/Carey

Junio de 2016

NEW GUIDELINE FOR THE SUPERVISION AND REGULATION OF THE NUTRITIONAL COMPOSITION AND ADVERTISEMENT OF FOODSTUFF

Recently the "guideline for the supervision and regulation of the nutritional composition of foodstuff and its advertisement ("**the guideline**") was published by the Undersecretary of Health.

The guideline´s main objective is to, "guide the process of supervision and regulation of foodstuff", taking into consideration the upcoming implementation of Decree No. 13 (June 27, 2016), which modifies the Health Regulations for Food Products.

This document puts special emphasis on two main articles of the Decree No. 13 (articles 120 bis and 110 bis), which regulate the use of the warning sign "HIGH IN", advertisements targeted at children who are 14 years of age or younger and sales and marketing of foodstuff in pre-school, elementary and secondary educational institutions.

Thus, some relevant aspects raised by the guideline are related to the advertisement of "HIGH IN" foods and the difference between fair use of a registered trademark and advertising activities.

Regarding advertising, the guideline distinguishes between activities related to marketing and those that involve mass media advertisements. In this context, the guideline refers to the**shape of the product** (for example a cookie or a candy with an animal shape). The guideline allows the use of these kinds of shapes and the use of the product's image in the packaging, provided it is a**realistic** depiction. In this regard, the guideline provides that, "the elements directed at children 14 years of age or younger and which have been registered as trademarks, may be used in the labeling and wrapping in**the same way in which they havebeen accepted in their trademark registration,**otherwise these elements will be considered as advertisement. On the contrary, fantastic or unreal images of the product, such as disproportionate images will be considered as advertising directed at children who are 14 years of age or younger"

Esta alerta legal es proporcionada por Carey y Cía. Ltda. con fines educativos e informativos únicamente y no pretende ni debe interpretarse como asesoría legal.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, Piso 43.
Las Condes, Santiago, Chile.
www.carey.cl

(emphasis added in the guideline).

Furthermore, the guideline states that**elements registered as trademarks** may be used in the labeling or packaging of the products but only if used in the same way in which they have been registered, otherwise they will be considered as advertising. Indeed, the guideline sustains that, “the elements directed at children 14 years of age or younger and which have been registered as trademarks, may be used on the packaging, wrapping or labeling in the same way in which they **havebeen accepted in their trademark registration,**otherwise these elements will be considered as advertisement (emphasis added in the guideline)”.

Please take into consideration that, although the guideline is a helpful resource to know the criteria of the health authority in light of possible future infringement procedures, the guideline is not binding and thus it is not possible to assume that this criteria will remain consistent in the future.

Autores: Fernando García; Ignacio Gillmore