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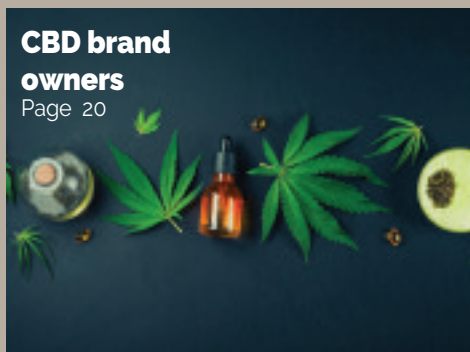
Lawyer



Goliath defeated once again: *Bentley Motors v Bentley Clothing*

Chris Lees, Director and Co-Owner of Bentley Clothing, highlights quotes from Bentley Motors' IPO cancellation actions: non-use, invalidity and appeal to the appointed person; High Court; and Court of Appeal.

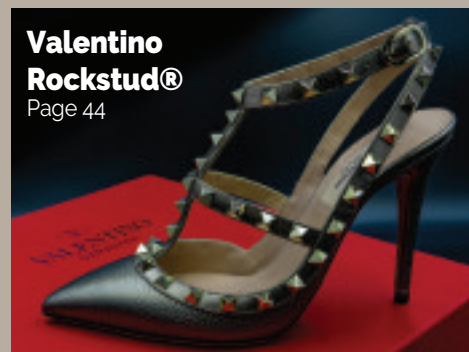
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Argentina: healthy eating, labeling law and trademark protection

Santiago R. O'Connor, Managing Partner of O'Connor & Power, provides an overview of the new rulings on food labelling and the implications involved for brand owners and consumers.

On Thursday, October 29, 2020, after an extensive session, the Senate of the Argentine Republic gave half approval to the "Law Project for the Promotion of Healthy Eating", which must now be dealt in the Chamber of Deputies.

The before mentioned law, known as the "Front Labeling Law", is of vital importance in Argentina's trademark scenario, since it directly affects the use of the trademarks that manufacturers include in packaging of their products, which constitute a very valuable intangible good, being the vehicle through which they transmit to the consumer the origin, quality and description of their product.

The main points of this law are as follows¹:

"a) Guarantee the right to health and adequate food through the promotion of healthy eating, by providing simple and understandable nutritional information on packaged foods and non-alcoholic beverages, to promote assertive and active decision-making, and to safeguard the rights of consumers; b) To warn consumers about the excesses components such as sugars, sodium, saturated fats, total fats and calories, based on clear, timely and accurate information (...); c) To promote the prevention of malnutrition in the population and the reduction of chronic non-communicable diseases". (Article 1).

According to Article 3, "All persons, human or legal, who produce, prepare, fractionate,



Santiago R. O'Connor

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¹ Recovered from <https://www.senado.gob.ar/parlamentario/comisiones/verExp/1334.20/S/PL>

package, order to package or manufacture, distribute, market, import, who have placed their trademark or are part of the marketing chain of food and non-alcoholic beverages for human consumption, throughout the territory of the Argentine Republic, are subject to the obligations established in this law".

Résumé

Santiago R. O'Connor, Managing Partner

Santiago R. O'Connor was born in Buenos Aires, Argentina. He is an attorney and graduate of the Faculty of Law of the State University of Buenos Aires. He has undertaken postgraduate studies at Harvard Law School and the Fordham IP Institute of New York, and has been professor of international private law.

Santiago is a patent and trademark agent specialized in intellectual and industrial property fields, advising domestic and foreign companies on local and international IP law, prosecution, and litigation in Argentina and throughout Latin America with more of 30 years of practice and experience and is the managing partner of O'Connor & Power.

He is an active participant in many IP International Associations, with main focus in INTA, CITMA, ECTA, PTMG, AIPPI and ASIPI, among others.

When the situation so warrants, the products must "include on the main side an indelible warning seal for each critical nutrient in excess, as appropriate: "EXCESS IN SUGARS"; "EXCESS IN SODIUM"; "EXCESS IN SATURATED FATS"; "EXCESS IN TOTAL FATS"; "EXCESS IN CALORIES". In case of containing sweeteners, the package must contain a precautionary legend immediately below the warning seals with the legend "CONTAINS SWEETENERS, NOT RECOMMENDED FOR CHILDREN". If caffeine is present, the package must contain a warning immediately below the warning seals that read "CONTAINS CAFFEINE. AVOID IN CHILDREN" (...)."

Regarding the characteristics of the warning seal, it "must have the following provisions:

- a) The seal shall take the form of black octagons with white border and letters in capital letters;
- b) The size of each seal shall never be less than five percent (5%) of the surface of the main face of the container;
- c) It may not be covered partially or totally by any other element. In case the area of the main face of the container is equal or less than ten (10) square centimeters, and contains more than (1) seal, the application authority shall determine the appropriate way of placing the seals.



The initiative, which is the result of several years of research and is already being applied in countries such as Chile, Ecuador, Uruguay, Peru and now also Mexico, aims to inform and raise awareness as a preventive measure in the fight against the overweight epidemic.

The provisions set forth in this article apply in a complementary manner (...) with respect to "(...)" of the MERCOSUR regulations, that is the Common South Market, this international free trade area agreement executed between Argentina, Brazil, Paraguay and Uruguay.

However, it is important to highlight the exceptions mentioned in Article 7, namely "common sugar, vegetable oils, nuts and common table salt are exempt from stamping on the main side".

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Article 9 establishes that "packaged food and non-alcoholic beverages containing a warning seal may not incorporate in their containers:

- (a) Supplementary nutritional information;
- (b) The inclusion of logos or phrases with the sponsorship or endorsements of scientific societies or civil associations;
- (c) Children's characters, animations, cartoons, celebrities, athletes or pets, interactive elements, the delivery or promise of delivery of gifts, prizes, presents, accessories, stickers, visual-special games, digital downloads, or any other element, as well as the participation or promise of participation in contests, games, sports, musical, theatrical or cultural events, together with the purchase of products with at least one critical nutrient in excess, that incite, promote or encourage the consumption, purchase or choice of the latter".

In the first paragraph of Article 10, "any form of advertising, promotion and sponsorship of packaged food and non-alcoholic beverages, containing at least one (1) warning seal, which is especially directed to children and adolescents (...)" is prohibited.

Article 12 establishes that "food and non-alcoholic beverages containing at least one (1) warning stamp or cautionary legend may not be offered, marketed, advertised, promoted or sponsored in the educational establishments that make up the initial, primary and secondary levels of the National Educational System".

It is clear that the initiative not only aims at providing information so that consumers can easily know what they are eating, but also regulates advertising and includes nutritional education and the promotion of healthy eating in schools. The underlying objective is to counteract the epidemic of overweight and obesity: 66.1% of Argentines are overweight, according to data from the 4th National Survey of Risk Factors (ENFR), conducted in 2019.²

The latter is a brief description of this law project, which have caused reactions of different sectors.

The voices in favor emphasize that the system of black octagons with the legend "EXCESS IN" offers direct and clear information at the time of choosing and buying, being the starting point to promote public policies tending to prevent chronic diseases, such as diabetes, hypertension and cardiovascular noncommunicable diseases, such as diabetes, hypertension and cardiovascular conditions, among others, and its application in the region has scientific evidence.

² Recovered from <https://www.infobae.com/tendencias/2020/10/30/como-funcionara-la-ley-de-etiquetado-frontal-de-alimentos/>

On the other side, the objections focus on the fact that the black stamp model does not favor the positive aspects of food; on the contrary, it stigmatizes them, generates negative economic effects in terms of manufacturing and packaging in the food industry, especially in SMEs; it is not enough to change the population's eating behaviors and the studies carried out are limited and do not evaluate the impact on the population's diet.

As the Argentine Center for Studies on Food Policy and Economics (CEPEA), underlines "We do not think it is appropriate to use black octagons since there are other effective models in the world, such as the Nutri-Score, the most evaluated and used in Europe. (...) "We also note...that the nutrient profile of PAHO is extremely demanding in its thresholds, so that it would apply to 91% of packaged products, and it is not true that all these products are unhealthy. Within those products, two thirds are foods that our food guides recommend consuming, so there would be a significant contradiction".

The Law Project has now to be discussed in the Chamber of Deputies where the support and lobby of consumer associations is very strong.

Likewise, renowned chefs of the country association, named ACELGA (Association of Chefs and Entrepreneurs Linked to Argentine Gastronomy) circulated on social networks a video in support of the law. "We need the Food Labeling Law now! Gentlemen legislators, we can't wait any longer. Our children's health is at stake. Foods must clearly state on their packaging the ingredients they have and the effect they cause on our bodies."

According to UNICEF, "the absence of a regulation on labeling violates the rights of children and adolescents, and also those of their families, because they cannot access the information they need to know if what they are consuming is healthy", emphasized the Representative of UNICEF Argentina, Luisa Brumana, and warned that obesity "especially affects the most vulnerable populations".

The Agency also believes that the enactment of such a law is particularly important in the context of the COVID-19 pandemic, as people with chronic conditions -such as obesity- are more likely to develop a severe form of the disease, making prevention policies central.

The debate on the labeling law, now under discussion in relation to food, and which will surely be extended to other industries, must be analyzed taking into consideration several aspects, taking advantage of the experience of other neighboring countries that have already implemented similar initiatives, and especially



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listening to the owners of the brand, so that this legislation strengthens their trademarks and not dilute the same.

Thus, mandatory changes that shall take place as a consequence of the implementation of this law, introducing the changes in frontal packaging, need the advice and analysis of the trademark owners in order to adequately and with equilibrium review how the same affects the communication of the sale of the products through their trademark.

No labeling law shall have good results if it does not help to strengthen brands, which are ultimately the engine and development of a country economy.

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² Recovered from <https://www.unicef.org/argentina/comunicados-prensa/ley-etiquetado-frontal-alimentos>