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Pedro F. Silva-Ruiz

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Developments in Consumer Law in Puerto Rico, Case Brief: *Costa v. Caguas Expressway Motors, Inc.*

Pedro F. Silva-Ruiz*

I. Introduction

As early as 1973, the Government of Puerto Rico created a Department (Ministry) of Consumer Affairs¹ as an executive department within the government.² According to its enabling act, the Department “shall have as its primary purpose to defend and implement the rights of the consumer, to restrain the inflationary trends and to establish and inspect price control over goods and services offered in commerce.”³ The powers and faculties granted to the Secretary (Minister) are very broad.⁴ This article makes reference to only a few of these powers.

Among the powers granted to the Department are:

(j) to regulate and inspect advertisements and deceitful practices in commerce, including the faculty of inspecting the advertisement of products and services published through different media of communication and to require advertisers to produce evidence of the truthfulness of the published advertisement.⁵

This note examines a recent case interpreting the “Regulations on Deceptive Practices and Advertisements.”⁶

* Professor of Law, University of Puerto Rico; Honorary Professor of Law, University of Arequipa, Peru.

1. D.A.C.O. (Spanish acronym for “Departamento de Asuntos del Consumidor”).

2. Act no. 5 of April 23, 1973, 3 P.R. LAWS ANN. § 342 *et seq.*

3. 3 P.R. LAWS ANN. § 341(b).

4. 3 P.R. LAWS ANN. § 341(E) ((a) through (z), (aa) 1-4).

5. 3 P.R. LAWS ANN. § 341(j).

6. Regulation no. 4339 approved by the Department of Consumer Affairs and filed with the Department of State on October 3, 1990. The Spanish version,

II. Regulations on Deceptive Practices and Advertisements

As stated in Article 2, “[T]he purpose of this regulation is to protect the consumer against practices and advertisements that create or tend to create a false or deceptive appearance of goods or services offered in commerce.” As expected, the regulation “shall be interpreted freely in favor of the consumer.”⁷

The Regulations also set forth the following definitions:

Advertisement: any oral, written, graphic, pictorial or other manifestation made for the purpose of offering, describing or otherwise representing a good or service or some aspect of a good or service.⁸

Deceptive advertisement: any advertisement that constitutes or tends to constitute fraud or deception or that communicates or tends to communicate a false or incorrect idea about the thing being advertised.⁹

Deceptive practice: any act, practice, course of conduct, persuasive mechanism, offering, information or promise made, apparently made or suggested, whether it be deceptive, false, fraudulent or otherwise tends to deceive, or through which the true facts about the things are twisted or can be misinterpreted.¹⁰

III. Case Brief

In *Costa v. Caguas Expressway Motors, Inc.*,¹¹ Costa filed an administrative complaint with the Department of Consumer Affairs against Caguas Expressway Motors for not agreeing to sell a motor vehicle for the price stated in a newspaper advertisement. Four days after the initial advertisement, the price of the car was modified (“corrected”) in an advertisement published in a different newspaper. The Department of Consumer Affairs dismissed the complaint. The Court of Appeals affirmed the ruling and the consumer appealed to the Supreme Court of Puerto Rico.

The Supreme Court of Puerto Rico reversed. The issue was whether an advertisement of a sale of goods could be corrected by a

“Reglamento de Practicas y Anuncios Enganosos,” prevails in the event of a discrepancy between the original Spanish text and the English translation.

7. Regulation 4339, article 4.

8. Regulation 4339, article 5(c).

9. Regulation 4339, article 5(d).

10. Regulation 4339, article 5(l).

11. 99 PRSC 80, 1999 PR Sup. LEXIS 203 (Dec. 29, 1999).

rectification in another newspaper other than the one in which the advertisement was originally published. Article 21 of the Regulations requires a merchant that discovers an error in an advertisement prior to publication to correct the error immediately. If the error is discovered after publication, the merchant must publish the correct information in an "adequate and reasonable fashion," and further shall place a copy of the correction in the place where he exhibits for sale or sells the good or service that was the subject of the advertisement.¹² The merchant must honor the published offer prior to correction because consumers may be motivated to act based on the erroneous advertisement.

In considering article 21 of the Regulations on Deceptive Practices and Advertisements, the Court ruled that it was not adequate or reasonable to publish a "correction" (a supposed rectification of the incorrect advertisement) in a newspaper other than the newspaper that carried the original advertisement. The Court also ruled that the merchant should post the corrected advertisement at the entrance to the store. The decision also reaffirms the principle that "[Any] affirmation in an advertisement that lends itself to various interpretations, one of which may be deceptive, shall be interpreted adversely for the advertiser."¹³

The dissent points out that the Opinion is an act of judicial legislation, as article 21 of the regulations requires only the publication of the correct information in an adequate and reasonable fashion.¹⁴

IV. Conclusion

The organic act creating the Department of Consumer Affairs¹⁵ grants the Secretary (Minister) a full and broad range of powers and faculties for protection of the consumer. The Regulations of Deceptive Practices and Advertisements is one of the rules in force to protect consumers, in particular, to remedy deceitful advertisements and practices in commerce. In my opinion, the Regulations, which date back to 1990, are in need of revision in certain respects to bring them up to date with current commercial advertising practices.

12. Regulation 4339, article 21.

13. *Garage Ruben, Inc. v. Tribunal Superior de Puerto Rico*, 101 D.P.R. 236, 245 (1973).

14. *Costa*, 99 PRSC 80, 1999 PR Sup. LEXIS 203, at *26 (Lopez, J. dissenting).

15. *Supra* note 3.
