

Competition & Antitrust and Trade

CCCS Greenwashing Study and Upcoming Guidelines

Introduction

Greenwashing has gained considerable prominence in recent times. This naturally followed the growth and importance of environmental sustainability in the global landscape. Greenwashing practices refer to conduct that deceives or misleads consumers on the alleged environmental benefits of products or services. The Competition and Consumer Commission of Singapore ("**CCCS**") has just issued a report from a commissioned study on greenwashing in online marketing ("**Greenwashing Study**"), which reviewed environmental claims made on over 1,000 products offered on the 100 most visited e-commerce sites by Singapore residents in October 2022, and seeks to provide guidance on next steps. We set out an overview of the key findings from the Greenwashing Study, the practices that CCCS may potentially cover in its upcoming guidelines, and the potential impact on businesses.

1. Background on Consumer Protection Law

1.1 By way of background information, Section 4 of the Consumer Protection (Fair Trading) Act 2003 ("**CPFTA**") sets out a general prohibition against unfair practices. This will catch greenwashing practices. Unfair practices under the CPFTA includes, amongst others:

- (a) Doing or saying anything, or omitting to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- (b) Making a false claim;
- (c) Representing that goods or services have approval, performance characteristics, qualities, uses or benefits that they do not have; and
- (d) Making a false or misleading representation concerning the need for any goods or services.

2. Vague Environmental Claims

2.1 CCCS noted from the Greenwashing Study that vague environmental claims were the most common form of greenwashing conduct. 51% of the online product claims surveyed had vague



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claims with insufficient elaboration or details to support the claims. These claims included terms such as "environmental friendly", "eco-friendly", "green", "sustainable", "good for the Earth", "natural", "conscious" and "responsible", and were prone to overstatement or exaggeration as to the actual environmental benefits of the product.

2.2 To avoid a potential violation of the CPFTA, CCCS recommends suppliers to do the following when making environmental claims:

- (a) Be specific in the environmental claims, presenting any qualifying or supporting information accurately and clearly alongside such claims;
- (b) Avoid making claims that would imply or convey an overall impression that the environmental benefits of the product is more than it is; and
- (c) Ensure that all environmental claims can be substantiated with valid and credible evidence.

3. Use of Technical Jargon

3.1 Another common form of greenwashing conduct identified in the Greenwashing Study was the use of technical jargon. 14% of the online product claims surveyed used technical language that made it difficult for consumers to understand or verify the claim. CCCS noted that the use of technical jargon may confuse or mislead consumers on the environmental benefit of the goods, services or businesses. For example, the term "made of high-quality ABS eco-friendly material" risked misinforming consumers about the product's environmental by labelling ABS, a type of petroleum-based plastic, as environmentally friendly.

3.2 Instead of using technical jargon, CCCS advises suppliers to do the following when making environmental claims to:

- (a) Use language that is easier for consumers to understand; and
- (b) Explain the meaning of implications of technical terms.

4. CCCS Greenwashing Guidelines

4.1 Following the Greenwashing Study, CCCS will develop a set of guidelines to provide greater clarity to suppliers on the environmental claims that could amount to unfair practices under the CPFTA ("**Greenwashing Guidelines**"). Apart from the above-mentioned practices of vague environmental claims and use of technical jargon, the Greenwashing Guidelines will also address

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other potential greenwashing conduct that were identified from the Greenwashing Study, which include:

- (a) Highlighting of mandatory or standard product features which are not meaningful;
- (b) Referring to non-genuine environmental certifications or mischaracterising the type of certification obtained; and
- (c) The use of misleading branding and imagery.

4.2 The move to regulate/ provide guidance on greenwashing issues from a consumer protection perspective mirrors similar recent developments in other jurisdictions. For example, the EU has proposed several amendments to its Unfair Commercial Practices Directive to address greenwashing. These proposed amendments include:

- (a) Expanding the list of product characteristics which traders should not deceive consumers on to include environmental impact;
- (b) Expanding the list of actions which are to be considered misleading to include making an environmental claim related to future environmental performance without clear, objective, and verifiable commitments and targets and an independent monitoring system; and
- (c) Adding the following four greenwashing practices into the list of commercial practices which are considered unfair in all circumstances:
 - (i) Displaying a sustainability label which is not based on a certification scheme or not established by public authorities.
 - (ii) Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.
 - (iii) Making an environmental claim about the entire product when it concerns only a certain aspect of the product.
 - (iv) Presenting requirements imposed by law on all products in the relevant product category on the EU market as a distinctive feature of the trader's offer.

4.3 The EU has also adopted a proposal earlier this year for a Directive on Substantiation and Communication of Explicit Environmental Claims, which will include clear criteria on how companies should prove their environmental claims and labels, requirements for these claims and labels to be checked by an independent and accredited verifier, and new rules on governance of environmental labelling schemes to ensure that they are solid, transparent and reliable.

4.4 There are similarities in the issues of concern identified in the Greenwashing Study and the greenwashing practices covered by the EU's proposed amendments to its Unfair Commercial

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Practices Directives. Given this, it is highly likely that CCCS may draw guidance from the developments in other jurisdictions like the EU when developing the Greenwashing Guidelines and of course, to the extent relevant to the local environment.

5. Potential Future Impact on E-Commerce Platforms

- 5.1 Although the Greenwashing Study and CCCS's Greenwashing Guidelines are focused on suppliers and retailers that operate as e-commerce merchants, it is important to recognize the potential future implications that greenwashing may have on the e-commerce platforms themselves.
- 5.2 CCCS has stated in its E-commerce Platforms Market Study that it considers e-commerce platforms to be within the meaning of "suppliers" under the CPFTA. E-commerce platforms can therefore also face liability under the CPFTA for any greenwashing practices that the merchants engage in on their platforms. In particular, e-commerce platforms may potentially be found liable for abetting merchants to engage in unfair practices in violation of Section 10 of the CPFTA. For such abetment offences, CCCS can make an application to the courts seeking an injunction to restrain the e-commerce platforms, which will have an adverse impact on platform operations.
- 5.3 Some regulators in other jurisdictions have also shifted their focus to e-commerce platforms to tackle greenwashing and other consumer protection issues. For example, under the India Consumer Protection (e-Commerce) Rules 2020, every marketplace e-commerce entity must require sellers through an undertaking to ensure that descriptions, images and other content pertaining to goods or services on their platform is accurate and corresponds directly to the goods or services. Failure to do so would expose the marketplace e-commerce entity to liability under the Indian Consumer Protection Act 2019.
- 5.4 Within the Southeast Asia region, ASEAN published the ASEAN Guidelines on Consumer Protection in E-commerce ("**ASEAN Guidelines**") earlier this year, with one of the chapters focusing on platform regulation. In the ASEAN Guidelines, ASEAN recognised that e-commerce platforms are able to exercise considerable control over the users on their platform. ASEAN has suggested that ASEAN Member States should consider taking appropriate regulatory and enforcement steps to ensure that platform power is paired with the responsibility to act in a consumer-centric manner. ASEAN also suggested that ASEAN Member States should consider mandating e-commerce platforms to take proactive measures to prevent consumer harm, such as conducting routine screens of sellers operating on their platforms, rectifying and removing goods and content in violation of consumer protection laws, and taking down errant sellers.
- 5.5 Thus, e-commerce platforms should continue to monitor this space and consider taking preemptive steps to address any greenwashing practices that are present on their platforms.

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Consumer protection remains a key concern in Singapore and the trend is towards increased enforcement efforts by regulators to protect consumers. Do keep a lookout for further developments in this space and re-assess internal existing policies and documentations which may be rendered outdated by future developments. Please feel free to reach out to our contact partners if you would like to find out more.

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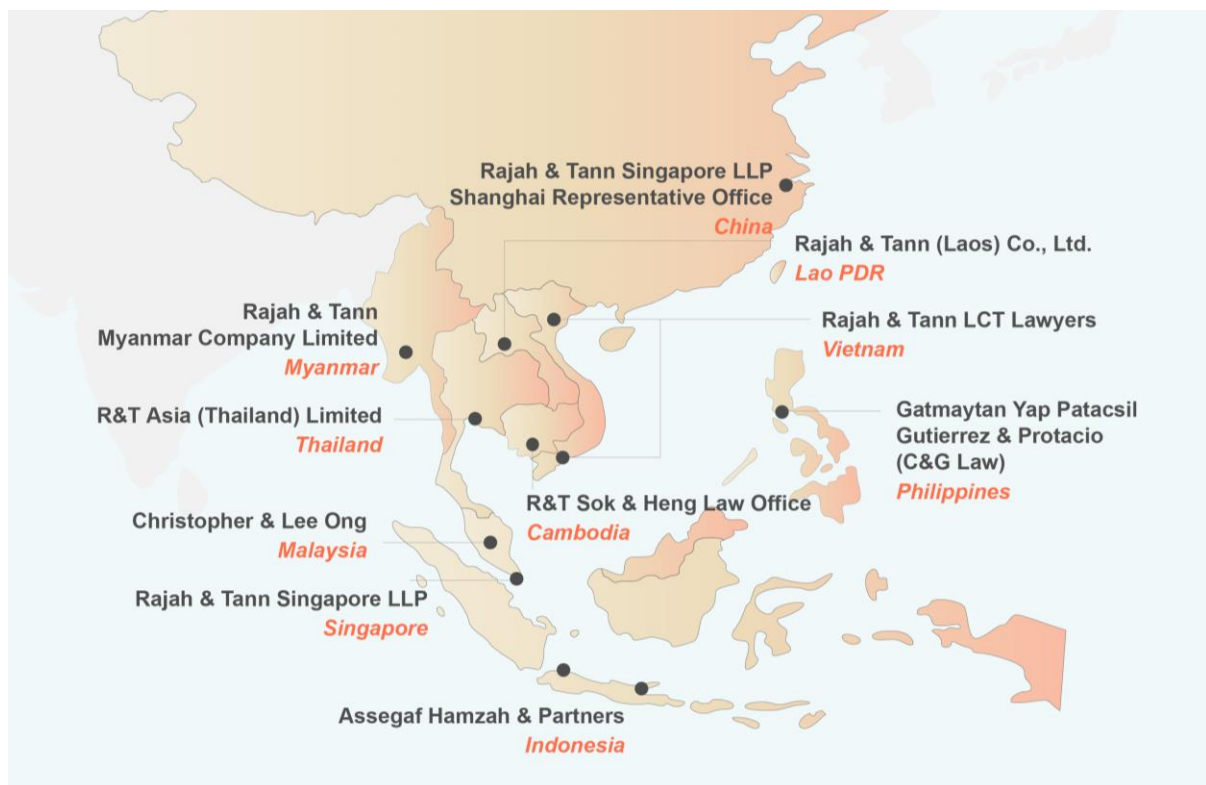
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