



Expert Contributor
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Food, Beverage Labeling Standards Contradict Mexican Law

In recent years, we have witnessed a legislative trend in various countries that consists of incorporating provisions aimed at implementing front labeling systems for food and non-alcoholic beverages into national legislation. The aim is to fight obesity and poor nutrition through the use of warning seals or traffic light-style notices that inform that a certain product exceeds acceptable limits for calories, sugars, sodium and fats.

Likewise, these laws have incorporated prohibitions on the use of children’s characters, animations, cartoons, celebrities, athletes or mascots, interactive elements, such as visual-spatial games, or digital downloads aimed at children.

Similarly in Mexico, this labeling system was implemented through the Official Mexican Standard NOM-051-SCFI/SSA1-2010, “General labeling specifications for prepackaged food and non-alcoholic beverages — commercial and health information,” in article 4.1.5, which entered into force on Oct. 1, 2020.

These prohibitions have caused great controversy and discomfort in the food and beverage industry. Although the goal pursued is beneficial for the population, the restrictions directly conflict with various laws and international treaties related to the protection of intellectual property, copyright and trade, all of them hierarchically superior, transgressing the fundamental principle of reserve of law, since a hierarchically inferior law, such as an official Mexican standard, is intended to go beyond what the laws or treaties state, thus violating the principles of legality, legal order, overstepping of the norm and legal certainty.

Indeed, through an official Mexican standard, whose function is to regulate technical elements and establish the characteristics that certain processes or services must meet, the legitimate use of rights recognized in various legal provisions is prohibited. The main provisions are:

- Federal Law for the Protection of Industrial Property, since the use of registered trademarks containing designs of children’s characters or mascots is prohibited.

- Federal Copyright Law, since the exploitation of works is prohibited. Owners of economic rights have the exclusive right to authorize and/or prohibit the exploitation of their work; therefore, a restriction to incorporate such work in labels and advertising contradicts said law.
- Federal Consumer Protection Law, since it prevents carrying out commercial practices duly legislated, such as advertising and promotions, since the realization and inclusion of advertising offers aimed at children is also prohibited.

It also contradicts, among others, the following international provisions:

- Universal Declaration of Human Rights, since various rights enshrined therein are limited, such as the right to non-discrimination, property rights, rights to freedom of expression and opinion (including commercial discourse) and the right to protection of moral and material interests that correspond to the authors by reason of scientific, literary or artistic productions.
- Paris Convention for the Protection of Literary and Artistic Works, since the right to exploit industrial property, specifically trademark rights, is limited, constituting a violation of the provisions of this treaty for nationals of all signatory countries who wish to use their exclusive rights.
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS): although this treaty indicates the possibility of limitations to trademarks, it does not establish the possibility of eliminating them, which occurs with the aforementioned restrictions.
- Berne Convention for the Protection of Literary and Artistic Works, given that the right of the owners of economic rights to use and exploit works is limited, including their reproduction by any procedure and in any form.
- WIPO Copyright Treaty (WCT or TODA), given that the right to exploit works through the digital environment is arbitrarily limited, which is specifically affected with regard to the prohibitions on advertising and promotions that include drawings or characters aimed at children.
- Agreement on Technical Barriers to Trade (TBT), since said agreement recognizes the right of countries to adopt standards or technical regulations to protect their legitimate objectives, such as the protection of life and safety of persons or consumers as long as these do not constitute unnecessary barriers to trade.

In addition to the above, there are very restrictive legal initiatives regarding the advertising of these products, and it is intended that the Ministry of Health be in charge of issuing quality seals to recognize the nutritional value of food. Also, there are prohibitions on selling food with a high caloric content and sugary drinks to minors in some states, such as Oaxaca and Tabasco.

This situation is undesirably leading us to an over-regulation of the food and beverage industry and to the occurrence of consistent phenomena in which, in order to comply with the provisions contained in the Official

Mexican Standard, modifications have to be made to the labels of the products, suppressing the use of characters and that these modifications may generate certain similarities in the packaging and annoyance to third parties that did not exist before the entry into force of the standard.

For this reason, the standard has been questioned before the judiciary in Mexico, which resolved in the first stage that NOM-051-SCFI/SSA1-2010 infringes the principle of reserve of law, whose final decision is very close to being resolved, where we can anticipate that it is very likely that the decision will be confirmed given the clear illegality in its issuance.

In this regard and as a conclusion, I consider that it is necessary to look for incidences where one right does not end up nullifying another, to create processes of education and awareness of the population to explain the effects of certain products on health as well as to look for a way that can be effective in providing the consumer with truthful, fast and useful information that allows making informed decisions in the selection of food.

Special attention must be paid to the provisions contained in International Treaties on Intellectual Property and Trade to avoid breaching the provisions contained therein.