

Decision on folios 310 delaying consideration of the preliminary request until after the counterarguments are presented.

On p. 315/319 plaintiff filed a petition requesting reconsideration of the above decision, which was denied at pp 320.

Petition from plaintiff at pp 322/346 filing an interlocutory appeal to reverse the above ruling.

New petition from plaintiff at pp 353/357 repeating the request for consideration of preliminary relief filed in the initial complaint, which was denied, awaiting respondent's counter-arguments (p 353).

ANVISA counter-arguments at pp 367/579, initially alleging the existence of collateral estoppel, as SINDITABACO, the union with which plaintiff is affiliated, filed an ordinary action (nº 2008.71.00.026898-0) and writ of injunction (nº 2009.51.01.000510-0) in Rio Grande do Sul and Rio de Janeiro, respectively, with identical prayers and grounds, therefore the case should be transferred to the 2nd Federal Court of Porto Alegre in light of the clear connection. It furthermore alleges the necessary joinder of defendants with the Federal government (Department of Health). On the merits, it alleges that the Federal Regional Tribunal for the 2nd Region has already ruled on the legality of Resolution RDC No. 54/08 in its decision on civil appeal No. 2004.51.01.009332-4. It alleges that plaintiff markets products with high levels of carcinogens, that nicotine is a drug that causes addiction and is highly toxic, included in the International Disease Classification from the World Health Organization; that the images published in RDC No. 54/08 are based on a Study Group created by the National Cancer Institute, ANVISA and the UFF and UFRJ laboratories and that their content falls within the scope of technical discretion granted to it by Law 9782/99.

This is the report. THIS IS MY DECISION.

I initially reject the initial argument of collateral estoppel and prevention between this case and class action lawsuits 2008.71.00.026898-0 and 2009.51.01.000510-0, pursuant to article 104 of the Consumer Defense Code.

There is also no necessary joinder of defendants to require mandatory involvement of the Federal government, as ANVISA, which has its own legal autonomy, is responsible for overseeing public health