

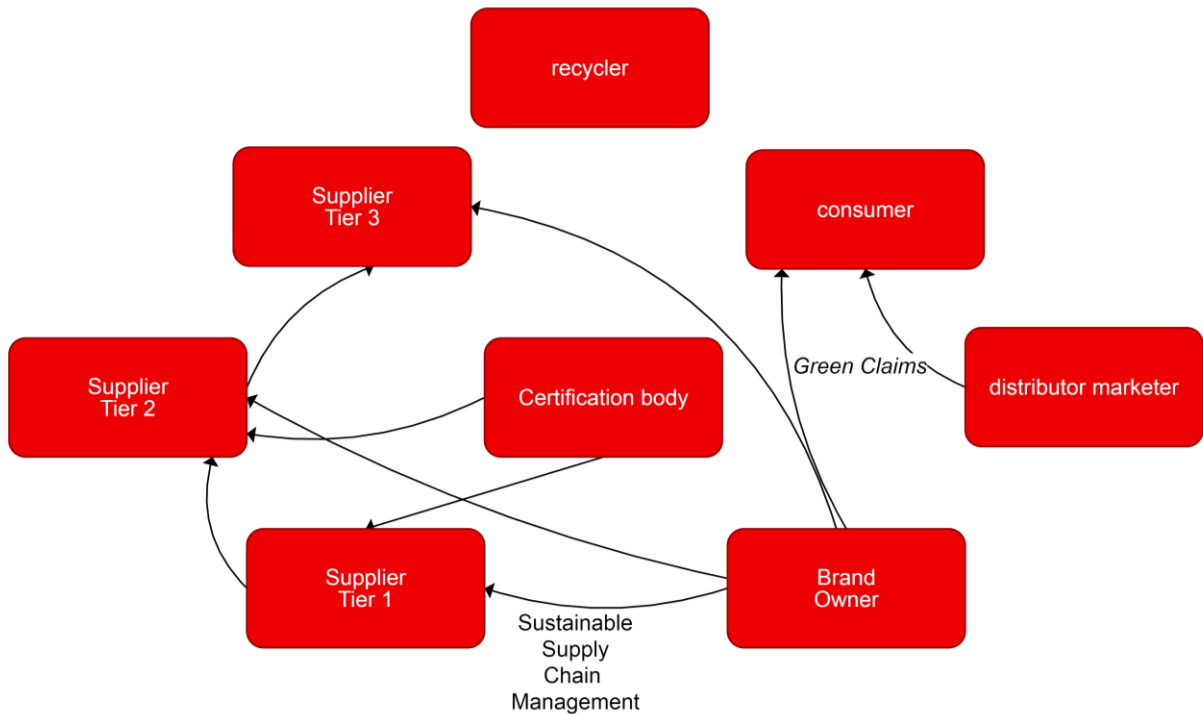
Memorandum

Re AIPPI World Congress 2024 in Hangzhou, China, Café Session "Green Fashion"
From Reinhard Oertli, AIPPI Standing Committee Development and IP
Date 21 October 2024

Green Fashion: new accountability rules in EU and US and their impact on suppliers in developing countries

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AIPPI Standing Committee Development and IP: Green fashion

1. New rules for sustainability claims (Green Claims) in the EU and the US

1 New rules for sustainability claims, also known as Green Claims, have been introduced in both the EU and the US.

1.1 EU

2 In the EU, these rules are governed by the Unfair Commercial Practices Directive 2005/29/EC of 11 May 2005, the Directive on substantiation and communication of explicit environmental claims (Green Claims Directive), which is a proposal in its final draft (2023/0085(COD)), and the Directive on corporate sustainability due diligence (Directive 2024/1760)(CSDDD), which entered into force on 25 July 2024, amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

1.2 USA

3 In the US, the Federal Trade Commission (FTC) Part 260 – Guides for the use of environmental marketing claims, provides the framework for fair and unfair green claims.

2. Relevance for brand owners and distributors, consumers, and suppliers

2.1 Relevance between brand owners/distributors and consumers

4 The new rules primarily pose new challenges for brand owners and marketers (distributors) in their relationship with consumers. For them, protecting the image of their brands as “green”, “eco-friendly” or similar, by avoiding or defending against unfair competition or passing off claims for

allegedly unfunded and untrue green claims is crucial. The related legal issues are heavily discussed among politicians, legal scholars, attorneys, and in-house counsel. Legal issues of this kind arise between brand owners, distributors and consumers (and consumer organizations) that have their domicile mostly in developed countries.

2.2 Relevance between brand owners/distributors and suppliers

- 5 But the new rules also affect the relationships between brand owners/distributors and their suppliers, which are less often discussed. They may pose new challenges for the relationship between brand owners and distributors and their suppliers, whereby the latter are often domiciled in developing countries.
- 6 The new rules can act as non-monetary trade barriers, effectively excluding suppliers in developing countries from supplying the brand owners and distributors who marked their goods with green claims, because they cannot give the brand owners and distributors the assurances these need in order to prove their compliance with the requirements of the applicable legislation.
- 7 There is a risk that smaller brand owners/distributors might stop using green claims or shun away from suppliers who are not subject to the same or comparable legal regimes as they are (re-shoring or near-shoring).
- 8 The big fashion industry on the other hand has the power to impose its own standards on its suppliers. By imposing brand- and distributor-specific requirements, they make switching distribution channels more difficult and indirectly increase their market power even further.

3. Sustainable supply chain management

3.1 Sustainable supply chain management as the other side of the coin of green claims

- 9 Sustainable supply chain management (**SSCM**) is discussed as the remedy against claims for alleged unfair green claims in the distributor/consumer relationship. A brand owner or distributor can demonstrate the veracity of its green claims by reference to its efficient SSCM, which excludes any substantive contributions to its product that would not live up to the promises underlying its green claims.
- 10 SSCM is defined as “the management of material, information and capital flows as well as cooperation among companies along the supply chain while taking goals from all three dimensions of sustainable development, *i.e.*, economic, environmental and social, into account which are derived from customer and stakeholder requirements. In sustainable supply chains, environmental and social criteria need to be fulfilled by the members to remain within the supply chain, while it is expected that competitiveness would be maintained through meeting customer needs and related economic criteria.”¹

¹ STEFAN SEURING, MARTIN MÜLLER, From a literature review to a conceptual framework for sustainable supply chain management, *Journal of Cleaner Production*, VI. 16. No. 15 Oct. 2008, P. 1699-1710



3.2 Sustainable supply chain management between brand owners/distributors and suppliers

11 The relationship between distributors/brand owners and suppliers and the impact of SSCM on these relationships is less often discussed in a legal context. SSCM may have a negative or a positive impact, depending on how it is implemented.

3.2.1 Active SSCM by big and medium-sized brands and distributors

12 Big and medium-sized brands and distributors should sufficiently engage the different stakeholders in their SSCM strategies, pay attention to upstream and downstream flows of material and information, incentivize collaboration, develop comprehensive SSCM policies throughout the supply chain, and actively work with their suppliers. The goal is that they accept green standards as a mutually beneficial value proposition rather than something that is imposed on them in a neocolonialistic fashion.

13 The suppliers should build these requirements into their operating and manufacturing processes from the outset, adapt them to their needs and the conditions of their economic and political environment, all in consideration of the willingness of the consumers to pay a premium.

14 This approach should help brand owners/distributors meet the requirements of the green claims legislation, evaluate their suppliers and sub-suppliers and manage their compliance and realize the positive incentives of compliance, rather than just avoiding the negative consequences of non-compliance.

15 Collaborative tracking of overall sustainability performance is important for avoiding risks and improving supply chain performance, self-improvement of suppliers, communication between brand and suppliers, and mutually defined and accepted criteria for product and supplier's production method.

16 Dynamic and bi-directional supply chain management is essential for sustainable production.

17 Suppliers should be encouraged to report on developments of internal operations, changes in their environment and notices from their sub-suppliers, including failures and temporary breakdowns, without fear of unnecessary negative consequences, to build mutual trust and to allow all parties to learn.

18 Frequent in-person meetings between representatives of brands and suppliers at different levels, a combination of audits and certified third-party audits, and mutual exchanges are recommended. Integration of raw materials and garment design, production process layout, and best practices, tools, and technologies are essential.

19 Improvement should be seen as a welcome process, with training and exchange of experiences, rather than a neo-colonialist exercise of power.

20 Incentives and awards should focus less on short-term achievements and more on long-term sustainability improvements.



21 The Sustainable Apparel Coalition's (SAC) Higg Index Facility Environmental Module provides a framework for audits, self-certification, and joint work on improvements and failure minimization and avoidance.

3.2.2 Reliance on standards by smaller brand owners and distributors

22 Smaller brand owners and distributors should be able to rely on standards defined and supervised by independent standard-setting organizations and use their labels and seals if they meet their requirements. This option is also interesting for suppliers of components that are intended to go into a wider range of products and brands, because such standards make them independent from a specific brand owner/distributor. brand owner/distributor and their organizations should endorse the standards of the standard-setting organizations and use their labels and seals as sign that their products meet the respective requirements, there should be a right of brand owners/distributors and consumers to sue the standard-setting organizations if they do not properly monitor compliance with their standards by the producers using their labels and seals.

3.2.3 Environmental sustainability and social standards and human rights

23 Environmental sustainability and social standards and human rights are inseparable, sides of the same coin of sustainability. Four Freedoms of the International Labour Organization (ILO): freedom of association, no forced labor, no child labor, and no discrimination.

3.3 SSCM between suppliers and sub-suppliers

24 Brands should manage the sub-suppliers of their suppliers directly or ensure that their suppliers do so, applying the same principles to suppliers of energy, manpower, logistics, etc.

25 The above principles should also be applied by the suppliers towards their sub-suppliers and help them evaluate and monitor them. Each supplier should have incentives to apply the same SSCM tools to its sub-suppliers, considering the relevance of their contributions and their factual and financial possibilities and the legal and economic environment in which they work.

3.4 SSCM and downwards sustainability

26 Considerations of downwards sustainability, such as **recycling and biodegradability**, should be integrated into the production process from the beginning.

27 Materials management and end-of-life management should encourage the reuse and repurposing of clothing and textiles, particularly for non-sold items but also for items sold to consumers



