**Case Information**

1. **Case Title:** Federal Public Attorney's Officevs. CONANDA (Federal Government) / Google Brasil Internet Ltda.
2. **Meta Data**
3. **Case Number:** 0054856-33.2016.4.01.3800
4. **Corresponding Law Reference:** Brazil, Regional Federal Court, Civil Class Action Nº 0054856-33.2016.4.01.3800 - Minas Gerais. Federal judge Miguel Angelo de Alvarenga Lopes, 10th Federal Court, First Circuit. Federal Gazette publication on 06-19-2017
5. **Date of Decision:** 06-19-2017
6. **Featured Case:** n/a
7. **Region:** Latin-America and Caribbean
8. **Country:** Brazil
9. **Mode of Expression:** Electronic / Internet-based Communication;
10. **Judicial Body:** Lower Court; Specialized Court/Tribunal;
11. **Type of Law:** Administrative Law; Civil Law;
12. **Main Theme:** Content Regulation / Censorship; Commercial Speech;
13. **Outcome:** Decision - Procedural Outcome; Judgment in Favor of Defendant; Injunction or Order Denied;
14. **Status:** Currently pending;
15. **Tags:** Advertising; Censorship; Children; Content-Based Restriction; Google; Internet; Right to Information; Rights of Others; Websites
16. **Excerpt:**

**Case Tracking - url?**

**Case Analysis**

1. **Summary and Outcome**
   1. **Summary:** The Federal Public Attorney’s Office (MPF), concerned with YouTube access by children, filed a civil class action against Google Brasil Internet Ltda. and the National Council for the Rights of Children (CONANDA), requesting: (i) the company to provide warnings regarding advertisement aimed at children and tools for reporting that sort of content to the platform; and (ii) the Council to establish administrative sanctions for content producers advertising to children.
   2. **Outcome:** According to the federal judge of the 10th Federal Court in Minas Gerais, pursuant to article 19 of the Brazilian Internet “Bill of Rights” (*Marco Civil da Internet*), there is no legal duty for Google to preemptively police content and, therefore, no legal obligation to include new report situations in addition to those already established by the company in its community standards. Moreover, the Council has no legal authority to establish administrative sanctions.
2. **Facts**
   1. **Facts giving rise to cause of action**

In March 2014, the National Council for the Rights of Children (CONANDA) published Resolution no. 163/2014, which deals with the abusiveness of advertising aimed at children and teenagers. The Council is one of Brazil’s most important government bodies designed to protect the interest of children and youth. One of its main activities is to monitor child protection actions carried out by the public power. Following the publication of Resolution no. 163/2014, actions against advertisement aimed at children have become more frequent in the country.

* 1. **Cause of action or law at issue**

YouTube is a content sharing space that have been employed to spread well-crafted videos depicting children as main characters, who, sometimes, advertise. Additionally, some Brazilian channels, such as *Bel para Meninas*, that often present and display the usages of products available in the market, have children as target audience.

The Federal Public Attorney’s Office (MPF) argued that several videos shared on YouTube contain abusive and illegal publicity aimed at children. Concerned with YouTube access by children, MPF filed a civil class action against Google Brasil Internet Ltda. and the National Council for the Rights of Children (CONANDA), requesting: (i) the company to provide warnings regarding advertisement aimed at children and tools for reporting that sort of content to the platform; and (ii) the Council to include administrative sanctions in Resolution no. 163/2014 in order to punish content producers advertising to children.

1. Decision Overview
   1. **Deciding judge & type of opinion**

According to the federal judge, advertising through merchandising is considered abusive by CONANDA Resolution no. 163/2014, which seeks to enforce the norms of the Consumer Defense Code (CDC) and the Statute of the Child and the Adolescent (ECA). Pursuant to article 37 of CDC, advertising is abusive when it takes advantage of "*deficiency of judgment and experience of the child*", while article 71 of ECA sets forth that it is necessary to respect children’s condition of “person in development”. Nonetheless, the judge denied MPF’s injunction request.

The federal judge stated that some videos shared on YouTube include content that can be classified as merchandising, i.e., a reference to a brand or a product in exchange for payment or some other reward. This has certain implications pursuant to Brazilian law, especially regarding the duty of transparency and identification of advertising messages – art. 36 of the Consumer Defense Code establishes that advertising must be transmitted in a way that enables consumers to easily understand it as an advertisement. The issue becomes more serious when advertising targets children.

* 1. **Issue statement**

The main issue analyzed before the Court regarding Google was whether the company could be compelled to exercise some kind of control over merchandising content on YouTube. In order to make his decision, the federal judge mentioned the Brazil’s Internet “Bill of Rights” (*Marco Civil da Internet*), which disciplines internet use in Brazil. Some basic principles listed in *Marco Civil da Internet* and directly related to the case are mentioned in the decision: freedom of expression, communication and expression of thought (article 3, subparagraph I), and the accountability of agents according to their activities (article 3, subparagraph VI).

With regard to CONANDA, the main issue was whether the Council had legal authority to impose sanctions in case of violation of Resolution no. 163/2014. CONANDA was created in 1991, as required by ECA, and is part of the Federal Government. The body is responsible for the protection of children and the youth, developing many different activities for this purpose - including the elaboration of resolutions that detail and complement what is stipulated by law. These resolutions are, thus, always subjected to the Brazilian Constitution and national legislation. In order to analyze the request for inclusion of administrative sanctions in CONANDA Resolution no. 163/2014, the judge analyzed Law no. 8,242/1991, which created the council.

* 1. **Parties’ arguments**

MPF asserted that child protection guaranteed by the Brazilian Constitution and ECA, as well as the principles of consumer protection, such as non-abusive advertising and transparency, must be safeguarded by the federal government.

* 1. **Court’s rulings & legal grounds**

In order to reject MPF’s request with regard to Google, the judge stated that there is no legal duty for the company to preemptively police content, pursuant to article 19 of *Marco Civil da Internet*. Google would be compelled to exclude YouTube videos if, after receiving a court order demanding the removal of specific content, the company failed to comply. Therefore, it would be up to the concerned parties to file a suit requesting Google to remove inappropriate content. Since the platform has no legal obligation to have prior control over the videos posted by its users, it does not have a duty to add warnings regarding these videos. In addition, the judge asserted that putting in place a channel for users to report improper or illegal content is not mandatory - even though Google may adopt it following its own policies.

Regarding CONANDA, the judge stated that the Council has no legal authority to establish administrative sanctions, according to article 2 of Law no. 8,242/1991. Pursuant to the Brazilian Constitution, the Council can only elaborate general norms on child and youth protection - and not establish sanctions, since this is the prerogative of the legislative power.

**Direction**

1. **Decision Direction:** Expands expression
2. **Information:** Advertisement aimed at children on the internet is a very sensitive issue. However, prior control over content on internet platforms is not the best way to deal with the problem, since it could amount to prior censorship. Compelling companies to exercise control over content means delegating subjective perceptions on the legality of certain kinds of content to their discretion and further encouraging these companies to take content down and/or diminish its visibility - what may damage freedom of expression.

**Perspective**

1. Global Perspective:
2. **International, Regional, and National Laws or Cases**

Braz., Marco Civil da Internet, Law no. 12,965/2014, art. 19, 20, 6 and 3, subparagraphs I and IV;

Braz., Consumer Defense Code, Law no. 8,078/1990, art. 36 and 37, paragraph 2;

Braz., Statute of the Child and the Adolescent, Law no. 8,069/1990 art. 71.

Braz., Federal Constitution of 1988;

Braz., Law no. 8,242/1991, art. 2;

Braz., Res. no. 163/2014, CONANDA;

Braz., Superior Court of Justice, REsp no. 1,342,640/SP. Justice Rapporteur Nancy Andrighi, 3th Chamber. Federal Gazette publication on 14-02-2017;

1. Other National Standards, Law or Jurisprudence
2. General Notes:

**Significance**

1. **Case significance:** Even though the decision was delivered by a lower court, it is important in the national context because the lawsuit filed by MPF is a civil class action (regulated by Law no. 7,347/85), which is employed to protect collective interests and, therefore, its judgment may have broader effects. If the courts’ decisions grant civil class actions requests, the judgement might benefit any third party damaged by the same fact, pursuant to article 16 of Law no. 7,347/85.
2. Precedential Effect
3. Persuasive Effect
4. Related Cases
5. Additional Citations

**Documents**

1. Official Case Documents

<http://dissenso.org/wp-content/uploads/2017/08/jfmg_00548563320164013800_19062017-2.pdf>

1. Amicus Briefs and Other Legal Authorities
2. Reports, Analysis and News Articles
3. Relevant Materials in Foreign Languages (Portuguese)

<http://dissenso.org/casoteca/ministerio-publico-federal-vs-uniao-conanda-google-brasil-internet-ltda/>

<http://www.valor.com.br/legislacao/5134636/google-vence-discussao-sobre-publicidade-infantil>

<http://www.direitosdacrianca.gov.br/conanda>