

Is Sri Lanka Greenwashed? : Comparative legal analysis on status of Greenwashing in Sri Lanka

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Abstract: *As the results of environmental damage are increasing, the majority of people around the world are suffering from its impacts. Due to that reason, they attempt to mitigate the effect of this issue as much as possible and one way of such mitigation is consuming sustainable and eco-friendly products and services. Consequently, businesses and companies started to introduce sustainable products with the intention of beginning a sustainable market. However, several people who wanted to get the commercial benefit of this practice started to mislead the consumers by pretending that their artificial and harmful products are also sustainable and organic. This practice of misleading consumers was developed as 'Greenwashing' and now most of countries have started to pay their attention to mitigate the impacts on Greenwashing. Some countries have introduced their regulations regarding Greenwashing. However, when it comes to Sri Lanka, even though Greenwashing is existing within the country, the relevant authorities and organizations have still failed to address this issue. Simultaneously, there is a lacuna in the legal system of Sri Lanka as well due to the lack of proper and specific laws for Greenwashing. In this research it is purposed to compare and analyse the Sri Lankan laws related to Greenwashing with other specified laws and guidelines in the international level. In addition to that this is a qualitative research based on international codes and guidelines together with national laws.*

Keywords: *Greenwashing, Sustainability, Misleading consumers, Environmental impact*

1. Introduction

Environmental pollution is the major reason behind climate change, global warming, loss of bio diversity, certain diseases and ecological imbalance etc. With the inception of industrialization, humans began to invent substitutes like plastics, polythene and some other chemicals which ease the daily lifestyle of humans. However, over time they found that plastics and polythene together with the manufacturing process of such materials create the ground for severe damages to the environment including its living beings. Hence, in the modern-day people have acknowledged the inevitable consequences brought about by the unsustainable and environmentally harmful products and services. Therefore, a majority of people tend to avoid these kinds of products and prefer Eco friendly, Organic products. This was proved by the National Geographic and Globescan's latest Greendex study which was conducted based on 18 countries (Assoune). Greenwashing is the practice which was created by money minded marketers and under the term of greenwashing it is indicated a false and misleading marketing style which attempts to impress the customers by advertising the products and services of particular company are environmentally sustainable. Certain scholars use the term 'Eco pornography' to indicate the meaning of Greenwashing (Hoch

and Franz,1992). The Oxford English dictionary describes the term 'greenwashing' as "Disinformation disseminated by an organization, etc., so as to present an environmentally responsible public image; a public image of environmental responsibility promulgated by or for an organization, etc., but perceived as being unfounded or intentionally misleading'(Assoune). Therefore, under greenwashing, such products and services are not actually eco-friendly as they mislead and miscommunicate the consumers. Unfortunately, it is difficult to distinguish the green washed products from the products which truly contribute to the environmental protection.

2. Methodology

This research was conducted under the doctrinal research methodology in order to study about the present legal aspects in Sri Lanka regarding Greenwashing while comparing with the legal aspects in the world. Additionally, to assess the laws existing in Sri Lanka regarding Greenwashing, it has been utilized a comparative and international methodology as well.

3. Results and Discussion

Usually under Greenwashing the companies pay more attention to attract consumers by spending money and time by convincing that those products are ecofriendly, whilst at the same time hiding their environmental impact. Thus, this practice can be recognized as a disagreeable and inappropriate, since the consumers' good intention to be familiar with sustainable products are misused by the companies for their commercial purposes.

This term 'Greenwashing' was coined by the environmentalist Jay Westervelt in 1986 through one of his essays. In it he emphasized that the hoteliers promoted the reuse of towels as a sustainable method with the hidden

intention of saving their cost for towels (Watson,2016). During the same period, in the mid 1980s, Chevron company who is a leading character of the oil industry publicised their contribution to the environment via tv programmes and media. However, it was revealed that they were polluting the environment while violating the Clean Air Act 1967 and Clean Water Act 1972 of United States. With that evolution of misleading consumers, now it can be seen the greenwashing in numerous products including foods, beverages, sanitary products, vehicles, fashion brands and even financial institutions also commits the sins of Greenwashing.

Most importantly the practice of greenwashing should not be mingled with the green marketing, as there is a visible margin between these two concepts. In accordance with green marketing the businesses and companies are obliged to ensure that their products are ecofriendly with less environmental impact. Their main objective is to continue the business with a minimized environmental impact. Usually, the green marketing products do not contain toxic ingredients and they are reusable, recyclable whereas by way of greenwashing practices the companies utilize the same concept of protecting the environment while manufacturing products and services which are not eco-friendly. However, the most negative effect of greenwashing is the disappointed consumers will not be relied upon the truly sustainable products as their trust is already broken.

The main and identifiable characteristics of greenwashed products are, the vague language with misleading and false environmental claims. For an example, once the Hyundai company advertised that one of their cars has the capability of cleaning the air and it was highly criticized by the Advertising Standards Authority (Puddicombe, 2021). Moreover,

greenwashed brands use greenery images with words like 'green' and 'eco' to depict and establish the idea of sustainability in the consumer's mind. At the same time, it is prudent to get rid of using the products which claim '100% ecofriendly' or '100% natural' while containing in a materials like plastics or polythene. Further in order check the truth behind the environmental claims of a particular product, a study can be done about the certifications.

i. Six Sins of Greenwashing

Under green washing the companies cunningly utilize the misunderstanding and lack of knowledge of the consumers. Consequently, the study conducted by TerraChoice in 2010 was able to introduce 7 sins of greenwashing which depicts the types of greenwashing (bluedotmarketing,2021).

ii. The Sin of the Hidden Trade-Off

Under this concept the small amount or part of the product which is organic is highlighted, regardless of the rest of artificial and harmful ingredients contained in it. Rather than focusing on the real nature of the products, the consumers tend to buy these kinds of products thinking that it is organic and healthy. Basically, this is not a false concept but it amounts to a misleading concept. For an example a product made utilizing a small attribute which is eco-friendly, can be caused to occur mass pollution during its procedure, even though it was made with organic ingredients. Instead of demonstrating that pollution, the particular companies stress out the organic ingredient.

iii. The Sin of no proof

Generally, for an environmental claim it is necessary to have a certification by a third party as the third-party certification publicise the manufacturing process of the company.

Rather than a mere statements about the product, in order to support the claim, it should be proved with facts and details. When an environmental claim is not supported by a certification of reliable third party, it creates the sin of no proof.

iv. The Sin of Vagueness

Poor definition or the broad meaning cause to this sin as the consumers misunderstand the product. As an example, a hand sanitizer which contains 99% of chemicals and mentions that it is chemical free, commits the sin of vagueness.

v. The Sin of Irrelevance

Under this sin it is made an environmental claim which is irrelevant and unhelpful for eco-friendly products and simultaneously it is a truthful claim. By means of tricky statements and focusing the attention of consumer to the irrelevant facts, this sin is committed. For an example there is sin of irrelevance when a product mentions that it does not contain a harmful chemical which is banned and not used by other products as well.

vi. The Sin of Lesser of Two Evils

When questionable products are saying that they are environmentally friendly and organic, there is the Sin of Lesser of Two Evils. For an example, if a cigarette company claims that their cigarettes organic and eco-friendly, there is a risk for the health of the consumers at the same time. Simply it contains the technical truth which changes the attention of the consumer from the massive health and environmental risk that can be happened from the product. This green claim can be truthful within the product category, but it can be harmful for the consumers.

vii. The Sin of fibbing

Making false environmental claims amounts to the Sin of fibbing. For an example, once the Hyundai company advertised that their cars have an ability to clean the air. Generally, this type of a sin is not common, as making false statements can be a reason to deprive the trust of the consumers.

viii. The Sin of worshipping false labels

When false certifications endorsed by third parties are used in products, this sin can be visible. Under this sin, the products use certain labels showing “approved” by certain standards such as Energy Star Certified, Green Seal Certified. (bluedotmarketing,2021).

ix. Impacts of Greenwashing

Basically, greenwashing can be affected to the environment and the consumers at the same in different ways.

x. Impact on environment

The misleading of consumers paves the way for severe impacts on the environment as it misuses the consumers’ intention to support environmental protection in different ways. The companies publicise that they take actions for the protection of environment whereas their products and services do a huge harm while manufacturing. Rather than making changes in the products or manufacturing process, the companies rely on a mere advertising which says that it is eco-friendly. However finally it ends up with the destructive contribution to the environment. The Malaysia Palm Oil Council, in 2008 advertised that Palm oil trees provide a habitat for various species of flora and fauna. However later it was found that palm oil trees caused extinction of rainforest species, destruction of flood buffer zone and different other damages to the environment. Likewise, Shell company once advertised their oil sands ‘secure a profitable and sustainable future’. However, the UK

Advertising Standards Authority declared that Shell company has no evidence to prove the sustainability on the environment. Identically cosmetics, beverages and food items which say organic and contained in unsustainable materials do a considerable impact to the environment (Dhal,2010).

xi. Impacts on the consumers

According to research conducted by TerraChoice in 2009 it was revealed that out of 397 cleaning products, children’s products and cosmetics only 3 products were made using sustainable materials and sustainable manufacture process. Unfortunately, those greenwashed products were most popular brands in the market at that time. The unawareness of consumers about greenwashing leads to the unsustainable and unhealthy practices which cause to generate serious health issues like cancers, genetic disorders (Dhal,2010). In the garment industry of low and middle-income countries (LMICs), due to the cotton dust and the poor sanitary facilities the garment workers have to face cancers, lung diseases (Bick, Halsey and Ekenga, 2018). Ben and Jerry, a company which manufacture dairy products stated that they focus of ‘making world a better place’. However, it was revealed that this company utilizes low quality farmed milk for their dairy products. 10 samples out of 11, taken from Ben and Jerry company was positive for herbicide contamination which is harmful for human health (pegasuslegalregister, 2018). The confusion of the consumers generated by greenwashing can create a mistrust towards the true environmental claims and consequently it will be destroyed the green market which purposes to protect the environment. Similarly, the products which pretend that they are Eco friendly, can be a reason to affect the human health together with their economy as well.

Laws related to Greenwashing in other jurisdictions

United Kingdom can be known as an initiate state which established a standardized practice to diminish the impact of greenwashing. In 2021, Competition and Markets Authority (CMA) of United Kingdom established Green Claims Code declaring the guidance which are relevant to the businesses and companies when considering the protection of consumers regarding environmental claims. Most importantly this code has connected with the inclusions of Unfair Trading Regulations 2008 (CPRs), Misleading Marketing Regulations 2008 (BPRs) and Advertising Standards Authority (ASA)'s rules as well. It contains 6 key principles

- a) Be truthful and accurate;
- b) Be clear and unambiguous;
- c) Not omit or hide material information;
- d) Only make fair and meaningful comparisons;
- e) Consider the full lifecycle of the product or their service
- f) Be substantiated.

Any business which fails to comply with the Green Claim Code can be subjected to the actions taken by the Competition and Markets Authority (CMA), Advertising Standards Authority (ASA) and trading standards. It is prudent to identify these codes as a flow from Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and Business Protection from Misleading Marketing Regulations 2008 of UK, rather than a newly established law which strictly focuses on greenwashing.

Other than this Green Claim Code of UK, it cannot be found a specific law for

greenwashing in other jurisdictions. However, there is a visible contribution by organizations, federations which work for consumers and environmental protection. During the absence of a proper regulation for Greenwashing in United Kingdom, the non-profitable organizations like Green Peace initiated in raising voice against the greenwashing (Dhal, 2010). Changing Markets Foundation, as a worldwide non-governmental organization based on Netherlands, discusses about social issues. Focusing on protection of sustainable trade practices, it has presented a report titled 'Licence to Greenwash', considering the textile certifications. In this report they have evaluated the 10 certifications in the fashion industry and by means of that they have found that the majority of existing certification brands act to hide the environmental impact caused by the fashion industry (ChangingMarketFoundation,2022).

Likewise, the World Federation of Advertisers (WFA) has introduced a set of regulations related to Greenwashing including six guidelines. Under those guidelines, firstly clear wording and understandable language should be present without confusing the consumer. Secondly, sufficient information must be included in the products for the benefit of the consumer and to mitigate miscommunication. At the same time, marketers are obliged to indicate the limits of durability of the product and their environmental claims should be based on the lifecycle of the product. Moreover, instead of a mere comparison with other competitive products, in accordance with these guidelines, it is required to mention advance information. For an example if a company states that their ingredients are organic, it should be mentioned what makes the ingredients more organic than other products. Similarly, if any business intends to advertise about an environmental claim, they are required to

mention strong evidence for that claim as well. Finally, it is required to demonstrate the impact to the environment, the contained ingredients and the process of production in order to educate the consumer regarding the product (Whitaker and Williams, 2022).

The Federal Trade Commission (FTC) of United States in 1992 introduced a set of guidelines to restrict the practice of greenwashing. In accordance with these rules the language must be clear, the claims which are comparative should be clear and there should not be any over exaggerating of environmental claims etc.

As a result of keeping an eye on this growing misleading trend, the United Nations Conference on Sustainable Development in Rio in June 2012 (Rio 2012) established guidelines on Green Economy, which aims at implementing a practice of economy which is interacting with environmental protection as well. Therefore, by means of such steps it is granted a responsibility on the companies and consumers only to be familiar with the Eco-friendly products which actually contribute to the protection of the environment. Simultaneously, The Attorneys General Task Force on Environmental Marketing was established in 1989 by the Attorney General of Minnesota with the purpose of providing the justice for the consumers with good intention of protecting the environment.

In addition to that, University of Oregon in United Kingdom has established a Greenwashing Index which allows the public to give feedback, rate on the various advertisements which make environmental claims. This can be known as an active participation of public to mitigate the negative impact of greenwashing. In the same line certain other organizations like Greenpeace, Friends of the Earth also work on spreading the public awareness on greenwashing and

gaining opinions from the public about environmental claims (Lorance, 2010).

Laws related to Greenwashing in Sri Lanka

. When considering the situation of Sri Lanka, there can be found numerous cosmetics which says they are 'greenest' and 'environmentally friendly' while containing in plastic tubes or bottles. Simultaneously their websites also have published articles on environmental protection. Moreover, there are plastic water bottles which mention 'eco-friendly' on the polythene label and 'organic' foods containing in polythene covers. However, no authority has recognized these companies as greenwashing companies. It becomes evident that even though Greenwashing is commonly existing in Sri Lanka, still it has not been addressed effectively.

In order to indirectly address the greenwashing practices, there are few statutes in Sri Lanka which aim on consumer protection. The Food Act No. 26 of 1980, was an act which was established to govern the manufacture, sale, distribution of food in Sri Lanka, regulating the advertising and labelling of food products. Under section 3 it states that advertising or labelling of the food in a false, deceptive and misleading manner is prohibited under the Act which generates a false impression regarding the item. Simultaneously, in terms of section 160(4) of the Intellectual Property Act No.36 of 2003, any action which misleads or likely to mislead the public creates an act of unfair competition and further it has been mentioned the instances which may constitute misleading; such as process of manufacturing, suitability of product, quality and quantity etc. Further, in terms of section 7 of Consumer Affairs Authority Act No.9 of 2003, the objectives of the Act are to protect the consumers from the marketing of goods and services which are

detrimental to life and property, while safeguarding consumers from and seeking remedies for unfair trade practices etc. Significantly, under the functions of this Act, it is intended to educate the consumers regarding the rights and interests while protecting them. Further, under section 30, no trader is allowed under the Consumer Affairs Authority Act No.9 of 2003 to conduct any misleading or deceptive action. Together with that according to section 31, false representation of the standard, quality, approvals and certificates about the goods is also prohibited. Identical provisions are mentioned in the section 18 and 19 of the Consumer Protection Act No.1 of 1979 as well.

In addition to that, under the functions of the Rupavahini corporation mentioned in section 7 of the Sri Lanka Rupavahini Corporation Act No. 6 of 1982, a television broadcasting service should be carried out prioritizing the public interest and the programmes broadcast by the corporation should be controlled and governed. Furthermore, in accordance with the Code of Ethics Standard of Practice, there is a standard which declares that any untrue statement or omission of fact should not be done which initiates a misleading.

When concerning the essence of these Acts regarding Greenwashing, it is obvious that these Acts were not enacted with the specific purpose of mitigating Greenwashing. Therefore, it is difficult to completely eradicate the negative impact from Greenwashing by applying the above-mentioned provisions. Even though they are applicable to a certain extent, when comparing with UK, still Sri Lanka is in a very primitive stage. Although Green Claims Code is not a separate law, with the purpose of modifying the existing consumer protection laws to address the issue of greenwashing, UK regulators have gone beyond the existing legal framework.

4. Recommendations

Obviously, there is an absence of a specific legal framework for greenwashing in Sri Lanka. As a result, it is evident that even though Sri Lanka follows a silent approach regarding Greenwashing, there is a high risk of having impacts of Greenwashing to Sri Lankan consumers. Initially it is significant to aware the consumers about the practice of greenwashing and its impacts. Therefore, it is necessary to have a legal tool which distinguishes the true environmental claims from misleading greenwashing claims and there should be guidelines and standards to mitigate the practice of greenwashing. Such legal framework should be operated regularly since there can be variations in the modes of greenwashing. At the same time there is a necessity of having a regulation to sue against greenwashing companies after a proper investigation.

Furthermore, to receive the public participation, it should be created several mobile applications and forums for the consumers to comment and rate on the environmental claims which is similar to the Greenwashing index of University of Oregon. Moreover, there should be a legal framework to ensure the transparency of the products with environmental claims by providing necessary evidence using numerical data rather than attractive words like 'environmentally friendly'. Further, Public awareness on greenwashing should be promoted and it can be supportive to get the contribution from non-governmental organizations as well. Finally, instead of giving the burden on consumers regarding categorizing greenwashing products, with the public participation the relevant authorities should take an action to update the laws.

5. Conclusion

In terms of Greenwashing, the companies pretend that not only their products, but their labelling, manufacturing, distributing also sustainable and environmentally friendly. After considering their common products and services in the society it is evident that from food item to financial service, Greenwashing is applied. The main issue related with Greenwashing is, as the misled people attract towards these brands with the good intention of reducing the environmental impact, the environmental harm become serious. In a conclusion it becomes visible that as there is no a considerable consideration to this greenwashing concept in Sri Lanka, there is a lacuna in the legal system due to the absence of specific law or regulation to control the greenwashing. Moreover, it is evident that existing laws related to consumers rights and food safety are also not sufficient for this purpose. Lack of knowledge regarding the consumers rights, lack of sufficient laws and regulations for Greenwashing in Sri Lanka depicts that still the majority of products and services are misleading consumers to a considerable extent. In contrast, within Sri Lanka, a contribution from non-governmental organizations also cannot be seen mainly due to the lack of knowledge about greenwashing. Therefore, it must be stressed that in Sri Lanka the deliberation focused on Greenwashing is not sufficient when comparing with the other jurisdictions like United Kingdom.

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