



II-9.6: Burkina Faso's media regulator ordered an advertisement for an insecticide to be taken off the air because its health risks were hidden from the public, and requested that the media refrain from broadcasting similar advertisements in the future.

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Translated Article



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MAIN INFORMATION

An advertisement broadcast in Burkina Faso for an insecticide did not reveal its health risks. The national media regulator published a decision on September 6, 2011 ordering that it be taken off the air and "requested" that the media refrain from broadcasting advertisements dangerous for human health and dignity.

CONTEXT AND SUMMARY

An insecticide, *Oro double action*, was for sale in Burkina Faso. Its use bore health risks that were mentioned on the product packaging. However, the advertisement touting its merits was designed to mislead consumers.

The national media regulator, called the *Conseil supérieur de la communication* (CSC), intervened with a September 6, 2011 decision, in application of paragraph 17 of the Act of June 14, 2005, which granted it the task of "ensuring that advertising's basic principles are obeyed in the media."

The decision is careful to point out that this kind of advertising also constitutes the felony of misleading advertising, as well as an act of unfair competition against other sellers.

It nonetheless decided to use its powers in order to order the company to cease broadcasting the advertisement. Furthermore, it "requested" that media executives generally avoid broadcasting this type of dangerous advertisement, and called on them to "be more vigilant" in order to avoid broadcasting advertisements that are potentially hazardous to human health or dignity.

BRIEF COMMENTARY

This decision raises three observations. First of all, we observe both the universal nature of these problems and the relativism of practices. Indeed, misleading advertisements are an omnipresent phenomenon that is even worse in market societies. But, why should we not take into account the fact that the risks were described on the product's packaging? One might be led to believe that the fact that it might not be easy for the target customers to understand product instructions was taken into account. Secondly, why not simply have filed suit before a criminal court, since criminal sanctions are more violent and repressive than regulatory orders? This is the essence of the question of regulatory efficacy: in reality, criminal courts are often less efficient than regulators' bureaucratic interventions, especially when the regulator can put pressure on the media that broadcast the undesirable advertisement.

Secondly, this decision demonstrates the increasing use of soft law in lieu of hard law. Indeed, the second part of the regulator's decision is intended for the company that is accused of having broken the rules, but also contains a general "request" intended for the media as a whole. A "request" does not seem to be obligatory at first glance. But, the "request" that banking law allowed the French banking regulator to address to banks' shareholders in order to ask them to recapitalize the banks whose shares they owned indeed seemed obligatory. Furthermore, this is revelatory of de facto power sharing between the government's regulator and the media themselves.

Indeed, thirdly, what is requested of the media goes far beyond health risks, because the public regulator specifically mentioned the hypothesis of an advertisement that would harm human dignity. The media would, in such a case, have the duty of preventing such an advertisement from being broadcast. This means that they have this power. The public regulator calls upon the media to be "vigilant": this means that the media have the right to refuse to broadcast advertisements that do not comply with the principles of human dignity; thereby, the media possess the ability to self-regulate. Therefore, the media and the public regulator co-regulate advertisement. This is also the situation in France, where co-regulation takes place between the *Conseil supérieur de l'audiovisuel* (CSA - French public media content regulator) and the *Autorité de régulation professionnelle de la publicité* (ARPP - Advertising industry self-regulation authority).