

SUSTAINABILITY CLAIMS AND LABELLING IN THAILAND*

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ABSTRACT

Sustainability concerns are changing the way the products are made and how they are marketed to the consumers. In other countries, there are implementations of control measure over the practice of advertisement of the products or services that claim to have sustainability values. In Thailand, the practice of self-declared or unqualified claiming or labelling sustainability values by the producers or the marketers may leads to confusion and skepticism over the truthfulness of sustainability value of the products or the production processes, which may eventually dissuade the interest of the consumers in supporting of the sustainable products.

This study finds that the consumer protection law of Thailand is inadequate to resolve the disputes which may arise over the issue of sustainability claims and labelling. By exploring the legal frameworks of the United States of America and the European Union in the area of consumer protection regarding sustainability advertisements, this study concluded that Thailand should issue regulation as the legal control measure in order to protect the rights of consumer and proposed the recommendations of compliance criteria for a regulation on advertising of sustainability values in Thailand.

Keywords: Consumer Protection, Sustainability Claim, Sustainability Advertisement, Advertisement Law

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บทคัดย่อ

หลักการและคุณค่าแห่งความยั่งยืนได้เปลี่ยนวิถีทางของธุรกิจในการสร้างผลิตภัณฑ์และการโฆษณาสินค้าที่ประกอบด้วยคุณค่าแห่งความยั่งยืนต่อผู้บริโภค และมาตรการควบคุมการโฆษณาคุณค่าแห่งความยั่งยืนได้มีขึ้นในประเทศต่างๆ ทั่วพฤติกรรมของผู้ผลิตหรือผู้โฆษณาในการโฆษณาข้อความที่เกี่ยวข้องกับคุณค่าแห่งความยั่งยืนซึ่งไม่ได้ผ่านการตรวจสอบหรือการรับรองนั้นสามารถทำได้ในประเทศไทย เนื่องจากกฎหมายคุ้มครองผู้บริโภคด้านการโฆษณาไม่อาจใช้แก้ปัญหาในกรณีที่เนื้อหาของการโฆษณาคุณค่าแห่งความยั่งยืนนั้นสามารถตีความหมายได้หลายแบบระหว่างผู้โฆษณาและผู้บริโภค จากการศึกษาพบว่าหากเกิดกรณีพิพาทขึ้นถึงเนื้อความที่สื่อถึงหลักการหรือคุณค่าแห่งความยั่งยืนขึ้น มาตรา 22 ประกอบมาตรา 28 แห่งพระราชบัญญัติคุ้มครองผู้บริโภค พ.ศ. 2522 นั้น ไม่เพียงพอที่จะแก้ไขพิพาทที่อาจเกิดขึ้นได้ ดังนั้น จึงได้ศึกษามาตรการทางกฎหมายในการคุ้มครองผู้บริโภคกรณีนี้จากประเทศสหรัฐอเมริกาและสหภาพยุโรป เพื่อเสนอแนวทางการในออกกฎกระทรวงในการแก้ไขปัญหาสำหรับประเทศไทยต่อไป

คำสำคัญ: คุ้มครองผู้บริโภค, การโฆษณาคุณค่าแห่งความยั่งยืน, กฎหมายคุ้มครองผู้บริโภค, การคุ้มครองผู้บริโภคด้านโฆษณา

Introduction

Over the past decade, there are a large number of initiatives promoting 'Sustainable Consumption and Production' (SCP), led by the United Nations Environmental Programme (UNEP) together with many intergovernmental organisations that have created a platform of knowledge, instruments and tools for promoting sustainability value at the global level¹. The rising of access and availability of information has been enabling the public to raise a question of environmental and social impacts of the businesses and their products. Some report found that the consumers are increasingly concerned about environmental, social and economic issues, hence they are willing to act on such concerns by supporting and buying sustainable products and services². While the consumers are playing the key role in driving towards sustainable consumption, the businesses also enhance their marketing of sustainability value to meet the consumers' demands and to create a value to their sustainable products and companies. It appears that some market research firms are applying new sustainability marketing terms, or, sustainability claims on the products and services; however, the credibility of those claims and labelling are often inconsistent because of the lack of mutual understanding and common ground in definitions of those sustainability terminology. Several products started to have the on-pack claims or labels to inform the consumers about their environmental or social commitments, in addition, some brands appeared to have developed their own labels stating their sustainability attributes³, however, how could the consumers assessing, interpreting or verifying such claims relating to sustainability value is a question to be studied further.

Access to information requires time and verification needs resource and money, which is the reason why individual as a consumer usually does not bother to seek the truth behind claims and labelling of products. Without tools for verification or clarification, the sustainable products with its added-value are indifferent from unsustainable ones in the market which may leads to reduction of motivation and preference to purchase and support sustainability. An instrument to enhance a sustainability environment in consumption and production is needed in order to

¹ UNEP, 'SCP Global Outlook' at 40, available for download at <<http://www.unep.org/resourceefficiency/Default.aspx?tabid=78405>>.

² World Business Council for Sustainable Development (WBCSD), 'Sustainable Consumption Facts and Trends: The Role of the Consumer' at 15, available for download at <<http://www.wbcd.org/contentwbc/download/479/5182>>.

³ *Id.* At 19.

achieve a goal in sustainable development. Therefore, it is the role of government to help and protect the consumers from misleading or deceptive action in sustainability claims or labelling and to inform and promote sustainable practices to the consumers for an inclusive and transformative economy⁴.

This study will further discuss the control measures or regulatory framework in consumer protection on sustainability claims and labelling in the United States and the European Union, together with analysing current consumer protection laws of Thailand, and, proposing appropriate solution or framework for a Thai legislation.

1. Concept of Sustainability and Definition of Sustainability Claims

Sustainability refers to the relationship between economic viability and ecological constraint that our society shall sustain resources for future generations by consider the management and distribution of resources including equity and accessibility of those resources to everyone in the society for our prosperous development. Thus, the three aspects which are essential to the sustainability concept or principles are:

- (a) Environmental sustainability - the ability to maintain the resources and services that future generation will require without sacrificing the long-term health of the ecosystems in doing so. Environmental sustainability is a prerequisite to create a sustainable socio-economic system⁵;
- (b) Social or Ethical sustainability - a “life-enhancing condition within communities, and a process within communities that can achieve that condition”⁶, in particular, “social sustainability is a positive condition marked by a strong sense of social cohesion, and equity of access to key services (including health, education, transport, housing and recreation)”; and,
- (c) Economic sustainability - the durability of economic performance variables without necessarily consider a wider environmental and social

⁴ Consumer International, ‘The role of consumer protection in meeting the SDGs’ available for download at < http://www.consumersinternational.org/media/1488820/the-role-of-consumer-protection-in-meeting-the-sdgs_updated-jan15.pdf>.

⁵ John Morelli, ‘Environmental Sustainability: A Definition for Environmental Professionals’ (2011) Vol 1 Issue 1 Art 2 at 4.

⁶ Stephen McKenzie, ‘Social Sustainability: Towards Some Definitions’ (2004) at 14.

impacts. Hence, some researchers⁷ illustrated that economic sustainability is used to “refer to the durability of human welfare levels or utility; the extent of which integrated environmental and social issues on how welfare is defined or determined”.

Therefore, sustainability claims can be defined as any statement that represent the commitment to sustain either one or more aspect of environment, society or economy in the advertisement, it is a practice of making claim or labelling that the products or services have contributed to or sustained the environment or have ethical or social merits.

2. Problems on Claiming or Labelling Sustainability Value

Claiming or labelling sustainability value is a marketing strategy that a sustainability-oriented vision of marketing emphasizes integration of sustainability principles into both marketing theory and the practical decision making of marketing professionals that the enterprises choose to replace conventional marketing⁸. The growing influence of environmental and social sustainability have made the concept of sustainability an essential factor of today's commerce. Businesses embrace sustainable practices that compliment and support their strategies and communicate their efforts on sustainability to the consumers and other stakeholders through claims and labelling in order to remain relevant. Countless terms and phrases are being used to draw attention on environmental and social characteristics of products or their processes. Sustainability claims may be appeared in the forms of texts or images or both combined as distinctive signs or labels that aim to differentiate the products or processes from others which do not have sustainable merits like theirs. However, their credibility and their meanings are often questionable. According to ISEAL Alliance, there are five universal truths of credible sustainability claims: “a claim needs to be clear, accurate, relevant and based on a system that is transparent and robust”.

The growing number of the self-declared ecolabeling schemes has caused widespread confusion and skepticism over the truthfulness of such environmental

⁷ Barry Dalal-Clayton and Barry Sadler, ‘Strategic Environment Assessment: Sustainability Appraisal; A Sourcebook and Reference Guide to International Experience’ (2004) at 232.

⁸ Frank-Martin Belz and Ken Peattie, ‘Sustainability Marketing: A Global Perspective’ (2nd Ed. 2012).

claims, hence many enterprises decided to choose the independent or third-party entities to certify that their environmental attributes are valid⁹. Indeed, an independent third-party certification can provide a higher level of clarity and credibility to any sustainability claims, but, in the case that businesses are not within a jurisdiction where regulations relating to claims and labelling enforced, they may not feel obliged or are required to make a credible claim or an accurate label since the businesses might consider it as costs, thus, eventually they may simply continue to advertise sustainability value with their self-declaratory labels. In the worst case, a self-declared claim could be only a marketing ploy by just simply advertise misleading or deceptive claims whereas unable to substantiate such claim. Accordingly, a claim and a label must be accurate and credible for its truthfulness. A misleading or deceptive claim is not only detrimental to consumer at times, but also devaluing other sustainable products or processes in the long run. As a result of confusion, lack of accuracy, and, unavailability of contents verification, many commentators and scholars are in favour of public standards¹⁰ in order to emphasise the accuracy and credibility of claims and labels and to maintain a sustainability value of sustainable products.

3. Legal Frameworks in Advertising Sustainability Value in Foreign Countries

3.1 Consumer Protection in the United States of America

(i) The FTC Act and the Green Guides

The Federal Trade Commission (FTC) is an independent federal agency responsible for unfair competition and consumer protection. Section 5 of the FTC Act grants authority to the FTC to prevent “unfair or deceptive acts or practices”¹¹, it has been interpreted to permit the FTC to regulate “false, deceptive and misleading use of commercial speech or advertising claims.”¹² The FTC defined ‘deceptive’ and as “a representation, omission or practice that is likely to mislead the

⁹ Jason J. Czarnecki, ‘Greenwashing and Self-Declared Seafood Ecolabels’, 28 Tul. Envtl. L. J 37 (2014).

¹⁰ *Id.*

¹¹ Federal Trade Commission Act of 1938, ch. 40, Pub. L. No. 75-447, 52 Stat. 111, (1938) (codified as amended at 15 U.S.C. § 45(a)(1) (2006)).

¹² E. Howard Barnett, ‘Green with Envy: The FTC, the EPA, the States, and the Regulation of Environmental Marketing’, 1 ENVTL.LAW. 491, 495 (1995).

consumer acting reasonably in the circumstances, to the consumer's detriment"¹³ Thus, the consumer may file a complaint to the FTC for investigation and take enforcement action, and the FTC may bring charges against the actions of persons or companies which the FTC believes said person or company made a deceptive or misleading claim. Subsequently, however, a case-by-case prosecution by the FTC was an inadequate standard to use as a tool for assessment of complex and scientific green marketing claims. Therefore, the private sector such as advertising industry and state attorneys general requested the FTC to adopt uniform green-marketing guidelines that would allow them to differentiate between a legal and illegal green marketing claim¹⁴.

In 1992, the FTC first released the guidance for the 'use of environmental marketing claims', generally known as the 'Green Guides'¹⁵ as claims and labelling guidelines and updated them periodically. The Green Guides are not federal regulations, hence, they do not have the enforcement and effect of law; however, the FTC issued the Green Guides as an "administrative interpretation of law"¹⁶. The FTC can take action under the FTC Act when the claims are inconsistent with the Green Guides by proving said claims or practices is unfair or deceptive. The Guides advise advertisers, marketers or producers that they will need a "competent and reliable evidence to adequately substantiate environmental marketing claims" which was later prescribed as "evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that a representation is true."¹⁷ The details of topics the Guides addressed are: (i) General Environmental Benefit claims, (ii) Carbon Offsets, (iii) Certifications and Seals of Approval, (iv) Compostable, (v) Degradable, (vi) Free-Of claims, (vii) Non-Toxic claims, (viii) Ozone-Safe and Ozone-Friendly claims, (ix) Recyclable, (x) Recycled Content, (xi) Renewable Energy claims, and, (xii) Renewable Materials claims¹⁸. For example, a claim such as 'eco-friendly' sends a message that a product has environmental benefits and also conveys that a product has no negative impact on the environment; which is unlikely that the producer can

¹³ Cliffdale Associates., Inc., 103 F.T.C. 110, 176 app. (1984).

¹⁴ *Supra* note 12 at 498.

¹⁵ 16 C.F.R. § 260.

¹⁶ Federal Trade Commission, 'The Green Guides Statement of Basis and Purpose'.

¹⁷ *Ibid*, § 260.5.

¹⁸ *Supra* note 15.

substantiate the claim, thus, it is deceptive. Another example is a claim such as 'eco-friendly: made with recycled materials' would not be considered a deceptive claim because this statement is clear and prominent and the producer may be able to substantiate that the components of product or package is made from recycled material, thus this kind of claim or label is not deceptive.¹⁹ The Guides do not include the areas of 'organic' and 'sustainable' claims, stated in the provision that "in the case of organic claims, the Commission wants to avoid providing advice that is duplicative or inconsistent with the USDA's National Organic Program (NOP), which provides a comprehensive regulatory framework governing organic claims outside the NOP's jurisdiction, and for sustainable claims, the Commission lacks sufficient evidence on which to base general guidance."²⁰

(ii) State Laws

Every state enacted their own consumer protection laws similar to section 5 of the FTC Act since private actions or commerce within the state is not subject to federal authority, hence, unfair, false or deceptive claims in each state is regulated under state consumer protection law. The state consumer protection act is different from the FTC Act that it often grants private cause of action while the FTC Act does not.²¹ And, that private rights of action usually provide recovery of costs and attorney's fee as well as multiple damages.²²

While many states had adopted the Green Guides as a guidance for interpretation, some state, such as, California and Minnesota had adopted the FTC Green Guides as its state law which means the Guides, which in a federal level do not have a legal binding status, become an effective regulation and enforceable state laws.²³ Therefore, consumers may bring legal actions through states consumer protection agencies or to the state court; supporting their cases with the definition and the interpretation provided in the Green Guides. It is worth to note that both federal government and states government are similarly focusing on the environmental aspect of the claims or the claims that are able to be proved by the scientific method, thus, claims and labelling in other dimension of sustainability i.e. socially or ethically, have been left to the voluntary schemes standards or certification programmes.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Alan S. Brown & Larry E. Hepler, 'Comparison of Consumer Fraud Statutes Across the Fifty States', (2005) at 270.

²² *Ibid*

²³ MINN.STAT.ANN. § 325E.41.

3.2 Consumer Protection in the European Union

(i) The Unfair Commercial Practices Directive

The European Union Directive 2005/29/EC ‘Unfair Commercial Practices Directive’²⁴ (UCP Directive) is applying to misleading advertising and other unfair commercial practices in ‘business-to-consumers transactions’, not only at a stage of advertising but also “before, during, and after a commercial transaction in relation to a product.”²⁵ The UCP Directive has a scope with protection of the economic interests of consumers regarding misleading and unfair commercial practice, and, excluding other areas such as health and safety. The Article 5 of the Directive provided that a commercial practice is unfair if “(a) it is contrary to the requirements of professional diligence, and, (b) it materially distorts or likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed...”, and in the paragraph 4 providing that the “commercial practices shall be unfair if they are misleading or aggressive.” Further, in Article 6 defined ‘misleading acts’ as “contains false information and is therefore untruthful or in anyway, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct...and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise”, thus, businesses must present their claims in a clear specific, accurate and unambiguous manner to ensure that consumers are not being misled. Under Article 7, claims can be misleading if they are based on vague and general statements such as ‘environmentally friendly’ or ‘ecological’ or ‘sustainable’ because these claims are almost impossible to substantiate from its vagueness. For example, claims that electric car is ‘ecological’ have been found misleading in France because it did not provide information to put the claim into perspective of consumer stating regulator “since it could not be established that the electricity needed to recharge the cars would entirely derive from renewable energy sources, using it would have a negative impact on the environment”. In addition, Article 12 stating that the

²⁴ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’). OJ L149.

²⁵ The UCP Directive Article 3

“Member States shall confer upon the courts or administrative authorities powers enabling them in the civil or administrative proceedings provided for in Article 11: (a) to require the trader to furnish evidence as to the accuracy of factual claims...; and, (b) to consider factual claims as inaccurate if the evidence demanded in accordance with (a) is not furnished or is deemed insufficient by the court or administrative authority”. Thus, claims should be based on evidence which can be verified by the authorities, since claims must be able to be proved with solid evidence, they must be robust and verifiable which could be either through scientific method or documentation. Accordingly, claims or labelling shall be assessed whether they are misleading or deceptive under the UCP Directive on a case by case basis.

(ii) National Application of the UCP Directive and National Guidelines of the EU Member States

The EU member states adopt and implemented the UCP Directive to their national legislatures by either incorporated it into existing laws, e.g. Denmark, Germany, France, Sweden etc., or adopted a new law transposing the UCP Directive e.g. the United Kingdom, Ireland, Poland etc. The ‘internal market clause’ in Article 4 of the Directive caused the member states to repeal any provisions which were incompatible with the Directive, as a result, each national laws of every member states have one set of rules and a high level of consumer protection, particularly the set of the Black List practices which prohibited in all circumstances prescribed. Additionally, since the UCP Directive aims to apply to business to consumer transactions, some countries extended the scope of their laws to regulate other type of transaction i.e. business to business transaction too, for example, Austria, Germany and Sweden. Therefore, application of the Directive, under Article 6, national authorities perform a case by case basis assessment of claims and its impact on the average consumer’s purchasing decision. The European Commission (EC) considers that problems of ‘green’ claims could be “addressed by measures related to enforcement and development of best practices rather than by legislative changes to the UCP Directive and it will support appropriate and consistent enforcement e.g. developing guidance on this topic” as announced in the European Consumer Agenda.²⁶ Subject to the Article 11 of the UCP Directive, the

²⁶ The European Commission, ‘UCPD Report’ available at <http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf> accessed on 7 January 2017.

member states are free to choose the enforcement mechanisms which “best suit their legal tradition, as long as they ensure that adequate and effective means exist to prevent unfair commercial practices.” According to Article 13, it is also left to member states to decide what type of penalties should be applied, as long as these are “effective, proportionate and dissuasive”. Consequently, not only businesses have to take national guidances on unfair practices of claims and labelling into account, cross-border unfair commercial practices face a variety of enforcement and different legal procedures, as a result, Regulation (EC) No 2006/2004 on consumer protection cooperation (the CPC Regulation)²⁷ was adopted to address this issue. The CPC Regulation created a framework to allow national authorities from all countries in the EEA to jointly address breaches of consumer rules, one of them is unfair commercial practices under the UCP Directive, when the trader and the consumer are established in different countries. Therefore, Europe is combating misleading or deceptive claims while maintaining their value in the single market policy through this mechanism. Interestingly, without one-size-fits-all type of standards, the member states may further adopt or maintain stricter provisions or standards than those in the UCP Directive, provided the member states flexibility when they have to deal with newly developed issues in unfair commercial practices, claims or labelling, through national legislations.

4. Analysis of the Consumer Protection Law in Thailand

The Consumer Protection Act of Thailand²⁸ ensures the rights of consumer to be afforded “the right to information including correct and adequate description of the goods or services” in Section 4. Whereas definition of ‘advertise’ was given as “the act enabling the public to have notice or knowledge of a statement for the purpose of trade”²⁹, Section 22 providing that “An advertisement shall not contain any statement which is unfair to consumers...be it a statement as to origins, conditions, qualities or characteristics of goods or services...” and in paragraph two

²⁷ Regulation (EC) No 2006/2004 of the European parliament and of the council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) OJ 364.

²⁸ Consumer Protection Act, B.E. 2522 (1979)

²⁹ Consumer Protection Act, B.E. 2522 (1979) Section 3

providing that statements are deemed to be unfair to consumers are “(1) a false or exaggerative statement;...”. When the producer in Thailand claiming its product or service is ‘green’ or ‘environmentally-friendly’ without being qualified to any standard or certificate, supposed the resource of the product is renewable materials but the production process including waste disposal is not being attested, while the consumers perceive such product as it is something that sustain the environment throughout of its life-cycle, without the common definition of the terms the producer may insist that it considers the ‘green’ or ‘environmentally-friendly’ specifically to resource materials but not to the water or waste management of the production process, it is not certain that said claims are false or exaggerative under Section 22 of the Consumer Protection Act. Moreover, even though Thailand already have voluntary product life-cycle and carbon emissions standards certification program, the producers who do not participate in the voluntary schemes yet claiming their products e.g. ‘eco-friendly’ or ‘protecting environment’ could continue the practice of unqualified claims since it can be interpret in several or different way.

Furthermore, the claims relating to social or economic sustainability can be interpreted variously and also can be difficult to prove, for example, the ‘fair trade’ claim, without associating with standards schemes but self-declared, can be viewed by the consumers that the claim has the same meaning or up to the par of voluntary fair-trade standards association, however the businesses may argue that their trade is considered fair since they acquire the materials or products at the local market price, hence the businesses deemed the claim is correct to their sense and the consumers may not be able to prove it as false or exaggerative statement under the law. Plus, the case of claiming social contribution, if it did not document the practice during the process or before making the claim, it will be very difficult for not only the consumers but also the authority to prove the particular practice at the specific period. Therefore, Section 28 of the Consumer Protection Act, provided “in the case where the Committee on Advertisement has a reasonable cause to suspect that any statement used in an advertisement is false or exaggerative under Section 22 paragraph two (1), the Committee on Advertisement shall have the authority to issue an order demanding the advertiser to make such proof as to vindicate the truth.”, may unable to obtain proof if it was not made in documentation during the practices or processes or before making claims since it was not require by law. In addition, claims which have various meanings and can be interpret differently by every stakeholders, even the producers substitute the claims that perceived diversely or unevenly by the consumers, to whose interpretation the authority will deem as a

point of reference that it violates Section 22 in the investigation under Section 28 or in the dispute process.

Therefore, the Consumer Protection law of Thailand may be adequate for sustainability claims or labelling that is qualified or certified under existed standards or when it provided comprehensible, straightforward and precise contents of claims to the public since the authority may issue an order demanding the producer or the advertiser to prove whether a claim is false or exaggerative on its agreed comprehensible meaning or its associated standards under Section 22 paragraph two (1) and Section 28 of the Consumer Protection Act. However, if the producer or business making claims or labelling that are vague or unambiguous to the consumers, or claiming that it has contributed to society or ecology without representing to or associating with any certification or standards nor does it providing any further explanation on such claim or label, it is uncertain how the authority will evaluate the said sustainability-related claim as being false or exaggerative under Section 22 paragraph two (1), hence, the Thai law is inadequate to resolve the dispute between the businesses and the consumers resulting from discrepancy of interpretation of vague sustainability claims. Consequently, the consumers are lacking in the right to be informed and to be compensated in this issue.

5. Conclusion and Recommendation

In conclusion, the existing consumer protection law of Thailand is inadequate to interpret sustainability-related claim and label which is not associated with or not certified by standards program or labelling schemes as unfair advertisement to the consumers from the lack of common grounds among the business, the consumers and the authorities. From a study of mechanisms in the United States and the European Union, there are legislations combating the environmental marketing and unfair practices towards the consumers. Thus, the command and control approaches as implemented in foreign countries consumer protection laws relating to sustainability advertisement, either by making statement or labelling the claim, prescribing the general or vague claims are considered deceptive and misleading and discouraging absolute term such as 'eco-friendly', 'good for the environment', 'green', 'sustainable', 'an ethical choice' etc. because the impossibility in substantiation of claims unless otherwise associated with certification program or labelling scheme pertaining to the entire products life-cycle. In addition, environmental benefits advertisement shall be made only when it has

scientific evidence that was tested by the expertise of relevant professionals, hence decreasing vague and unqualified sustainability-related advertisement. Moreover, substantiation of sustainability claims and labelling shall be presented by the results of scientific tests or analyses and documentation of track records or data collection for environmental and ethical aspects of sustainability respectively to provide the public and the authority a resolvable dispute. Furthermore, there should be definitions of specific claims attributing environmental or ethical benefits provided by law in order to ensure the consumers rights to be informed and to fulfill the loophole of unfair advertisement interpretation. Although the cost of compliance may affect the businesses, however advertisement is not mandatory, and it is worth to protect the public from the businesses claiming their sustainability merits hence benefits from the choice of the consumers. Therefore, it is recommended in this thesis that Thailand should adopt the same concept of regulatory framework to be its legal control measure with its own details of topics that need to be addressed in Thailand, which shall be further meticulously explored and studied in the policy making and legislative drafting process, to set out the framework of practice of sustainability claims and labelling and to become a ground of reference among every stakeholders in a legal dispute in Thailand accordingly.

This study proposed that, by virtue of Section 8³⁰ and Section 22 paragraph two (5), the Ministerial Regulation may be issued to combating the environmental benefits, ethical and social contributions of claims by providing a compliance criteria on sustainability-related advertisements to be a common ground for every stakeholders to resolve a dispute which may be raised and to be a solution for the consumers seeking remedy or compensation. The regulation concerning the practice of sustainability advertisements, which including environmental and ethical claims and labelling, shall prescribing rules and criteria in the following:

- (a) Content of claims; the advertisements on sustainability value shall be made and communicated to the public in a clear and precise manner. Providing that making claims or products labelling should reflect specific and verifiable environmental benefit, ethical contribution or social improvement. In particular, it shall stating which aspect of sustainability the claim targets, whether it referring to the whole

³⁰ Section 8 of the Consumer Protection Act, B.E. 2522 (1979) “The Prime Minister shall have charge and control of the execution of this Act and shall have powers to appoint competent officials and issue Ministerial Regulations for the execution of this Act. Ministerial Regulations shall come into force upon their publication in the government gazette.”

product or its entire life-cycle or specific part or element such as packaging or resource efficiency dimension, and the subject of the claim must be stated in an unambiguous manner.

- (b) Accuracy of claims; advertisement concerning sustainability either through making claims or product labelling shall be presented in accurate, clear, specific and unambiguous way to ensure that the public are not misled or misunderstood its intended meaning. The term presenting in claim or label shall be accurate and truthful to the scale of its environmental benefit or social contribution, and shall not overstate anything more than what it had literally achieved.
- (c) Avoidance of ambiguous and vague claims; broad or general claims should be clear and prominent and must limit specific benefits they have contributed. General sustainability claims will likely to be perceived as overall contribution to environment and society, hence almost impossible to substantiate. For general environmental benefits claim, it shall be associated with entire life-cycle assessment labelling schemes which is reputable such as the EU Ecolabel, the German Blue Angle or the Thai Green Label.
- (d) Substantiation of claims; any information appeared on sustainability advertising shall be based on verifiable, robust and recognized relevant evidence which may be scientific or documentation methods. Failure to substantiate the claims in documentation or equivalent shall be considered exaggerative and misleading the consumers. It may be specifically set out that environmental claims shall have scientific evidence to support said claims and shall be ready to provide it comprehensibly to the consumers and the authority when the claim is challenged or requested. For other aspect of sustainability besides environmental benefits claims, either in the dimension of social contribution or encouraging ethical consumption of products or services, it may prescribing requirement of documentation substantiating the claim in order to have a track record of facts when proving the accuracy and truthfulness of claims in a dispute.
- (e) Criteria of evidence; the evidence substantiating the claim shall be clear and robust by using appropriate methods. In environmental benefits claims, evidence must be made by relevant scientific testing or analysing method made by the expertise of professionals, hence the businesses shall refrain from making claims of environmental benefits unless it can obtain and provide competent scientific evidence on

claims. In other aspects, evidence shall be documentation substantiating the claims. For example, claiming that the product has contributed to local community workforce and encouraging the consumers to engage in social contribution related claim, unless the track records were kept in documentation it will be very difficult and almost impossible to prove which and whom of claim addressed. Thus, the law should require the businesses to make or obtain reliable documentation or equivalent, e.g. electronic data of records, that can substantiate the claims before or at the time of advertising and such evidence should be retained by the businesses throughout the time of advertisement.

- (f) Defining the concerned sustainability terms; it should be studied which terms relating to environmental benefits and ethical or social contributions used in marketing or advertisement that needed to have specific definition. For example, the United States using consumer perception survey in the policy making process, thus providing the term 'degradable' to be qualified to the product or package that have reliable scientific evidence that the entire item will completely breakdown and decompose into the elements in nature or completely decompose after customary disposal into waste stream within one year. In Thailand, the terms such as 'degradable' or 'recyclable' shall be defined by regulation, with the expertise of professionals, as a common ground for every stakeholders in making claims in order to encourage the correct practice of environmental benefits in the society.
- (g) Best practice; the sustainability advertisement in any aspects should be made for communicating about its achievements of either sustaining the environment or contributing the society, not its aspirations of performance in the future because it is not eligible for substantiation by evidence. For communicating efforts on sustainability and avoiding the accusation of false, exaggerative or misleading claims, the claim must associate the established plan with clear targets and timescales of commitment, including the auditing or monitoring for substantiation of sustainability advertisement

REFERENCES

Books

- Barnett, E. Howard. *Green with Envy: The FTC, the EPA, the States, and the Regulation of Environmental Marketing*, 1 ENVTL.LAW., 1995.
- Barry Dalal-Clayton and Barry Sadler, 'Strategic Environment Assessment: Sustainability Appraisal; A Sourcebook and Reference Guide to International Experience' (2004).
- Frank-Martin Belz and Ken Peattie. *Sustainability Marketing: A Global Perspective*. (2nd Ed.) 2012.
- McKenzie, Stephen *Social Sustainability: Towards Some Definitions*, 2004.

Articles

- Alan S. Brown & Larry E. Hepler, "Comparison of Consumer Fraud Statutes Across the Fifty States", 2005 p 270. available at
<<http://www.thefederation.org/documents/Vol55No3.pdf>>
- European Commission, the, "UCPD Report" available at
<http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf>
accessed 7 January 2017.
- Jason J. Czarnezki, "Greenwashing and Self-Declared Seafood Ecolabels", 28 Tul. Env'tl. L J 37 2014. available online at
<<http://digitalcommons.pace.edu/lawfaculty/987/>>.
- John Morelli "Environmental Sustainability: A Definition for Environmental Professionals" (2011) Vol 1 Issue 1 Art 2. available at
<<http://scholarworks.rit.edu/jes/vol1/iss1/2/>>.
- Joop de Boer, "Sustainability labelling schemes: The logic of their claims and their functions for stakeholders" *Business and the Environment*, July 2003.
published online in Wiley InterScience, DOI: 10.1002/bse.326.

Electronic Media

- Consumer International, "The role of consumer protection in meeting the SDGs" available for download at

<http://www.consumersinternational.org/media/1488820/the-role-of-consumer-protection-in-meeting-the-sdgs_updated-jan15.pdf>.

Report from the Multi-Stakeholder Dialogue, the European Commission,

‘Environmental Claims’ available at

<<https://www.luminpdf.com/viewer/NNW8SdgpHj8fiTw2i>> accessed on 7 January 2017.

UNEP, “SCP Global Outlook” at 40, available for download at

<<http://www.unep.org/resourceefficiency/Default.aspx?tabid=78405>>.

World Business Council for Sustainable Development (WBCSD), ‘Sustainable Consumption Facts and Trends: The Role of the Consumer’ at 15, available for download at <<http://www.wbcd.org/contentwbc/download/479/5182>>