

## The press freedom and the advertising freedom<sup>1</sup>

### *A liberdade de imprensa e a liberdade na publicidade*

### *La libertad de prensa y la libertad en la publicidad*

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**Abstract** *This paper aims at discussing and problematizing issues that affect the debate between freedom and information censorship, by identifying the main differences between press freedom and freedom in the advertising context. We expect to contribute to the understanding that journalism and advertising are in totally different dimensions by clarifying the role and importance of information in the public sphere and this is why freedom cannot be the same for both issues.*

**Keywords:** Public sphere. Press freedom. Journalism. Advertising. Ethics.

**Resumo** *O presente artigo procura discutir e problematizar as questões que permeiam o debate entre a liberdade e a censura da informação, esclarecendo as principais diferenças entre a liberdade de imprensa e a liberdade no contexto da publicidade. Esclarecendo o papel e a importância da informação na esfera pública, espera-se contribuir para o entendimento de que o jornalismo e a*

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*publicidade estão em dimensões distintas e que, portanto, a liberdade não pode ser a mesma para ambos.*

**Palavras-chave:** *Esfera Pública. Liberdade de Imprensa. Jornalismo. Publicidade. Ética.*

**Resumen** *El presente artículo intenta discutir y polemizar las cuestiones que afectan el debate entre la libertad de información y la censura, identificando las principales diferencias entre la libertad de prensa y la libertad en el ámbito de la publicidad. Al esclarecer el papel y la importancia de la información en la esfera pública, se espera contribuir a la explicación de que el periodismo y la publicidad están en dimensiones totalmente opuestas y que, por lo tanto, la libertad no puede ser la misma para cada una de ellas.*

**Palabras-clave:** *Esfera pública. Libertad de prensa. Periodismo. Publicidad. Ética.*

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## One weight, two measures

In another situation, we already had the opportunity to affirm that “the public sphere is a space in which the communicative relation finds a large supply of contradictions - historical, social, economic, political ones and, for sure, communicational ones” (BUCCI, 2009c, p. 70). Public expression of the market being formed, the space of the public sphere presents itself as the public face which results from the confluence of private economic activities, that is to say, the public sphere projects itself with public visibility, upon a basis materialized in the economic life of its multiple individual and collective agents. It is to this extent that the public sphere results from the reunion in public of private agents, thus acting as public subjects in permanent debate. Therefore it would be an illusion to suppose that the public sphere is a stable consensus. On the contrary, it is instable, evolutive. As we already pointed out before, “it does not present itself as a pacific arena of consensus, but it weaves itself, above all, into conflicting and instable situations.” (BUCCI: 2009c, p. 70).

This instability oscillates from one side to the other, from time to time. It was so in the case of the vote of the Projeto de Lei 1002/07 [Law Project 1002/07], presented on the 9<sup>th</sup> of May 2007 by the deputy Jorge Tadeu Mudalen (DEM-SP), in the Congresso Nacional [National Congress], which would result in restrictions to beer advertising, that was then classified a alcoholic drink. Whereas some people invoked freedom of expression, with the argument that any limitation on advertising would characterize censorship, others required from the State limits imposed on beer advertising for the indistinct public, which included young people, adolescents and mainly children. These were good arguments. How can we say who was right? Could restricting the freedom of advertising be considered censorship? Or, on the contrary, would it be a wise measure to protect children and adolescents?

Another emblematic case was the initiative of the Ministério Público Federal (MPF) [Federal Public Ministry] in São Paulo, recommending

that some fast food chains stopped using gifts and toys to promote the sale of snacks. On the 15<sup>th</sup> of June 2009, the MPF issued a preliminary injunction in order to oblige the snack bar chains McDonald's, Bob's and Burger King to suspend the promotions McLanche Feliz, Lanche Bkids and Trikids, based upon the distribution or sale of toys and gifts. For the Procurador da República [Attorney General] Márcio Schuster-schitz da Silva Araújo, author of the action the toys influenced the children, stimulating them to consume food, which was associated with the problem of child s obesity<sup>4</sup>:

With the present *ação civil pública* [public civil action] the Ministério Público Federal [Federal Public Ministry] intends that the illegitimacy of the commercial practice adopted by the defendant-companies to sell toys in sequential and constant snack promotions targeted at children in their commercial establishments – snack bars be recognized.<sup>5</sup>

Here we must reflect upon the nature of the advertising discourse and of the promotional actions associated with it, always oriented towards the aim of potentializing consumption, that is to say the purchase of goods and services. In this point, a preliminary investigation is indispensable. Let us do it:

Is it possible that advertising, more exactly, advertising discourse, constitutes a discourse like any other? To say it in a better way: is it licit to suppose that the one who enunciates an advertisement in commercial vehicles, the vehiculation of which is paid, enunciates a thought or an idea, exactly like the one who writes an opinative article in a blog or in a newspaper? The question is not superfluous or superficial. It will accompany us all along this article.

<sup>4</sup> Available on: [http://noticias.pgr.mpf.gov.br/noticias/noticias-do-site/copy\\_of\\_consumidor-e-ordem-economica/mpf-sp-move-acao-para-que-redes-de-fast-food-suspendam-venda-de-brinquedos](http://noticias.pgr.mpf.gov.br/noticias/noticias-do-site/copy_of_consumidor-e-ordem-economica/mpf-sp-move-acao-para-que-redes-de-fast-food-suspendam-venda-de-brinquedos). Accessed on April 19th 2009.

<sup>5</sup> About the public civil action against McDonalds, Bob's and Burger King. São Paulo, June 15th 2009, p. 2. Available on: <http://www.prsp.mpf.gov.br/sala-de-imprensa/pdfs-das-noticias/acpdietas.pdf/view>. Accessed on April 19th 2009.

Let us say at once that the propagation campaigns of the beer brands, without exception, as well as those who involve the promotion of the sale of sandwiches of all kind in big or small snack bars constitute a typical advertising vehiculation. Although from a technical and theoretical point of view there are basic distinctions which separate the concept of propaganda and that of advertising, here, as far as this argumentation is concerned, one as well as the other can be applied to beer or sandwich campaigns.<sup>6</sup>

Advertising is a discourse which is interested in producing a determined reaction from its public (or “target-public”, as the advertising and marketing professionals like to say, using perfect bellicose metaphors in which they specialized, in which the consumer is always the shooters’ target, never that of intelligent and autonomous interlocutors). Advertising measures its efficiency according to the return – measured in consumption – which it assures to the advertiser. It is not at the service of the free formation of the public’s opinion and will; instead of this, it seeks to cause a definite and pre-established effect on the spirits (targets) that it hits with its artillery of messages.

Many authors, in different stages of the development of advertising in Brazil resolved to discourse upon the power of persuasion and upon the characteristics of the advertising discourse (CARVALHO, 1998; GOMES, 2003; SAMPAIO, 1997; SANT’ANNA, 1977). In fact, propaganda or advertising comprises a discourse defined by commercial, political or religious objectives. It plunges into the public sphere in order to obtain clients, electors, devotees. Exactly because of this, it is right to affirm that advertising is directed at the consumer, and not at the citizen.

As far as this is concerned, according to what we already mentioned, let us remember that the advertising messages are propagated in paid spaces and times: the advertisers buy fragments of the public’s attention in order to offer it their merchandises, be it goods, services or promises of well-being.

<sup>6</sup> In the present article the methodological distinction between one notion and the other is not necessary.

Whereas the ideal of journalism seeks objective information, which contributes to the citizen's emancipation (even if in practical life, there are cases of instrumentalization of the journalistic discourse in order to achieve the commercial, political or religious objectives), the ideal of the advertising messages seeks to seduce the customers, aiming at making them captivated buyers, faithful to a determined brand or person. Perhaps the distinction that is synthesized here sounds rudimentary, but in order to establish an essential contrast between one thing and another, it is appropriate. It is sufficient to register the following thing: if something fundamental distinguishes the journalistic discourse from the advertising discourse, it is exactly this interest which exists behind the message. In other words, to be successful, advertising must duly manage its interest in the consumer's money, vote or faith, whereas, to be successful, journalism must know how to distance itself from this very interest. It is because of this that journalism cannot be confounded with advertising and vice-versa. It is also because of this that from the 19<sup>th</sup> century on, the printed newspapers were concerned with the clear separation, in their pages, what is advertising contents from that which is informative contents. For the same reasons, though to a smaller extent, they were concerned with the separation of the opinion articles from the news reports, since they are distinct categories of the journalistic discourse.

Summing up, advertising has recourse to information to promote the advertiser's interest. And it is in this sense that it is said to be an *interested discourse*. Advertising is a unilateral discourse. The better it be it is not at the service of the fundamental right to information. This does not mean, in any moment, that it must be censored. It does not mean that it is at the service of the public's misinformation. It only means that it seeks to move the public, exhorted as a consumer to move to one direction or to another. At last, advertising is an extension of trade (of goods or services, of political slogans, or of religions). It is an accessory activity which exists in order to help to maximize the achievement of the trade objectives.

Well, if it is really like this, – and so it is, – society, as well as it has the right to restrict the circulation of merchandises considered inappropriate, has also the right to restrict, provided that it be democratically, according to the parameters of the Constitutional State, the vehiculation of advertising of certain merchandises, which, in a certain way, have been considered improper. In this sense, it would not occur to anybody to suppose that a veto on the advertising of atomic weapons would be censorship or violence against the freedom of expression, since advertising is subordinated to trade and the commercialization of atomic weapons having been prohibited the same restriction will be extended to the advertising of atomic weapons. It is not a question of censorship, of course.

### **The success of advertising self-regulation in Brazil**

Before going on with the argumentation which will tend to explain explicitly the differences between the regime of press freedom and the regime of the freedom to advertise, it is interesting to open a parenthesis in order to understand the more than relevant role which can insert self-regulation into this process, which is to regulate the vehiculation of the advertising discourse and even that of the artistic discourse. We will notice that, also there, there is no – neither could there be – a previous regulation for the vehiculation of journalistic information. The journalistic information is free per definition – we cannot burden it with any type of classification per schedule or per age. Any restriction on journalistic information would result in censorship, not exactly against journalists, but against the right the citizen has to inform himself about the facts and about the ideas. The advertising vehiculations, on the contrary, as well as the artistic manifestations (which, different from the first, cannot admit censorship), are liable to more regulation. The first ones can really suffer some kinds of restriction and the second ones can be classified according to age range and also to schedule range (in the case of mass media). Neither one thing nor the other necessarily means the establishment of censorship.

In Brazil, the practice of the Conselho de Autorregulamentação Publicitária [Brazilian Advertising Self-regulation Council] CONAR, has much to teach to the communication professionals. Dealing with self-rule as well as with self-regulation, CONAR is an experience which can be considered a success. Thanks to it, we can see with much clarity that the real statute of advertising communication can be managed with autonomy by its entities, its agents, and its professionals and that they understand precisely the difference between the freedom of expression in general and the freedom of expression on the advertising market.

By the way, CONAR is a good example to show how not all things need to be solved by law. Many of the impasses and of the dilemmas we meet in our daily life are sufficiently equated on the level of self-regulating instances. Nevertheless this does not mean either that the organ is obliged to have all the answers to the problems that were created by advertising. What must be emphasized, in this question, is the fact that there are alternatives to the State. CONAR acts where the State has not yet entered – and need not enter.

Other international examples, as it is the case of the MPAA (Motion Picture Association of America) or of the CAC (Conselho Audiovisual da Catalunha [Audiovisual Council of Cataluña), with a similar actuation to that of CONAR, can serve as a basis to illustrate a domain where not everything needs to be solved by law or by the intervention of the State. Acting as a representative of the cinematographic industry, it is incumbent on the MPAA to establish the indicative classification of the films, that is to say, it indicates to the public which is the minimum age range for each performance. The classification it establishes has a weight of recommendation, not of imposition, but, by being indicative, it is highly effective. In case this indication is not being followed and that the content, which is considered inappropriate, is exhibited, the people responsible for the exhibition can be admonished and, possibly, even prosecuted in legal terms. In the case of CAC, of Cataluña, the organ only establishes the classification parameters, but does not deal with the classifying of the works. This work is incumbent on the TV broadcasting



stations, which according to the parameters established by CAC, disposes the programs in its rating. The actuation occurs *a posteriori*, there being sanctions for the cases of inappropriateness

Dealing specifically with the question concerning the indicative classification of the films and other contents of audiovisual entertainment, Maria Rita Kehl presents new arguments explaining which, according to her, would be the advantages if the State assumed his function:

The advantage of doing the classification through the mediation of the State is a **public and secular** instance, that is to say, on the one hand, it represents the society's interests, which are not necessarily to be confounded with those of the market. On the other hand, it is (or it should be) independent of the religious entities; they are the ones that manifest the most frequently judgements that are independent of the commercial interests of the broadcasting stations. (BUCCI; KEHL, 2006)

The advantage of the intervention, in this case, resides exactly in the fact that the State represents the public opinion. Organs such as the MPAA, the CAC or CONAR representing market segments, are worried about the credibility of the sectors they represent (BUCCI; KEHL, 2006), whereas the State, in KEHL's opinion, would represent more than a market sector, society as a whole.

### **Differences between advertising and the press**

For the rest, there is nobody with common sense, who intends to equate freedom of press with the freedom of vehiculating advertising messages. A passage of the discourse of the entrepreneur and publisher Roberto Civita is particularly clarifying, in a conference held at the IV Congresso Brasileiro de Publicidade [IV Brazilian Advertising Congress], in São Paulo, in the year 2008. Civita, one of the most vigorous defender of the freedom of advertising in Brazil, presented a clear notion about the

motives which constitute the limits of advertising communication, differentiating it from press freedom. Let us have a closer look at this passage. He says:

Of course, we shall not – a priori – condemn all and any restriction on advertising and neither shall we equate it with attempts to limit press freedom. There are restrictions on advertising which make sense, such as - for example – that relative to cigarette advertising adopted in almost all the developed countries. The very Constitution establishes that it belongs to the jurisdiction of the federal law to impose eventual restrictions on commercial advertising of tobacco and alcoholic beverages, agro-toxics, drugs and therapies. (CIVITA, R. In: PEREIRA, 2008).

### **Right to information**

As we already pointed out at the beginning of this article, it is obvious that it is possible to find cases in which journalism surrendered to the seduction of proselytism, deviating from its ideals. “On the pretext of giving assistance to the consumer, who seeks his leisure in the cinema, the press assumed the role of propagating entertainment industry”. (BUCCI: 2009b, p. 28) Nevertheless even in these cases, the regime of press freedom cannot be equated with that of advertising. Let us see why:

The democratic tradition ensures the citizen’s right to information, since power emanates from the people and it is exercised in his name. The more informed the citizen is, the more apt he is to delegate, to control and to exercise power. Thus press freedom is indispensable to assure that the citizen has access to the information he depends on in order to exercise his rights and to exercise or control power

In opposition to advertising, journalism is the fruit of the debates which take place in the public space and returns to it. Whereas the excellence of advertising is achieved when it can lead the consumer’s will (Suggestion: to change “consumer” for “public” – we are speaking

in a broader sense), the excellence of journalism is achieved when it is led by society.

In a famous phrase, Rui Barbosa points out to the importance of this debate in favour of the freedom of press: “the press is the nation’s sight” (BARBOSA, 2004, p. 32). He also observes the relation that exists between truth and freedom:

All the good that has been said and that which will be said in the press, will still be very little, if we consider it free, independent and moralized. Moralized, it does not acquiesce to the abuses. Independent, it does not surrender to seductions. Free, it does not fear the potentates. (BARBOSA, 2004, p. 35)

The mission of journalism, of the free and independent press, is to serve the citizen and to watch power. More than covering the events, it has the duty to watch power. This is one of the reasons why the press must be free. In case it is not free, there will not be a democratic debate, neither will there be democracy. Obviously, none of that can be said about advertising, which not by chance, *does not have the mission to watch power*.

## **Liberty and responsibility**

To be free does not implicate to be without responsibilities. There are many cases in which journalism collaborated in creating a space of instability and conflict. It is appropriate to remember some historical passages, such as the “Fechteler Case.” In May 1952, the French newspaper *Le Monde* published a supposed notice about the admiral William Fechteler, at that time, chief of the US Navy operations, led by the National Security Council. The French newspaper was ashamed of the case after it had been divulged that the news was false and that the notice had been published without much caution. “The person

responsible for the publication, the veteran chief editor, had to resign from some of his positions.” (MOLINA: 2007, p. 40).

Responsibility, as we already pointed out in other texts, “must not be understood as a counterweight of freedom. On the contrary, freedom is the greatest and the first responsibility of journalism.” (BUCCI: 2009b, p. 122)

In a passage of the book *O Papel do Jornal*, [*The Role of the Newspaper*] Dines (1986, p. 121) emphasizes the importance of the journalist’s responsibility as a communication agent:

“The journalist cannot enjoy privileges. The journalist knows that, by writing a three-line notice, he can destroy a reputation and a life. Working in the backstage of information, he evaluates the force he possesses. For him, a limit, provided that it is not arbitrary, is more comfortable and protecting than impunity.”

On the same page, Dines suggests that “the way of institutionalizing responsibility and of obliging the journalist to live with it is the creation of codes of ethics” (DINES, 1986, p. 121).

The codes of ethics became a constant in many editor’s offices. Democratic experience already demonstrated exhaustively that journalism does not need more law but the ethical consciousness and the commitment to the citizen’s right to information. In this point, the example of the experiences of self-regulation can be useful to the press, however not in the same terms of those adopted by advertising or by entertainment industry. There is no law that improves the press. Who improves the press is society (dialoguing with its newspapers), independent of the State.

Thus, when we speak of codes of ethics in the press, we also speak of self-rule. In fact, we are living with court decisions which condemn newspapers to previous censorship, as it the case of the daily newspaper *O Estado de S. Paulo*, which since more than three years has been prevented from informing its readers about the *Operação Boi Barrica* [*Boi*

*Barrica* Operation], of the Federal Police. But there are also victories. The *Lei de Imprensa* (*lei* nº 5.250) [Press Law (law number 5.250), instituted during the military dictatorship on the 9<sup>th</sup> of February 1967, with the objective of punishing journalists and of indicting the newspapers was revoked in 2009. It belongs to the past, but it shall not be forgotten. It must be remembered so that the restrictions, which existed, cannot set limits on the manifestation of thought or on the right to information any more. For the journalist to exercise freedom is a duty, since, for the citizen, the free press is a right. In order to commit himself to the citizen's daily respect for his right to information, the journalist cannot give up the duty of freedom.

During the 5<sup>a</sup> Conferência Legislativa sobre Liberdade de Imprensa, na Câmara dos Deputados [5<sup>th</sup> Legislative Conference on Press Freedom, in the Chamber of Deputies] in Brasília, the journalist Sidnei Basile, vice-president of the Relações Institucionais do Grupo Abril [Institutional Relations of the Grupo Abril – Brazilian major Media Group, headquartered in São Paulo] pointed out some vices of the Brazilian press and commented upon the challenge of self-regulation:

How can we satisfy this right (the right to information, every citizen is entitled to) without self-regulation codes which guarantee the right of defence of whom is being accused? That the parties be heard? That *off the records* accusations be avoided to the utmost? That the reader be not confused by the journalist's mixing opinion with a piece of news in the same text? That no news be obtained with the journalist's simulating to be another person? That the contents of audio and video tape not be leaked without explaining first to the public the many cares which were taken in order to attempt to obtain the information in many other ways? (BUCCI: 2010a).

Self-regulation, which was already tested in the United Kingdom, although this experience was not successful (the Press Complaints Commission is in a profound phase of re-evaluation), appears like a

challenge, because it takes time, it is a long process, involving press organs and the public, always making quite clear that the government or the Judiciary Branch, must not interfere in no way in the publishing of the newspapers.

## **Final considerations**

Thus the differences between advertising and press can be seen more neatly. It is more than obvious that advertising information is subsidiary to trade, which does not have and need not have commitment to the factual objective truth, nor to the citizen's right to information. Carvalho (1998, p. 31), for example, comments that advertising, "to convince and seduce the receiver, does not let shine through its real intentions, ideas and feelings, being able to use various resources". Maybe the author's vision follows an excessively critical and acid path, but it does not omit to help us to see the structural distinctions between press and advertising.

Different from advertising, the journalist's commitment actually resides in the free information of the seduction strategies and of the intentionality of thirds. In a few words, the role of ethics, in the history of the press, is to protect credibility. Not by chance, all the codes of press ethics are very much engaged in the prevention of conflicts of interest between the editor's office and the commercial area (in charge of the sale of advertisements) of the publishing houses, the newspapers and the broadcasting stations. If there are conflicts of interest there, it is because there are different statutes between one activity and the other. As every journalist with a minimum of experience knows, when an advertising contact wants to interfere in the conduction of a reporting, there is going to be confusion, for sure. And who is going to lose the most with this is the public.

The stronger the publishing independence is, the better can be the quality of the provided information and the higher will be cred-

ibility. Hence, the image of this vehicle will be better with regard to its public.

Advertising is always the partner of the press. It actually gives sustenance to the free press. Without advertising, we can say very clearly, there would not be a free press. But its freedom is not equal to the freedom of press. Neither could it be.

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