



# GMO, CONSUMPTION AND CONSUMER VULNERABILITY IN BRAZILIAN CONSUMER LAW: THE RIGHT TO BE DULY INFORMED

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# GMO, CONSUMPTION AND CONSUMER VULNERABILITY IN BRAZILIAN CONSUMER LAW: THE RIGHT TO BE DULY INFORMED

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**Abstract** - The Brazilian consumer protection system is governed by the principle of vulnerability and adopts, among other mechanisms of equalization, the figure of “less sufficiency”. Often confused, these concepts are distinct and deserve detailed analysis. They are, today, even more relevant if we take into account advances in biotechnology. In this respect an important step is to ensure the right information to consumer, exposed to consumer relations involving genetically modified organisms.

**Key words:** Consumer. Vulnerability. Lacking of resources. GMO

**Résumé** - Le système de protection des consommateurs brésiliens est régi par le principe de la vulnérabilité. Il adopte, entre autres mécanismes de equalization, la figure du «moins suffisant». Souvent confondus, ces concepts sont distincts et ils méritent une analyse détaillée. Ils sont, aujourd'hui, d'autant plus pertinente si l'on tient compte des progrès de la biotechnologie. À cet égard, une étape importante est de assurer le droit d'information aux consommateurs qui sont exposés à des relations concernant les organismes génétiquement modifiés.

**Mots clés:** Consommateur. Vulnérabilité. Faute de ressources. OGM

## 1. Initial presuppositions

Current contractual relations seem to demonstrate the complexity of “a new” exchange logic. In them, other objects are transformed in negotiable items. They are “shadow objects” that come to demand juridical guidance and demand recognition. In this sense, one of the dilemmas that appear is the “legal system” in regard to genetically modified organisms. The question is even more relevant when dealing with contractual relations undertaken between “non-equals”, in which there is not the necessary balance in bargaining power, access or knowledge, handling of instruments or market strategy. For the purposes of the present article, we will limit ourselves to analysis of the cases in which the consumer may be the subject of biotechnological relations. These are relations in which, necessarily, one does not have complete access to the information necessary for basing conscientious choice. In this respect, it is necessary to understand how the protection of the right to information is included in Brazilian consumer legislation and, within its instruments, what the established mechanisms for protection of the vulnerable subject are.

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The Brazilian Consumer Defense Code (Law no. 8.078/1990) was elaborated based on the principle of consumer protection, such as had been determined by the constitutional text (article 170, V). It is, thus, an instrument for legal protection of the consumer against suppliers. The option of the Brazilian legislator seems to have been to protect the legal relationship of consumption, tying it forcefully to the principle of objective good faith. To implement such an arrangement, it defines the figure of the “consumer” as any physical person or corporate entity and/or the entire collective of persons that acquire or use products or services as final receivers. It may already be perceived that under such a conception the protection from vulnerability is evident. It likewise defines the figure of the “supplier” as any physical person or corporate entity, of public or private right, as well as depersonalized entities that exercise activities of production, assembly, creation, construction, transformation, importation, exportation, distribution or commercialization of products or services<sup>1</sup>. To work with consumer protection, the Code starts from the presupposition that it is the vulnerable party in this contractual relation. Thus, protection of the consumer would not have a paternalistic aspect, but it would be a manner of preserving negotiating balance by means of promotion of instruments for equalization. In other words, it assumes the role of promoting contractual justice. Juridically, therefore, consumer protection starts from the attribution of an intrinsic and inseparable quality of all those that are placed in the position of consumer, that is, recognition of their vulnerability. Starting from this recognition, the Code establishes a series of rights of the consumer that facilitate and guarantee this protection. Among them, one finds protection of the consumer who is lacking in resources. The concepts of vulnerability and lack of resources, although often used as synonyms, present different aspects. In this sense, the intention of the present study is to make some differentiations in the concept, characteristics and objectives of each one of these institutes, using as a basis the provisions of art.4, I and art. 6, VIII of the Consumer Defense Code, applying them to the discussions involving GMO.

### **2. Vulnerability of the consumer**

The Consumer Defense Code, in its article 4, established a National Policy for Consumer Relations, enumerating a series of principles which protect the consumer and guides all provisions in the Code<sup>ii</sup>. This policy is an instrument which seeks to balance the interests of consumers and suppliers, concerning itself with service to consumers and transparency and harmony in relations of consumption. Among these principles, one of the most important is recognition of the vulnerability of the consumer. As ALMEIDA (1993, p.11-15) writes, the principle of vulnerability is considered the “backbone of consumer protection, upon which is laid the entire philosophical line of the movement” regarding consumers. This author reflects:

“It is easily recognizable that the consumer is the weakest party in the relation of consumption, beginning with the definition itself, that consumers are those that do not have control over the means of production and, as a consequence, must be submitted to the power of those who hold title to them. To satisfy the needs for consumption, it is inevitable that the consumer appears in the market and on these occasions submits himself to the conditions imposed on him by the other party, the supplier.”

The consumer is considered vulnerable through having the free manifestation of his will easily limited. This is especially true in regard to the choice of his priorities and needs, keeping in mind all the procedures, mechanisms, methods and techniques

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used by suppliers to, even indirectly, promote, maintain, develop and guarantee circulation of their products and services<sup>iii</sup>. As SLATER (1997, p. 108-111) argues, everything produced must be sold such that the productive apparatus requires the production of new consumerism, new products, new needs and new uses for things. In addition to basic needs, needs are created for men, and the satisfaction of needs depends on access to commodities and consumption. PASQUALOTTO (2004, p. 49) characterizes in summary fashion the relation of consumption from the point of view of the parties, "On the one side is the supplier of goods and services, generally materialized in a company, structured not only to serve its essential purpose, but also apt to provide for the protection of its commercial interests, whether through actions purposefully conceived, inserted in their own market strategy, or through diverse resources, that range from bargaining power up to specialized legal departments. On the other side, the consumer, generally an isolated physical person, ignorant of his own rights or without the possibility for putting them in action, impotent before injury to his legitimate interests, confronted with the need for consuming goods indispensable to his own existence and dignity." Such mechanisms of persuasion and manipulation that fall daily upon the consumer are varied and end up creating fetalized representations of life, which induce the consumer to consider them real, making him vulnerable, making him subject to the need for legal protection<sup>iv</sup>.

FILOMENO (GRINOVER *et al*, 1998, p. 46), commenting on the Consumer Defense Code, affirms that in the area of special protection, in effect, the consumer "is undoubtedly the most vulnerable party, if taking into account that the holders of the means of production are those who hold complete control of the market, in other words, over what to produce and how to produce, without mentioning the establishment of their profit margins". As ALMEIDA (1993, p.16) writes, there is consensus in the western world regarding the vulnerability of the consumer, "with the UN already having made a pronouncement regarding this matter in resolution 29/248 of 04.10.85, recognizing that consumers run up against various imbalances which conflict with the right of access to safe and inoffensive products and services."

The concept of what constitutes vulnerability of the consumer includes diverse focuses, such as the economic, technical-professional and legal. The consumer is vulnerable economically because the owners of the means of production, suppliers, have complete control of the market, in other words, over production, how to produce, who to produce for and the profit rates used. In this sense AMARANTE (1998, p. 15-16) expresses that the "economic authority of the stronger party evolved in the imbalance of the contractual power, which dictates conditions, makes selfish interests prevail, contracts without competition, masking privileges and assuring itself efficiency and profitability..., the consumer ends up being harmed in his economic integrity and in his physical-mental integrity, with stability and safety emerging from this as a vigorous ideal, the great desire of protecting him and placing him in balance in relations of consumption." Technical-professional vulnerability of the consumer arises from the lack of this specific knowledge over a certain area of activity or service. It may furthermore be noted that such lack of access is even more evident when biotechnological developments are analyzed. This is especially sensitive if we think in terms of use of GMO in animal and human food and in the lack of disclosure or access to the consequences of this. Each area of knowledge already naturally has its particularities, with complete domain over the causes, concepts and consequences of the phenomena which may occur in a specific area only being available to the specific scholar of a determined subject. If we imagine the quantity of

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inventions that populate day-to-day life of human societies, one will have a notion of how varied the goods created by man are and the scientific vulnerability of consumers. The authors conclude that the vulnerable party-consumer, "cannot be put on par with suppliers of products and services also through this aspect, for they hold the specific technical and professional knowledge regarding their activities, which leads to obvious acceptance that the consumer must be protected." Another focus under which the vulnerability of the consumer may be analyzed is legal vulnerability. The consumption society inaugurated a new type of contracting, standard form contract, in which are inserted contracts of and by adhesion. In the context of this new reality, suppliers make use of standard form contracts, which by their complexity, technical nature, lack of clarity and transparency makes the manifestation of a free and conscious will of the consumer<sup>v</sup> difficult, making the need for legal protection arise. One of these forms of protection is the imposition, on the supplier, of the duty of providing information on the composition of a certain food. One could exemplify this type of situation in the demand that the label for GM foods contain the figure of a yellow warning triangle. It is important to highlight that recognition of vulnerability does not depend on the economic, social or intellectual level of the consumer. It also does not allow proof on the contrary, it is not subject to question and may not be suppressed since it is a principle and not a legal presumption. It is an intrinsic quality, special, inborn, immanent and inseparable from all those that place themselves in the position of consumer. Actually, it is even allowed that those who are not consumers *lato sensu* (art. 2 of the CDC), upon demonstrating their vulnerability, may receive the protection foreseen in that legislation (art. 29 of the CDC). Moreover, it must be emphasized that the principle of vulnerability of the consumer has a juridical nature of material law, which seeks to manifest the meaning of that situation in which someone is found fragile or weak in relation to a situation or someone. In this diapason, the principle of vulnerability of the consumer is one of the pillars of the Consumer Defense Code, which serves as a basis for the entire system, being a guiding directive for achievement of the objectives envisaged for it, and its adoption results in considering the consumer as the center of the legal universe and that this vulnerability does not allow the consumer to be reduced to the condition of mere object of the market or of suppliers<sup>vi</sup>. It is a material directive for identification of implicit rights, whether of the defensive or rendering of services type, operating as a limiter of the activities of the suppliers. It is constituted not only of a guarantee that the consumer will not be the object of manipulation that reduces him to the condition of object, but also of a duty of full development of the personality of each individual and/or of the collective. Therefore, it is a principle that grounds the subjective juridical positions, that is, the defining standards of rights, guarantees and duties contained in the Consumer Defense Code, arising from the general principles of the economic activity established in art. 170, V of the Brazilian Federal Constitution of 1988. It is a parameter for its application, interpretation and integration of the code. Finally, it is fitting to highlight that the principle of vulnerability is consubstantiated, principally in articles 6, VIII – which allows the inversion of the burden of proof -; 12, 13 and 14 – which regulates the responsibility of the suppliers for damages through accident of consumption -; 38 - which determines the need for true information in advertising -; 39, IV – protection of the weaker consumer against abusive practices -; 46 - which releases the consumer in regard to the imposition of contracts of which he does not have knowledge in advance -; 47 - which imposes the criteria of interpretation in

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favor of the consumer of the contractual clauses -; 48 - which obliges the fulfillment of the acts -; and 51 § 4 – which confers competence of the Public Prosecutor Office to postulate against potestative clauses in contracts.

### **3. Lack of resources of the consumer of the consumer**

In accordance with that stated in the previous item, the Consumer Defense Code seeks to balance the contractual relationship existing between supplier and consumer. As such, it established a series of basic rights of the consumer<sup>vii</sup>, among which - article 6, VIII – that of facilitating defense of his rights, in which is inserted the possibility of inversion of the burden of proof. CALDEIRA (2001, p.169) explains that in order to understand the reason for inversion of the burden of proof, it becomes necessary to refer to the head and subsection I of article 5 of the Federal Constitution of 1988, which establishes the principle of isonomy. One may conclude that the objective of instituting the possibility of inversion of the burden of proof is not only placing the consumer in equality with the supplier, but guaranteeing him an effective and adequate procedural protection. BARBOSA MOREIRA (1999, 135-136) affirms that the possibility of inversion of the burden of proof consists of attributing to the consumer a procedural advantage, consubstantiated in the dispensation from proving a determined fact, which without the inversion he must show; transferring the duty of proving that the facts did not occur to the supplier. Hence, inversion means exemption from the burden for the consumer and the creation of burden of proof for the supplier. This possibility is evident when working with consumption relations whose object is biotechnological developments. How could one demand from the consumer a demonstration of the technological elements which under most hypotheses he does not even understand? Imagine, for example, the need for demonstrating the existence of defect in relation to quality of the product (for example, through the absence of information regarding the presence of GMO) or even which type of product may be responsible for a determined allergy that has been developed. This inversion, however, is not to be given in an automatic way and it may only be granted, at the criteria of the judge, in two specific procedural situations: when the allegation of the consumer is verisimilar, or when he is lacking in resources (less sufficiency)<sup>viii</sup>. CALDEIRA (2001, p.174-175) affirms that there is no consensus in doctrine and jurisprudence<sup>ix</sup> regarding the extension of the concept of lacking in resources (less sufficiency), such that it may be understood either as economic, or as technical, or including both focuses. GIDI (1995, p. 35-37) questioning when the consumer may be considered as lacking in resources (less sufficiency) observes “that the main aspect that emerges in the context of the inferiority of the consumer in relation to the supplier, in that which regards production of proof, is in the inequality that exists in respect to holding the technical knowledge inherent to this activity”. Thus he concludes that lack of resources (less sufficiency) is related to the lack of specific technical knowledge of the area of activity of the supplier. SANSONE (2002, p. 154) highlights that lack of resources (less sufficiency) “has a lot to do with the impossibility of the consumer proving something in his favor; or not having necessary technical knowledge for the production of such proof, or for not finding or having means to better demonstrate it”. Regarding the extent of the concept, BARBOSA MOREIRA (1999, 143) understands that it “must be elaborated based on the purpose of the standard, which is to make defense of consumer rights easier in the specific field of the instruction”. In that which refers to the purely

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economic aspect, he argues that, although he does not share in the understanding that the lack of resources (less sufficiency) is equivalent to mere absence of financial resources, he recognizes that in many cases, the condition of juridically needy being configured, it will be characterized when proof depends on expenses not covered by the exemption given by free legal aid. Of the various concepts of lack of resources (less sufficiency) given above, one may conclude that, although this includes the economic aspect, the objective of this institute in the Code is not only to protect the economically weaker party, but to guarantee to every consumer, regardless of his economic level, broad access to the justice system, through a jurisdictional protection which is effective and adequate for defense of his rights. In consonance with the principles of the Code, it seeks contractual balance, and not only economic balance, between the consumer and the supplier. As CALDEIRA (2001, p.175) concludes, the possibility of inversion of the burden of proof, when lack of resources (less sufficiency) is characterized, "seeks to assist the one who is not even able to dialogue with the supplier, for he does not understand or knows nothing about the product, not having subsidies to undertake proofs that corroborate his right".

### **5. Genetically modified organisms: the duty of providing information**

An effective consequence of the principle of vulnerability is the duty of information which is part of any consumption relationship. In consumption relationships involving GMO, this duty arose strictly from the principle of objective good faith and from legislation currently in effect. Oddly, however, the Decree n°. 4.148/2008 which altered the legal content of Law no. 11.105/2005 regarding the GMO's securities standards, was recently approved by the Commission of Constitution and Justice and Citizenship of the House of Representatives. Said decree had been appended to another (PL no. 5.848/2005) whose wording was considered unconstitutional. Justification for the legislative alteration is correct information to the consumer, in consonance with already existing legislation, avoiding the "political use" of the discussion and use of the label as a form of "counter advertising". The current wording of Law no. 11.105/2005, however, already foresees, in its article 40, that the foods and food ingredients for the purpose of human or animal consumption have information regarding the presence or lack thereof of GMO. It conditions labeling, however, to later regulation. It is interesting to note that there had already been regulations in this respect (Decree no. 4.680/2003).

The Decree 4.680/2003 makes compulsory the labeling of GM food. Therefore, it is necessary to make it clear that the GMO labeling should not be confused with safety. In Brazil, if the GMO is not considered safe for consumption, it will not be authorized for commercialization. Therefore, only GM food or feed that are considered safe will be labeled because the labeling is part of the right of the consumer to have information and freedom of choice. The article 2 states that when food and food ingredients for human or animal consumption which contain or are produced from GMO which make up over one percent of the product are to be commercialized, the consumer must be informed of the transgenic nature of this product. The Decree also states that the consumer must be informed of the type of gene used, which must be included in the list of ingredients. As for food and ingredients produced from animals that were fed with feed with GM ingredients, these must be included on the main part of the label, and must meet requirements for size and highlighting as stated in article 2, thus: "(name of animal) fed with feed containing transgenic ingredient" or "(name



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of ingredient) produced from animals fed with feed containing transgenic ingredients". As for food and food ingredients that do not contain GMOs or were not produced from GMOs, the label will state that "(name of product or ingredient) is free of transgenics", providing there is a similar transgenic product on the Brazilian market. Another point to be made on the Decree is that the Ministry of Justice published the MJ Order 2658/03, which regulated Decree 4680/2003 and according to the text of this order, it seeks to define the form and minimum dimensions of the symbol to be included on the labels of food and food ingredients for human or animal consumption packaged as those sold in bulk or *in natura*, which contain or are produced from GMO as stated in Decree 4680, of 24 April, 2003. This order is complementary to the technical Regulations for the Labeling of Packaged Food, approved by Resolution 259 of 20 September, 2002 of the National Agency of Sanitary Inspection (Anvisa).

In large part, however, the absence of possible regulation regarding labeling would not release the supplier from the obligation of providing the most complete and adequate information regarding the ingredients of the products it sells. This is an affirmation that would be supported not only by the principle of objective good faith (transparency, loyalty and information), but equally by the principle of vulnerability.

It may be noted, for example, that the Consumer Code establishes the duty of informing as the fundamental principle of the National Policy of Consumption Relations (art. 4, IV) and as a basic right of the consumer (art. 6, III). In regard to the latter aspect, indeed, the provision is broad enough to allow one to suppose that this must encompass the specific nature of foods produced from GMOs (see the terms "characteristics", "composition", "quality" and "risks"). It seems clear, however, that under any analysis, whether regarding the percentages used in creation of the product, or whether regarding possible health risks, the supplier must provide the indispensable information. If this interpretation were not enough, the same CDC foresees the duty of the supplier maintaining (and making available in systemic interpretation) technical and scientific data that support the advertising it transmits (art. 36, sole paragraph). Moreover, it is certain that any advertising that omits information may be considered as false advertising (art. 37, §§1 and 3). One may, in this measure, question what the consequences of possible disrespect for such provisions are. In addition to civil consequences as, for example, compensation for damages caused or for violation of the duty of good faith (objective, connected to information), the CDC itself foresees administrative sanctions for such omission (fines and prohibition of sale) and criminal sanctions (art. 66, detention and fine). To a certain extent, therefore, the wording proposed for §§ 2 and 3 of art. 40 of Law no. 11.105/2005 seem unjustified. That is because, in accordance with said Decree, information regarding the absence of GMOs would be conditioned on the existence of similar "genetically modified items" and proof through specific analysis of that condition. In addition, it is proposed that any and all regulation regarding information be conditioned on that provided for in the projected wording. Well, in the event that such wording is definitively approved, we are faced with true inversion of the logic of consumer protection and of broadening of his awareness, education and responsible consumption. That is because denying or limiting information to the consumer regarding the content of the foods he consumes does not contribute to clarification for him or avoid "political use" of the label. If there is fear that food producers that use GMOs be hurt, this is the protection to be undertaken under the law of competition.

Effective result of the principle of vulnerability is the duty of incitement to any information regarding consumption. In relations involving GMO, this duty is due

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strictly to the principle of good faith and strict liability. The current wording of Law No. 11105/2005, however, already provides, in its Article 40, that food and food ingredients intended for human consumption or animal feed containing information about the presence or absence of GMO. However establish that the labeling will subject of further regulation. To a large extent, however, the absence of labeling regulations does not relieve the supplier to provide the most complete and adequate information on the ingredients of its products. Note, for example, that the Consumer Code settles the obligation to provide information as fundamental principle of the National Consumer Polices (art. 4, IV) and as a basic right of the consumer (Article 6, III). On this last point, moreover, the device is large enough to allow supposing that this duty covers the specific foods produced from GMO. It seems clear, therefore, that under any analysis, is about the percentage used in the preparation of the product or on the possible health risks, the supplier must provide the necessary information. On top of this interpretation, the same Code stipulates that the supplier maintain (and provide interpretation on systemic) technical and scientific data to support the advertising vehicles (art. 36, sole paragraph). It is certain, also, that any publicity or silent advertisement can be consider misleading (Article 37, § § 1 and 3). Article 30 states that any information or advertising about a product in any form of communications media must be accurate and that the manufacturer must be prepared to stand by this information when a contract is undertaken. In article 31 it is stated that all information about products or services and their characteristics, quality, quantity, composition, price, guarantee, expiry dates and origin must be clear, correct and accurate, and this is also the case when it comes to consumer health and safety. To that extent, would be asked which the consequences on failure in complying such provisions are. Along with the civil consequences, for example, compensation for damages or for breach of duty of good faith (objective, linked to information), even the Code provides administrative penalties for such omissions (fines and bans on marketing) and penalties (art. 66, arrest and fine).

### **6. Concluding notes**

The Consumer Defense Code has the purpose of balancing contractual relationships between consumers and suppliers. It recognizes that the consumer is the weaker party in this relationship and for that reason seeks to protect him. This type of protection is extremely important in times when consumption relations are also subject to the rigors of technological innovations. It is a fact that there is separation from technological knowledge and cognitive capacity of the consumer. The consumer is not always able to understand the consequences of his consumption habits and even if a certain product or service may come to be harmful to his health. To make this protection effective, we begin from the principle that any and every consumer, poor or rich, cultured or ignorant, physical person or corporate entity, individual or collective entity, is vulnerable, in other words, he/it may have his/its free and conscious manifestation of will attacked by commercial practices, by the absence of knowledge and by the denial of access to information. This recognition is what founds and justifies the existence of the consumer protection system, serving as a guide for the standards established by it. His/Its basic rights were conferred with the scope of protecting the consumer, and within these rights is that of facilitation of defense of his/its rights, through effective and adequate legal protection, which allows the inversion of the burden of proof when the consumer is lacking in resources

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(less sufficiency). In this context, it may be seen that vulnerability is a general characteristic of all consumers. Lack of resources (less sufficiency), for its part, is a specific condition of (a) determined consumer(s) who do not have economic or technical conditions for making use of their rights. Vulnerability is a material and general condition imposed by law, whereas lack of resources (less sufficiency) is merely a procedural matter, analyzed exclusively for purposes of inversion of the burden of proof. Finally, vulnerability is a principle admitted by the Consumer Defense Code. It is a starting point for the establishment and interpretation of the standards contained in the Code. It limits the activities of suppliers and may not be suppressed or withdrawn. In another manner of speaking, lack of resources (less sufficiency) is a judge, a conclusion at which one arrives, analyzing the individual characteristics of a consumer. It is a legal benefit that may be suppressed and revoked. Although they are different institutes, vulnerability and lack of resources (less sufficiency) have a common characteristic; they are used by the Consumer Defense Code for the protection, guarantee and enforcement of consumer rights.

In the terms of the Consumer Defense Code, the consumer has every right to be duly informed, and the information provided must be adequate, accurate and clear (article 6, clause III). The clarity of the information is not only a result of acting in good faith, but more importantly, it is the result of putting the transparency principle into action (article 4), which is also one of the objectives of the National Consumer Relations Policy adopted in Brazil, as the central idea of the Code is to establish a more sincere and less harmful relationship between consumers and suppliers. The Code states that suppliers should not market any products that are risky to the health or safety of consumers, except those which are known to be so and which consumers buy at their own risk and even then the manufacturer must supply necessary and suitable information concerning the product and its possible risks, which is necessary in the case of GMO (article 8). Likewise, article 9 clearly states that the supplier of potentially dangerous or harmful products and services must clearly provide information on these aspects of their products, without affecting the adoption of any other applicable measures in each concrete case. Once again, the concern of the legislator can be seen concerning clear information about safety issues should be made available to the consumer. Brazilian consumer protection legislation is concerned about information even in advertising. In dealing with consumption relations that involve GMO, the duty of adequate information (instrument of protection from vulnerability) and the mechanism of lack of resources (less sufficiency) represent an effective form of consumer protection, beyond casuistic regulations and merely economic interests.

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<sup>i</sup> According to articles 2 and 3 of the Brazilian Consumer Code.

<sup>ii</sup> Article 4. The National Policy for Consumer Relations aims to meet the needs of consumers, respect their dignity, health, safety, protection of their economic interests, improving their quality of life as well as the transfer and harmony in relations consumer, observing the following principles...

<sup>iii</sup> As recognized by São Paulo's Court of Justice, case n° AC 262603-2.

<sup>iv</sup> The CDC prohibits in its Article 37, any misleading or abusive advertising. Misleading advertising is one that incorrectly states the consumer about a product or service. Abusive is the advertising that exceeds unreasonably and in a manner contrary to the equality of certain conduct recognized as lawful criteria.

<sup>v</sup> The CDC, in art. 54, provides that standard form contracts are written in clear and noticeable and readable characters, so as to facilitate its understanding by the consumer.

<sup>vi</sup> As recognized by the Rio de Janeiro's Court of Justice, case n° AGA 184616/RJ.

<sup>vii</sup> Article 6 - are basic consumer rights:

I - to protect life, health and safety against the risks of practices in the provision of goods and services considered dangerous or harmful;

II- The education and outreach on the proper use of products and services, enabling free choice and equality in hiring;

II - adequate and clear information about different products and services, with correct specifications of quantities, characteristics, composition, quality and price as well as about the risks they present;

- Protection against misleading advertising and unfair business methods coercive or unfair and against unfair practices and imposed or in providing products and services;

V - the modification of contractual terms which establish or disproportionate benefits thereof by reason of subsequent events that make them excessively costly;

VI - to effectively prevent and repair damage to property and moral, individual, collective and diffuse;

VII - access to judicial and administrative, in order to prevent or repair of material and moral damages, individual technical assistance to the needy.

VIII - the facilitation of the defense of their rights, including the inversion of the burden of proof in his favor in the civil proceedings, while, at the discretion of the judge, the claim is credible or he is inapt, according to the ordinary rules of experience ;

X - appropriate and effective delivery of public services in general.

<sup>viii</sup> As recognized by the Brazilian Superior Court at the cases n° RESP 85521-PR and RESP 77.788-SC.

<sup>ix</sup> For instance, as in the case n° AC 254767-2 (São Paulo's Court of Justice).