

Process No.: 0204818-42.2019.8.19.0001

Type of Movement: Judgment

Description: This is a public civil action, with a request for provisional relief, proposed by the PUBLIC MINISTRY against ROCK WORLD S/A, SOUZA CRUZ LTDA., and VEGA FINA TABACARIA EIRELI. The Public Ministry claims that Sousa Cruz has been supplying tobacco products in non-compliance with the activity's regulations, in terms of advertising and sale of tobacco products during the Rock in Rio 2017 festival, when the company was fined by ANVISA for: a) marketing smoking products of the "Kent" brand containing overpackaging not registered with ANVISA, in the form of a kit consisting of a cigarette pack and a lighter with the "Rock in Rio" logo, which is a violation of art. 10, XXIX, of Law No. 6,437/77; b) irregular advertising of tobacco-derived smoking products of the "Kent" brand through street vending, in violation of art. 3 of Law No. 9,294/96 and art. 2, V, of Decree No. 8,262/14; c) advertising of the "Kent" product on a product display with brand elements using lights, in violation of art. 3 of Law No. 9,294/96 and art. 1, I, of the ANVISA Collegiate Board of Directors Resolution (RDC) No. 15/2003. 2. At the time of filing the demand, the 2019 event (Rock in Rio 2019) was in the process of being held. It was requested by injunction that the Defendants refrain from (i) conditioning the sale of lighters, or any other products, to the joint acquisition of smoking products; (ii) conditioning the sale of smoking products to the joint acquisition of lighters, or any other products; (iii) display the sale of smoking products in kits with lighters or other products; (iv) advertise smoking products, through street vending or sales stands; (v) advertise smoking products in counters with branded elements of the said product or using lights; (vi) sell smoking products in sales stand; (vii) sell smoking products through street vending; (viii) commercialize smoking products without adequate warning image/clauses; (ix) promote, propagate, or disseminate, in any form or means, a tobacco-derived product. 3. The main request is that the preliminary injunction granted is converted to the final decision; the Defendants being sentenced, under penalty of a daily fine of R\$ 5,000,000.00 (five million reais), to refrain from promoting any of the actions described in item 2 from (i) to (ix) in the "Rock in Rio" events to be held in 2019 and the followings years. 4. The Defendants are expected to be sentenced to (a) compensate, as wholly and widely as possible, the individual material and moral damages suffered by the consumer, under the facts presented, to be determined in the award calculation stage; (b) to recover for double the amount unduly earned due to the conduct challenged in this action; (c) repair the collective material and moral damages caused to consumers, in the minimum amount of R\$ 20,000,000.00 (twenty million reais), adjusted and with interest, which will be reverted to the Federal Fund for Diffuse Rights, mentioned in art. 13 of Law No. 7,347/85; (d) carry out counter-advertising, under art. 60 and its §1 of the Consumer Defense Code (CDC), after the sentence is confirmed, under penalty of a fine of R\$ 100,000.00 (one hundred thousand reais) per day of delay; (e) cover the case's fees and costs (fee-shifting provision). 5. The initial presentation was accompanied by the documents on pages 21-277. 6. Spontaneously, according to the case file pages 283-287, Rock World S/A requested the holding of a mediation/conciliation hearing, supported by art. 334 of the Civil Procedure Code (CPC), regularizing its representation on pages 405-414. 7. The decision on page 290, admitting the demand as structuring, appointed and held a special hearing, based on articles 138 and 139, IV of the Civil Procedure Code and art. 12 of Law 7,347/85. The participants of the hearing were the parties and representatives of ANVISA and INCA, even though the Plaintiff had expressed being against the hearing (pages 333-336). The decision and the partially concessive decision of the injunction requested, built in consensus, are attached to pages 383-385.

Also, the photos of the sales stand prototypes planned for the Rock in Rio 2019 event, as discussed and conceived jointly in the hearing, can be found on page 395. The steps to verify its compliance are found on pages 531-576. 8. The decision rendered at the hearing, pages 383-385, partially aggravates SOUZA CRUZ LTDA and VEGA FINA TABACARIA EIRELI to the amount set by the Court as a punitive fine so that they feel compelled to comply with it. The second instance, considering that the penalty was arbitrated in a hearing supported by arts. 11 of the Public Civil Action-Law and article 84, paragraphs 3 and 4, of the Consumer Defense Code, as well as article 536, caput and paragraph 1, of the Civil Procedure Code, highlighted the good procedural faith of the Appellants. Moreover, the fine was reduced to the amount of R\$ 500,000.00 in case of non-compliance, judging proportionality once the fine's coercive purpose was observed (AI 0060945-84.2019.8.19.0000). 9. SOUZA CRUZ LTDA and VEGA FINA TABACARIA EIRELI regularized their representations on pages 340-375 and 387/389, respectively. 10. Rock World S/A answered (pages 425-440) and added: (a) ANVISA had filed infraction reports without having been at the 2017 festival and almost two years after the alleged facts, at the same time of the Civil Inquiry's opening by the Public Ministry; so, the interpretation given by the Plaintiff was flawed and incomplete, because it was based on biased inferences that do not match the reality of the event; (b) with regard to the promotion and advertising of the Kent cigarette on a stand, supposedly located in a place prohibited for the sale of cigarettes, the products of SOUZA CRUZ LTDA, sold by VEGA FINA TABACARIA EIRELI, were arranged in a stand, within Rock World S/A's establishment, according to Decree 2018/96, art. 2, V, with the products being displayed in this space, which is not understood as advertising by the exception provided for in article 3 of Law 9,294/96, a diploma that would prevail over the restrictive regulation issued by ANVISA; (c) regarding the allegation of the itinerant sellers' prohibition, the products were sold inside the facilities and not on the public road; (d) with regard to the tie-in sale of cigarette packs and lighters, the sale of kits is not prohibited by law, in the same way that the licensing of the Rock in Rio brand in lighters does not find legal obstacles; moreover, the products were also sold separately, without the obligation of joint purchase; e) regarding the investment made by the products' manufacturer in the implementation of the tobacco shop, the ban on advertising is defined by the ruling legislation on the matter and the amount spent by who executes the action is not a relevant criterion for this definition; also, in the case of large events, as in this case, all values are superlative due to the number of participants; (f) regarding the objective civil liability attributed to Rock World S/A, the assumptions for this charge must be proven, as there is no consumption accident that justifies it in the case, according to articles 12 and 14 of the Consumer Defense Code; (g) in reference to the case's fees and costs (fee-shifting provision), ruling out any bad faith, the principle of symmetry in the application of article 18 of Law 7,434/85 must be invoked. Finally, it argues for the dismissal of copyright requests. 11. SOUZA CRUZ LTDA answered (pages 442-498) and brought as premise for the case the balancing of interests and practical intervention since the manufacture and marketing of tobacco-derived products are lawful economic activities. Under articles 1, IV, and 170 caput and sole paragraph, they deserve constitutional protections. However, they are also subject to restrictions necessary for the protection of rights, as evidenced in the same Constitution, article 220, §4, as well as in Law 9,294/96 and ANVISA's regulation. SOUZA CRUZ LTDA further argues that, in compliance with the conciliatory mode in which the demand was conducted by the Court: (a) a layout of two closed and similar points of sale (only differing in size) for the event was presented, whose title of the establishment would be: "Tobacco shop followed by the name of the retailer that will operate on site", with lighting at night, being internally all black/navy blue (that is, a dark color) with the sales display in silver background without differentiated lighting and any distinctive element of the brand on the

display other than cigarette packs, except for the warnings indicated by ANVISA and, by initiative of Souza Cruz, of the sale prohibition to minors under 18 (...);" (b) "in the aforementioned closed points of sale there will also be two accesses to the public, keeping, however, the interior protected and in each of the accesses there will be a security guard to verify the age and prevent the entry of minors into the place (...);" (c) SOUZA CRUZ LTDA was not willing to use a "manufacturer's street vendor selling cigarettes at the event" and sell "any kits (for example, cigarettes and lighter) in the sales establishment (...);" and, (d) "a standard price list was posted, given that this list cannot represent any advertisement for cigarette brands sold on the facilities, in compliance with ANVISA RDC No. 213/2018, art. 5, §3 (...)" . SOUZA CRUZ LTDA also evidences that ANVISA RDC No. 335/2003 was not in force when "Rock in Rio" 2017 was held, there being a regulatory loophole. RDC No. 62/2010 was revoked by RDC No. 335/2003, and, a few days later, this one was revoked by RDC No. 65/2010. The latter did not expressly reenact RDC No. 335/2010, attracting the incidence of articles 2, §1, and §3 from the Law of Introduction to the Rules of Brazilian Law (LINDB). 12. In preliminary, SOUZA CRUZ LTDA also raises the ineptitude of the claim, as the request is not specific and determined, making the Defendant's defense impossible (CPC, 319, IV coupled with 322 and 324, caput), and because the object of the dispute is not delimited (CPC, 286). For SOUZA CRUZ LTDA, the requests subject to items b, c, d, and f are elusive and uncertain. These requests make it impossible to exercise the adversary system, full defense, and due legal process since the establishment of future entrants is dissociated from concrete factual situations linked to future and uncertain events. In this way, the claim for compensation to individual consumers is dissociated from facts that could condemn the Defendant. In the same line, follow items d and e. The first one (recovery for double the amount) is allegedly dissociated from the factual and legal foundations that supported it. In the second one (counter-advertising), supposedly, there is no relationship between the facts presented and the assumptions of article 60 of the CDC (misleading or abusive advertising practice) giving rise to the required judgment. 13. On the merits, it ratifies the lawfulness of its conduct, arguing that: (a) for the Rock in Rio 2017 event, it set up temporary structures (stands), discreet profile, and "Tobacco Store" title, observing RDC No. 15/2003, art. 1, II, in force at the time, the areas (internal and external) physically delimited, located inside the commercial establishment of Rock World S/A, with smoking products exposed and sold only to individuals over 18 years old inside the aforementioned stands; noting that the health legislation did not require the affixing of visual barriers that would impede the external consumer to see the products displayed internally; (b) the decoration of the stands followed legal parameters; (c) the display and sale of the products were lawful and there was no commercial advertising; (d) images and warnings from ANVISA were displayed on the stands, which were highlighted regarding the products sold at the Tobacco Shop; (e) RDC No. 213/2018 was not in force at the time of Rock in Rio 2017, RDC No. 15/2003 was, and, therefore, the first one cannot be applied; before the publication of RDC No. 213/2018, the provisions of article 3 of Law 9,294/1996, with the wording attributed by Law 12,546/2011, were not even applicable as their regulations are pending; (f) also, the sale by street vendors was not restricted, meaning there was no violation of the legal provision; (g) there is lack of tie-in sale, as well as the duty to compensate, due to the absence of tort and causality; still, there is no identification of situations and/or to what extent attendees of the 2017 event would have suffered damage from the marketing of tobacco-derived products. The intended protection for all future editions of Rock in Rio emphasizes the impossibility of a future and conditional judgment, with no interest and usefulness of the requested jurisdictional provision. Finally, it urges for the dismissal of the request.

14. On pages 500-518, VEGA FINA TABACARIA EIRELI presents its defense, arguing the ineptitude of the complaint and that, as it is a permissive joinder of the Defendants, the Plaintiff had to individualize the conduct allegedly practiced individually by the parties, addressing a claim for each of them, what it did not do. On the merit, it alleges that its activity is the sale of products, including smoking products, having been installed a point of sale, with the stand being delimited and clearly identified as Tobacco Shop, on Rock World S/A's facilities for the 2017 event. They also had street vendors selling the products within the same area, without any legal prohibition at the time (2017). Both activities were legal. In addition, there was no tie-in sale but the sale of kits that included a lighter and a pack of cigarettes, which were also sold separately. It also argues that ANVISA had drawn up the infraction report without having been on site. Furthermore, the Plaintiff's claim is based on a normative diploma that was not in force at the 2017 event, violating the principle of non-retroactivity. Concerning the request for counter-advertising by VEGA FINA TABACARIA EIRELI, it adds that its activity is limited to marketing the product, as delimited by its constitutive act, and not to manufacture. Finally, it asks for the dismissal of the copyright requests.

15. In reply to pages 585-646, the Public Ministry rebutted the raised preliminaries and ratified the terms of its claim.

16. It was determined that the parties manifest their evidence (page 648).

17. On pages 650-903, the ASSOCIATION FOR TOBACCO CONTROL, HEALTH PROMOTION AND HUMAN RIGHTS - ACT HEALTH PROMOTION/ACT, supported on article 138 of the Civil Procedure Code, request its admission as *amicus curiae*. ACT adduces that it is a non-profitable and non-Governmental organization founded in 2006, when it became known as the Tobacco Control Alliance, to act nationally and internationally promoting and implementing tobacco control public policies under the Framework Convention for Tobacco Control (FCTC).

18. Given the determination of page 648, on pages 953-955, the Plaintiff came to say that it had no more evidence to produce, requiring the early judgment of the dispute. At the same opportunity, it expressed its agreement with the admission of ACT Health Promotion as *amicus curiae*. And it also mentioned that the Defendants' allegations in their replies (pages 585-646) do not bring argumentative innovation, thus reiterating its reasons for the demand. The Defendants (Rock World S/A on pages 938-944; SOUZA CRUZ LTDA on pages 905-936; and VEGA FINA TABACARIA EIRELI on pages 958-959) also said they had no more evidence to produce, requiring the early judgment of the law. On the same occasion, the Defendants objected to the admission of ACT as *amicus curiae*, arguing that the discussion in this Public Civil Action is legal and does not depend on any technical information that could justify the applicant's entry into the dispute. This is the brief report. Since the parties do not have more evidence to produce, I CONTINUE TO THE JUDGMENT OF THE FACT, supported by the CPC, article 355, I.

19. *Ab ovo*, and to the consideration of the application for admission as *amicus curiae* formulated by the ASSOCIATION FOR TOBACCO CONTROL, HEALTH PROMOTION AND HUMAN RIGHTS - ACT HEALTH PROMOTION/ACT, with support of article 138 of the Civil Procedure Code, under the argument of being able to present contributions in the form of relevant elements and information, for the pluralization and enrichment of the debate on the matter, which is characteristic of this interventional modality.

20. It is undeniable that the possibility of other persons (whether natural or legal), other than just the parties, to add elements of their knowledge about facts and information regarding the subject of the dispute proves to be of great value. This participation can help the judge reach the correct decision, thus being a healthy procedural measure that democratizes the Judiciary's scope of action.

21. However, the core of the question raised is in the legal regulations governing the matter at the Rock in Rio event in 2017. For the celebration related to the year 2019, the preliminary injunctions adopted met the purpose of avoiding any infringement. Furthermore, the information

provided by the applicant about any non-compliance with the injunction is irrelevant to the parties since they concern another manufacturer/supplier and other business establishments. Therefore, the applicant's participation in the case is neither useful nor convenient. 22. It is worth highlighting that, according to the Superior Court of Justice's understanding, the admissibility of the *amicus curiae* is exceptional. The requirements for its admissibility are: "relevance of the matter, specificity of the controversial topic or the general repercussion of the controversy" (according to AgInt in AREsp 1489024/SP, Reporting Judge Francisco Falcão, Second Panel, judged on 10/22/2019, DJe 10/28/2019 and AgInt in EDcl in AREsp 1551610/RS, Reporting Judge Herman Benjamin, Second Panel, judged on 08/18/20). In this case, the applicant's claim is related to the action's success, a particularity that is not abided by the procedural institute. 23. Accordingly, I REJECT the admission of ACT HEALTH PROMOTION as *amicus curiae* in this case. 24. As for the preliminary invoked by SOUZA CRUZ LTDA and VEGA FINA TABACARIA EIRELI (ineptitude of the complaint), it does not deserve to prosper, as they could present their responses to the Plaintiff's requests in all the items given, and, therefore, they cannot assert impossibility of defense. The dispute's object is perfectly outlined in the not to do obligations listed in item "b" and "c" of page 18 of the complaint, concerning the judgment for damages that may have been caused by commercial practices evidenced in this claim. Furthermore, VEGA FINA TABACARIA EIRELI's entry in the case is due to the solidarity imposed by the Consumer Defense Code on economic agents that participate in the same supply chain of consumer goods. Therefore, I REJECT the preliminary raised by SOUZA CRUZ LTDA and VEGA FINA TABACARIA EIRELI. 25. On the merits, the demand is limited to analyzing the alleged violations of the ruling of the consumption relationship of smoking products in the 2017 event (Rock in Rio 2017). Regarding the 2019 event, the preliminary injunctions issued in a special hearing (pages 383-385), held with the parties and interested parties (INCA and ANVISA) on 09/06/2019, proved efficient and effective in compliance with all legal parameters. 26. The legal regime governing this demand will be the Consumer Defense Code, as well as the special legislation for tobacco advertising, in compliance with article 220, §4, of the Constitution of the Federative Republic of Brazil, in addition to Law 9,294/1996 and its regulation, Decree 2018/1996, and also the Resolutions of the Collegiate Board of Directors (RDCs) of ANVISA, applicable to the subject in question. 27. Thus, delimiting the controversy's object, the commercial practices carried out in the 2017 event (offer and advertising), whose legality is questioned in this consumer class action, consist of (a) marketing of smoking products from the "Kent" brand, containing overpackaging not registered with ANVISA, relating to a kit of a cigarette pack and a lighter with the "Rock in Rio" logo, which illegality is typified in art. 10, XXIX, of Law No. 6,437/77; (b) carrying out irregular advertising of the same product, through street vendors, violating art. 3 of Law No. 9,294/96 coupled with art. 2, V, of Decree No. 8262/1; in addition to (c) carrying out commercial advertising on a product display with brand elements of the said product, using lights, in violation of art. 3 of Law No. 9,294/96 and art. 1, I, of RDC No. 15/2003. 28. The initial claim states that the INCA National Cancer Institute, based on a complaint by the Inter-American Heart Foundation and a detailed analysis of its technical team, will represent the Public Ministry. The INCA pointed out the irregularities in the advertising and sale of tobacco products during the Rock in Rio 2017 festival, causing irreversible damage to the entire community. Further, the complaint adds that ANVISA also became aware of these facts by INCA and, proceeding with its analysis, drew up infraction reports for the conducts evidenced in the item above. 29. According to the claim, SOUZA CRUZ LTDA would be illegally expanding its consumer market with collaboration of Rock World S/A, either in the sales authorizations or the advertising of its brand in a lighter, object of tie-in sale. The demand also argues that the Rock in Rio event, traditionally held in Rio de Janeiro city,

attracts a large audience (about 700 thousand people in its latest edition), with the main age group between 21 and 24 years old. Especially for these young people, there would be a wide range of academic publications and scientific evidence that would demonstrate "there is a proven causal link between the advertising and promotion of tobacco products and the increased consumption of these products, as well as initiation." The illustrative images of the sales stand installed on Rock World S/A's facilities, for the sale of SOUZA CRUZ LTDA's products by VEGA FINA TABACARIA EIRELI, the street vendor, and the Kent kit + electric lighter are in the initial document's heart (pages 8, 9, 13, and 14, respectively). Sanitary Infraction Reports Drawn by ANVISA. 30. Given the facts brought to ANVISA by INCA, the Agency has drawn up six infraction reports, five against Rock World S/A and one against SOUZA CRUZ LTDA. The infraction reports against Rock World S/A contain the following references: (a) 0017891198 (for violation of Law 9,294/96, art. 3; RDC No. 15/2003, art. 1, I, for the commercial advertising of the "Kent Control+Boost®" product, a kit composed of cigarette packs and a lighter with the "Rock in Rio®" logo, using a second packaging without proper registration with ANVISA); (b) 0017984191 (for violation of Law 9,294/96, art. 3; RDC No. 15/2003, art. 1, I - for carrying out commercial advertising related to the "Kent®" product in a product display, at the event "Rock in Rio - 2017", on 09/23/2017, which shows the presence of band elements of the referred product, using lights); (c) 0018015197 (for violation of Decree 8,088/2013, art. 14, for non-compliance with Notification 020/2017-CCTAB/CGTAB/DIARE/ANVISA, of 12/05/2017, not presenting a response that it proceeded with the immediate suspension of the disclosure and commercialization of all smoking products derived or not from tobacco, through street vendors, as well as presenting documentation proving the contracting of services for street vendors at the Rock in Rio event held on 23/09/2017; (d) 0018125191 (for violation of Law 9,294/96, art. 3, coupled with Decree 8,262/2014, art. 2, V, for irregular advertising of tobacco-derived smoking products of the "Kent®" brand, using a street vendor, evidenced at the Rock in Rio 2017 event, on 9/23/2017); (e) 0018147191 (for violation of articles 4, 5, and 20 §1 of RDC 90/2007, for exposing for sale a smoking product of the "Kent®" brand, containing a second packaging not registered with ANVISA, at the Rock in Rio 2017 event, held on 9/23/2017; the named product consisted of a kit of a "Kent®" pack of cigarettes and a lighter); regarding VEGA FINA TABACARIA EIRELI, the infraction report bears the following reference: (f) 0017927192 (for violation of RDC 90/2007, arts. 4, III, 5, and 20 §1, for commercializing "Kent®" smoking products containing a second packaging not registered with ANVISA, at the Rock in Rio 2017 event on 9/23/2017, the named product consisted of a kit of a "Kent®" pack of cigarettes and a lighter. 31. ROCK WORLD S/A and VEGA FINA TABACARIA EIRELI sustain that the facts presented in the initial claim were supported by the infraction reports mentioned above, which were drawn up by ANVISA almost two years after the event (Rock in Rio 2017) without ANVISA having been at the site. Likewise, the Civil Inquiry was opened for facts verification in January 2019. Therefore, it adds that they will not lend themselves to proving the facts articulated in the complaint. 32. The Defendant finds no ground. 33. The principle of free enterprise granted by the Constitution of the Federative Republic of Brazil (arts. 1, IV and 170, caput) does not prevent the State from imposing restrictions and limits to the exploitation of private activities given its compatibility with other principles, guarantees, fundamental rights, and constitutional, individual, or social protections. In this case, especially with health protection and the right to information. The risk associated with tobacco consumption justifies the intense health regulation of the tobacco market, considering the public interest in protecting and promoting health. Hence, all the sanitary activity performed by ANVISA specifically for smoking products, whether or not tobacco-derived, will be understandable under art. 8, caput and § 1, X of Law No. 9,782/1999. However, although it enjoys a specific and

differentiated regulation, control, and inspection regime by ANVISA, since it involves a risk to public health, the general deadline is the same as in any other administrative procedure. 34. Then, the period for "proceduralizing" the sanitary infraction's investigation is five years. The sanitary-administrative proceeding starts with the filing of the infraction reports. After the five years, the federal public administration's direct and indirect punitive action prescribes. The exercise of this police power aims to investigate violations to the legislation in force, counting from the act's date; or, in the case of permanent or continuous violation, from the day on which it ceased, under article 1 of Law 9,873/99. Therefore, ANVISA would have five years, from the date of the infringement evidenced (09/23/2017), to draw up these infraction reports, having done so within the legal term. Civil Inquiry. 35. Regarding the Civil Inquiry opening on a later date, the Defendant does not have better luck. Under article 8, paragraph 1 of Law 7347/1985, art. 90 of Law 8078/90, and to the National Council of the Public Ministry Resolution No. 23, of 9/17/2007, the Civil Inquiry is not a specific condition for prosecuting lawsuits under the Public Ministry's responsibility. Therefore, facts and evidence shall be produced in this Public Civil Action's records. Images presented in the complaint. 36. Moreover, the Defendants did not disagree with the images (photographs) of pages 8, 9, 13, and 14, attached by the Author in his complaint. Therefore, under article 422 of the Civil Procedure Code, they can prove the facts analyzed and judged. Sales stands. Its format. "K@" light. 37. The Plaintiff claims that the Defendant has breached Law 9,424/1996, article 3, failing to comply with the normative guidelines of ANVISA RDC No. 15 of 1/17/2003 and RDC No. 335 of 11/21/2003. It assures that Defendant has let be installed, installed, and exercised commercial activity in stands without a delimited internal sales area, which allowed the display of tobacco products for sale to become promotion of these products. There was no barrier between the display and the public that moved to and from the event's space, Rock World S/A's business establishment. In this line, the symbol "K" of the displayed smoking product, and its pack, is highlighted with lights, visible to all passersby from the afternoon onwards. In addition, the Defendants would have been able to sell smoking products with street vendors, a mobile display, a price list, and without warnings. 38. The photographs on page 8, presented in the complaint and by SOUZA CRUZ LTDA (page 464) in its response, demonstrates that the sales stand for smoking products was an open, hollow type, even though its internal part could be differentiated from the outer part by the delimitation of a temporary structure. It cannot be forgotten that this stand format (empty) provided a broader view of the products displayed internally for sale, even for those on the outside. However, at the time of the fact, there was no legal norm prohibiting the stand format mentioned above or even that the external viewing of internally exhibited products was blocked or reduced. 39. On the other hand, the image on page 9 indicates that, at night, the Tobacco Shop allowed the display of the luminous sign (neon light) "K" to identify the smoking product of the "Kent@" brand. So, it was confirmed that it meant advertising using the consumer's senses, in this case, the visual perception, to promote the smoking product. It is known that the so-called "visual merchandising" configures a strategy capable of valuing products, brands, and the point of sale itself to attract customers and encourage them to buy. In a recent decision of the Superior Court of Justice (REsp 1.703.077/SP), it was evidenced that "the nature of advertising involves active advertisements, so that the audience become enthusiastic about purchasing the product or service, often using psychological methods of persuasion, in addition to sensory elements that sharpen vision, smell, taste, and hearing, such as colors, smells, tastes, and how words and phrases are expressed." 40. As seen on page 9, the "K@" brand in (luminous) neon, although inside the stand (which was leaked/open), was visible to everyone who passed in front of the Tobacco Shop. Therefore, it sharpened the Rock in Rio 2017 public's vision, who were mainly between 21 and 24 years old. The Defendants used

advertising that encouraged smoking; the luminous "K®" was an invitation to consume the tobacco sold. Consequently, the Defendants' conduct, whether allowing, doing, or accepting the use of visually ostensible advertising of its smoking product, violates art. 3 of Law 9,294/96, art. 1, I, of RDC No. 15/2003, and article 37, paragraph 2 of the Consumer Defense Code. It configures abusive advertising, capable of inducing the consumer to behave in a harmful or dangerous manner to their health or safety. Sale of Kent® cigarettes by street vendors. 41. As for the sale of cigarettes by street vendors, it violates art. 3 of Law No. 9,294/96, art. 2, V, of Decree 2018/1996 (with the wording given by Decree 8,262/2014), and article 37, paragraph 2 of the Consumer Defense Code, as it is a sale made outside the limits established for the sale of smoking products (stand). There is a violation even if inside Rock World S/A's establishment, but outside the physical space intended to sell said product. It should be noted that the purpose of the regulations governing the matter is precisely to restrict the sales space, in addition to having warnings displayed in this space so that consumers are alerted to the product's components and their effects. 42. By consenting to the displacement of the sale also to street vendors around the entire area of Rock World S/A's establishment, as another way of offering the smoking product, the Defendant failed to keep the specific objective sales requirements established by RDC 15/2003 (delimitation of the internal area for displaying the products). Once again, it hurt the basic consumers' rights to have their health protected against the risks caused by practices in the supply of harmful products and abusive advertising (articles 6, I and IV coupled with 37 §2 of the Consumer Defense Code). Marketing of a kit consisting of a cigarette pack and a lighter. 43. The Defendants did not deny the sale of the kit but claimed that it was not a tie-in sale, in breach of article 39, I of the Consumer Defense Code, which prohibits this practice. This article bans tie-in sales, which consists of the consumer's freedom of choice prejudice by conditioning, subordinating, and binding the acquisition of a (main) product or service to the concomitant acquisition of another (secondary), when the consumer's purpose is solely getting the main product or service. 44. In this case, it did not configure a tie-in sale practice. There was no evidence that the unwanted (secondary) products were purchased in isolation and not concomitantly with the intended (main) product. 45. Furthermore, it cannot be deduced that there would have been an abusive tying practice held by the Defendants only because in the expenses records provided by Souza Cruz in the Civil Inquiry, there were no individualized details on the manufacture and sale of the products contained in the kit. If so, there would be a possible imbalance between the expenditure incurred with the event venue rental, for R\$1,920,000.00 (one million, nine hundred and twenty thousand reais), the provision of infrastructure services for the Tobacco Shops, for R\$ 2,000,000.00 (two million reais), and, for example, the sale of only R\$ 45,745.99 (forty-five thousand, seven hundred and forty-five reais and ninety-nine cents) in merchandise. Therefore, there is no violation of article 39, I, of the Consumer Defense Code. Compensation for damages caused by the advertising exceeding the limits imposed by law and technical regulations (violation of articles 6, I, and IV, coupled with art. 37 §2, coupled with art. 18, caput, all of the CDC; article 3 of Law no. 9.294/96; article 2, V, of Decree 2018/1996, and article 1, I, of RDC No. 15/2003), denoting defect in the service provided by the Defendants. 46. The Plaintiff expects the Defendants to be judged for damage compensation, as widely and entirely as possible, for (a) individual material and moral damages caused to the consumer, under the facts presented, to be determined in settlement; (b) recovery of double the amount unduly earned due to the conduct challenged in this action; (c) collective material and moral damages caused to consumers, in the minimum amount of R\$ 20,000,000.00 (twenty million reais), adjusted and plus interest, which will be reverted to the Federal Fund for Diffuse Rights, mentioned in art. 13 of Law No. 7,347/85; (d) carrying out counter-advertising, under art. 60 and its §1 of the Consumer

Defense Code (CDC), after the sentence is confirmed, under penalty of a fine of R\$ 100,000.00 (one hundred thousand reais) per day of delay; covering the case's fees and costs (fee-shifting provision). Individual moral and material damages. 47. Recognizing the abusive practice of the Defendants that injured the consumer's right, objectively born the duty to compensate the damages experienced by the specific consumer referred to in this public civil action, that is, the audience of Rock in Rio 2017. 48. However, as evidenced in REsp 1.502.967/RS by Justice Nancy Andrighi, "parameters and limits for determining individual material and moral damages are related to the quantum debeat of the challenged right. This should be debated in individual enforcement actions, which also have a high cognitive load", underpinned in article 97 of the Consumer Defense Code. 49. As evidenced in REsp 1.718.535/RS, judged on 11/27/2018, it is known that "the generality of the judgment to be rendered in a collective civil action, in which homogeneous individual rights are defended, results from the practical impossibility to determine all the elements usually contained in the specific legal norm, subject to immediate execution. Given the multiple ownership of individual rights collectively defended and the various ways and dimensions in which the damage to the right can be presented to each of its holders, it seems absolutely impracticable for the collective judgment to stipulate all the necessary elements to make this judicial title achievable right away". It should be noted that, still in line with the guiding judgment, "the spectrum of knowledge of the generic judgment is restricted to the homogeneity's core of the rights stated in the complaint. It refers, basically, to the examination of an unlawful act attributed to the Defendants, giving rise to the violation of homogeneous individual rights and interests brought into Court, establishing civil liability for all damages arising therefrom. Therefore, within the scope of the generic judgment, there is deliberation on the existence of the debtor's obligation (establishment of the liability for the damages caused), determination of the liable person, and mentions of the duty's nature (to pay/repay; to do or not to do). Hence, it can be concluded that the completion of the specific legal rule will materialize at the time of the sentence's compliance, which is divided into two very distinct phases: the first, consisting in the peculiar award calculation of the generic judgment, with broad cognitive activity, aimed at integrating the missing elements of the judicial title (the definition of who is the holder of the right, what is the provision and to what extent is entitled); the second, subsequent, is intended for the actual execution of the judicial title. It will be, therefore, at the time of the generic judgment's award calculation that the interested parties will have to prove, individually, the actual damages they suffered, as well as the causal link of these with the reputed unlawful proceeding in the collective civil action. They must also demonstrate the quality of victim, part of the collectivity injured by the procedure considered unlawful in the generic judgment". Collective moral damages. 50. Collective moral damage is an autonomous category of damage. It is linked to the collectivity's psychophysical integrity and its fundamental values, which reflect the broad reach of its members' dignity and the individual's ethical standard. It belongs to the autonomous category of damage that is not identified with the traditional attributes of humans (pain, suffering, or psychic upheaval) but with the unjust and intolerable violation of fundamental values held by the collectivity. Its primary function is to provide an indirect remedy for the damage to a non-pecuniary collective right, sanction the offender, and inhibit offensive conduct to these transindividual rights, as recognized in REsp 1.502.967/RS. 51. Considering this case peculiarities and seeking, as much as possible, to repair the actual damage caused by the Defendants' conduct contrary to Consumer Law, without disregarding the economic capacity of the payer and the needs of its recipient, which in this case is the whole society, I believe that fixing collective moral damage for R\$ 2,000,000.00 (two million reais), adjusted and plus interest, as of this date, is fair. This amount will be reverted to the Federal Fund for Diffuse

Rights, mentioned in art. 13 of Law No. 7,347/85. 52. Condemnation to double the amounts earned. The Author's claim is unacceptable, as it does not fall within the matter's normative frame in the specific case sub judice. Counter-advertising. 53. Concerning counter-advertising, it is provided for in arts. 56, item XII and 60 of the Consumer Defense Code, applicable when there are misleading or abusive advertising practices aiming to undo the social harms caused. Therefore, its scope is to protect consumers. All kinds of actions capable of providing the adequate and effective defense of the rights and interests protected by it admit a consumer status, as understood by article 83 of the CDC. 54. In the sub judice, it is understood that, due to the prohibition of tobacco products' advertising under Law 9,294/96, article 3, with the wording given by Law 12,546/11 ("it is prohibited, throughout the national territory, the commercial advertising of cigarettes, cigarillos, cigars, pipes, or any other smoking product, whether tobacco-derived or not, with the only exception of the display of said products in sales locations, provided that they are accompanied by the warning clauses referred to in §2, §3, and §4 of this article and the respective price list. The list must include the minimum retail sale price of cigarettes classified in Tipi code 2402.20.00, in force at the time, as established by the Executive Branch"), it will be necessary to seek another way to guarantee consumer protection through the specific sanction referred to (art. 56, XII coupled with art. 60 §1). 55. In this line, I find that counter-advertising can be pretty effective, considering one of the consequences of consuming tobacco products: COPD (Chronic Obstructive Pulmonary Disease). 56. Medical science has already identified that, among other diseases, smoking is the main risk factor for Chronic Obstructive Pulmonary Disease - COPD, ICD 10. The disease (COPD) is defined by the GOLD document (Global Initiative for Chronic Obstructive Lung Disease - website: <https://goldcopd.org/>) as a preventable and treatable disease, which presents pulmonary and extrapulmonary symptoms that contribute to the severity of the affected patients. In the city of Rio de Janeiro, there are reference centers for diagnosis and treatment of the disease. The following public institutions in Greater Rio stand out: (a) Rio de Janeiro State University - Piquet Carneiro Polyclinic; (b) Federal University of the State of Rio de Janeiro - Gaffrée Guinle University Hospital and Clementino Fraga Filho University Hospital; (c) Fluminense Federal University - Antônio Pedro University Hospital. 57. Among the various needs of the Brazilian public health network in caring for the COPD population is to provide information about COPD treatment, including access to smoking cessation. Therefore, I understand that the most effective counter-advertising for this specific case will be printing specific material for this purpose. It shall be illustrated and colored, in booklet format, and developed by the Defendants in partnership with the Departments of Pulmonology of the medical institutions mentioned above (item 56). Fourteen thousand (14,000) copies must be printed, in the representative amount of 2% (two percent) of the public participating in the 2017 Rock in Rio event (estimated at 700,000 people). Lastly, the printed material shall include and clarify that it deals with fulfilling this public civil action's judgment. The material must be produced at the expense of the Defendants within a maximum period of 6 (six) months from the final decision and distributed by them within 30 days after the production period. 58. Finally, I do not recognize bad faith in the Defendant's conduct, who, in addition to coming to the case file spontaneously, complied with the deferred injunction, acting under the appropriate procedural behavior, which is why I believe that the Special Court's understanding applies to the case. I judge inappropriate the condemnation to the attorney's fees in a public civil action when considering symmetry, and that bad faith does not exist, in the same way as with the Plaintiff, under article 18 of Law No. 7,347/1985 (EAREsp 962.250/SP, Reporting Justice Og Fernandes, Special Court, judged on 08/15/2018, DJe21/08/201 and AgInt in REsp 1762012/RJ, Reporting Justice Gurgel de Farias, judged on 08/31/20, DJe 09/08/20). Ex positio, I confirm the preliminary

injunction granted for the 2019 edition of Rock in Rio®, and, on the merits, acknowledging the violation of art. 6, I and IV coupled with art. 37 §2 coupled with art. 18 caput, all of the Consumer Defense Code; art. 3 of Law No. 9,294/96; art. 2, V of Decree 2018/1996 and article 1, I of the RDC No. 15/2003, at the 2017 Rock in Rio® event, I PARTIALLY UPHOLD THE CLAIM and CONDEMN the Defendants, jointly and severally, to COMPENSATE for: (a) individual material and moral damages suffered by the consumer, to be determined in award calculation by the competent civil court, according to article 97 of the Consumer Defense Code. The civil court will have to individually prove the actual damages suffered, as well as the causal link between these and the unlawful acts as considered in this collective civil action; and, (b) collective material and moral damages, for R\$ 2,000,000.00 (two million reais), adjusted and with interest, which will be reverted to the Federal Fund for Diffuse Rights, mentioned in art. 13 of Law No. 7,347/85. I IMPOSE to the Defendants, jointly and severally, as part of the decision, the administrative sanction of counter-advertising provided for article 56, XII coupled with art. 60 of the Consumer Defense Code. It consists in printing specific advertising material, in a number not less than 14,000 (fourteen thousand) copies, in booklet format (illustrated and colored), with at least ten (10) pages, to be distributed in outpatient and emergency care services in public and private hospitals of the city of Rio de Janeiro and Greater Rio. The material must inform consumers about the risks, prevention, and treatment of Chronic Obstructive Pulmonary Disease - COPD, ICD 10, as well as smoking cessation, including a printed remark stating that the issuance of the material deals with fulfilling this public civil action's judgment. The Defendants should develop this informative material about COPD in partnership with the Departments of Pulmonology of the following institutions: Rio de Janeiro State University - Piquet Carneiro Polyclinic; Federal University of the State of Rio de Janeiro - Gaffrée Guinle University Hospital and Clementino Fraga Filho University Hospital; Fluminense Federal University - Antônio Pedro University Hospital, all located in the city of Rio de Janeiro and Grande Rio. The material must be produced within a maximum period of 6 (six) months from the final decision and distributed by them (Defendants) within 30 days after the production period, under penalty of fine, which is fixed at R\$ 100,000.00 (one hundred thousand reais) per day of delay. I FAIL to condemn the Defendant for covering the case's fees and costs, supported by the STJ's reiterated position on the subject, accepting the principle of symmetry under article 18 of Law 7,347/1985.