

# Administrative Litigation and Life Sciences Update

## ARs 227/2022 and 358/2022

Mexico City, April 22, 2024

On March 27, 2020, relevant provisions to the General Health Law (*Ley General de Salud*, "LGS"), and the Mexican Official Norm (*Norma Oficial Mexicana*, "NOM") NOM-0051-SCFI/SSA1-2010, were amended to include the requirement to use labels on the front and back of food products and non-alcoholic beverages.

These labels must include easy to understand nutrition facts, which should be visible, truthful, and accurate; the labels must also indicate if the product exceeds the maximum limits of energetic content, added sugars, saturated fats, sodium and all the other critical nutrients and ingredients established on the NOM.

On April 8 and 9, 2024, the Supreme Court issued an opinion regarding the constitutionality of the new requirement to use front and back labels on food products and non-alcoholic beverages: amparo revisions 227/2022 and 358/2022.

In relation to the docket number 227/2022, a food and beverages company filed for an amparo appeal against said provisions, and the appeal was later analyzed by the Plenary of the Mexican Supreme Court on an Amparo Revision.

The Supreme Court decided to deny the constitutional protection to the complainant, because on the Court opinion, the extent of the amendments to the LGS, have constitutional ends, such as, (i) providing true and accurate information to the public, and (ii) preserving the public health by promoting a healthy nutrition, especially in the best interests of minors.

The Supreme Court also stated that the frontal labeling of food products and non-alcoholic beverages is the most appropriate mechanism to pursue the aforementioned rights, since through this, consumers can make healthier choices, by easily identifying products that are harmful to their health.

In relation to the arguments defending the NOM-0051, the Supreme Court decided as follows: (i) The amendments to the NOM where correctly implemented and it does not contain any violations of a disabling nature; (ii) There is no contradiction with NOM-0051 and NOM-218-SSA1-2011 because they have different scopes of application and they even complement each other, because the first one regulates prepackaged products, without distinguishing between beverages, with or without added caffeine, while the second is applicable to beverages added with caffeine; (iii) The labeling system is a technical issue that must be regulated through an official standard -NOM-; (iv) The NOM does not violate the complainant's freedom of commerce and competition, since it imposes no obstacle to engage in the activity the company pursues, nor restricts its participation on the market, since the company can fully exercise its rights, if it complies with the applicable regulations; (v) The difference in treatment, that requires placing the label on the front and back of the products with added caffeine is constitutional, since the measure is intended to protect the health of minors, given that the alkaloid used in carbonated drinks is associated with diseases such as diabetes.

Regarding the Amparo Revision 358/2022, the Plenary of the Supreme Court determined that the regulations do not violate the equal opportunity rights, because the processed and ultra-processed products, are not equal to the food products and non-alcoholic beverages.

Also, the Supreme Court pointed out that the measures comply with the proportionality test, in relation to the right of freedom of work, given that the NOM pursues the protection of a constitutional right. The requirements are suitable, necessary, and proportional; the advantages, such as, discouraging the consumption of foods that end up creating diseases; makes effective the protection of public's health; furthermore, obtaining these advantages justifies the disadvantage produced by the measures in terms of the decrease in the sale of products.

Lastly, the Plenary of the Supreme Court resolved that the NOM does not violate the right of legal certainty, given that article 212 of the LGS provides an enabling clause, which commissions the Health Ministry to issue all the specific regulations on the nature of the products and the information that must be displayed on the labels, therefore, NOM-0051 exists due to the authorization that was granted in the LGS, and standardized the regulation of the product labeling system for prepackaged food and non-alcoholic beverages.

These matters are the first of a series of appeals that the Plenary of the Supreme Court will analyze and decide against the cited amendments.

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