</i>	The advertising of OTC drugs is allowed as long as a notice containing the identification and the address of the supplier is presented. The advertising of drugs sold only under prescription is prohibited, with the exception of the posting on a web site that is only available to professionals who are duly authorized to prescribe medications.
	<i>Outdoor</i>	Allowed for OTC drugs as long as the advertisement does not: - Stimulate or induce the indiscriminate use of the drug; - Make use of expressions in order to promote the product specifically to children and / or teenagers; - Hold contests or promotions related to the purchasing of drugs; Besides that, those advertisements shall include the commercial name of the drug, its health registration number and its active ingredients. It is also mandatory that the following warning notice be displayed: "If the symptoms persist, a doctor should be consulted".
	<i>Press</i>	See outdoor above.
	<i>Radio</i>	See outdoor above.
	<i>SMS</i>	The General Rules apply.
	<i>TV</i>	See outdoor above.
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Activity	Prize Promotions	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	Law No. 5,768 of 1971 and Decree No. 70,951 of 1972 govern the advertising of Prize Promotions in Brazil.	
General self-regulatory framework	The Brazilian Self-Regulating Advertising Code provides no specific regulations on the advertisement of prize promotions.	
Restrictions to the activity	The free distribution of prizes through lotteries, contests, free tickets, or the like, is only valid if previously authorized by the Brazilian Ministry of Finance. According to article 5 of Decree 70.951, the prize must be delivered within a term of 30 days, counting from the date of the result of the lottery/contest. Please note that article 10 of the aforementioned Decree lists the types of products that cannot be distributed as prizes, namely: Medications; lubricants and fuels; guns, ammunitions, explosives, fireworks, alcoholic beverages or any kind of tobacco products; or any other products specified by the Ministry of Finance. Chapter II (articles 16 through 22) of the aforementioned Decree governs the prize lotteries, while Chapter IV (articles 25 through 30) governs the contests. The penalties are listed in articles 68 through 73.	
Restrictions to the media	<i>Cinema</i>	No specific regulation (Law 5,768 applied).
	<i>Direct Mail</i>	No specific regulation (Law 5,768 applied).
	<i>E-mail</i>	No specific regulation (Law 5,768 applied).
	<i>Web</i>	No specific regulation (Law 5,768 applied).
	<i>Outdoor</i>	No specific regulation (Law 5,768 applied).
	<i>Press</i>	No specific regulation (Law 5,768 applied).
	<i>Radio</i>	No specific regulation (Law 5,768 applied).
	<i>SMS</i>	No specific regulation (Law 5,768 applied).
	<i>TV</i>	No specific regulation (Law 5,768 applied).
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Activity	Sponsorship	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	Although there is no specific legislation on the advertising of sponsorships, Law No. 9294 of 1996, mentions the possibility of sponsorship as regards the advertisement of alcoholic beverages and tobacco products in article 5.	
General self-regulatory framework	There is no specific self-regulatory provision concerning the advertisement of sponsorships, but some exhibits of the Brazilian Self-Regulating Advertising Code do mention this possibility, i.e., exhibit A, items 5 and 7; exhibit J, item 8; exhibit P, item 5 and exhibit T, item 5.	
Restrictions to the activity	Both the Brazilian Legislation and the Advertising Self-Regulation Code, provide that the sponsorship by tobacco and alcoholic beverages companies may be publicized at any time as long as it only displays the product's slogan, and does not recommend their consumption. The only restriction applicable to this type of advertisement is that it shall be on stadiums or similar locations, and shall be static. Another consideration applicable to this kind of advertisement is that the warning notice is not required.	
Restrictions to the media	Cinema	No specific regulation.
	Direct Mail	No specific regulation.
	E-mail	No specific regulation.
	Web	No specific regulation.
	Outdoor	See key General Restrictions.
	Press	No specific regulation.
	Radio	No specific regulation.
	SMS	No specific regulation.
	TV	No specific regulation.
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Subject	Tobacco	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	The advertising of Tobacco is covered by: Law No. 9,294, of 1996; Law No. 10,167 of 2000; and Law No. 10,702 of 2003.	
General self-regulatory framework	The advertising of Tobacco is covered by the Brazilian Self-Regulating Advertising Code.	
Restrictions to the activity	The advertising of tobacco products is only allowed on posters, panels and billboards displayed inside its selling venues, and shall not - Suggest its exaggerated or irresponsible consumption; - Lead the consumer to believe that, by using the product, he or she will feel better or be healthier; - Associate the use of tobacco to any religious cult or civil celebrations; - Associate tobacco with the practice of Olympic sports; - Be directed to kids and/or teenagers or feature them Tobacco advertisements shall contain a warning notice regarding the diseases and damages caused by smoking, using the phrases set forth in article 2, §2, of law No. 9.294 of 1996, i.e., "smoking can cause heart diseases and cerebral effusion"; "smoking can cause lung cancer, chronic bronchitis and pulmonary emphysema", "smoking during pregnancy may harm the baby"; "smokers have greater chances of suffering stomach ulceration"; "Avoid smoking in the presence of kids"; Smoking can cause numerous health problems". Any packages, posters, panels, billboards etc. advertising tobacco products shall also contain the above warning notices. According to the Brazilian Self-Regulating Advertising Code, the advertisement of any products that have the purpose of inhibiting the desire of smoking shall contain a warning informing consumers that the product only offers help during the process - that it will require his/ her will to quit smoking.	
Restrictions to the media	<i>Cinema</i>	Prohibited.
	<i>Direct Mail</i>	Prohibited.
	<i>E-mail</i>	Prohibited.
	<i>Web</i>	Prohibited.
	<i>Outdoor</i>	Prohibited.
	<i>Press</i>	Prohibited.
	<i>Radio</i>	Prohibited.
	<i>SMS</i>	Prohibited.
	<i>TV</i>	Prohibited. Please note that the indirect advertisement of tobacco products, also known as merchandising, on any programs, is not allowed at any time of the day or night
Last updated	01 March 2005	

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Valdir Rocha

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Subject	Health & Beauty	
Country	Brazil	
Contact	Valdir Rocha	
General legal framework	No specific regulation.	
General self-regulatory framework	No specific regulation.	
Restrictions to the activity	Since there is no specific provision regarding the advertising of health and beauty-related products, the general rules shall apply thereto. As regards the advertising of health-related products, refer to pharmaceuticals to consult the restrictions on the promotion of medicines in general. Please note that all cosmetics must have a health registration in order to be commercialized.	
Restrictions to the media	<i>Cinema</i>	No specific regulation.
	<i>Direct Mail</i>	No specific regulation.
	<i>E-mail</i>	No specific regulation.
	<i>Web</i>	No specific regulation.
	<i>Outdoor</i>	No specific regulation.
	<i>Press</i>	No specific regulation.
	<i>Radio</i>	No specific regulation.
	<i>SMS</i>	No specific regulation.
	<i>TV</i>	No specific regulation.
Last updated	01 March 2005	

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