The European Proceedings of
Social & Behavioural Sciences
EpSBS

Future Academy

ISSN: 2357-1330

https://dx.doi.org/10.15405/epsbs.2018.12.03.45

UUMILC 2017
9TH UUM INTERNATIONAL LEGAL CONFERENCE

DECEPTIVE MARKETING OF DIETARY SUPPLEMENTS IN MALAYSIA: THE LEGAL FRAMEWORK

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Abstract

Globalization has transformed many industries from the traditional/conventional ambiance to a modern and a technology based industry. Among the transformed industry are the food and pharmaceutical industry which led to the dietary supplements industry. Dietary supplements are products that are labeled as *dietary supplements* and are not represented for use as a conventional food or as a sole item of a meal or diet. Supplements can be marketed for ingestion in various forms such as capsule, powder, soft gel, tablet, liquid, teas, or any other form. Although dietary supplements have aided in the maintenance of the quality of life, yet the market is flooded with dietary supplements that are marketed with deceptive or misleading description. Advertisements in the media, has become a vital source of information about dietary supplements for consumers. Hence, the extent to which the manufacturers of these dietary supplements adhere to the standards and guidelines of good advertising practices remains relatively unexplored in Malaysia. Where the existing regulatory framework provides for the control of marketing for pharmaceutical related product, the law is absent in providing the same for food related products. The inadequacy existing laws such as the Trade Description Act 2011, Consumer Protection Act 1999, The Food Act 1983, related guidelines, circulars and directives that govern the marketing of dietary supplements may pose a threat to the sustainability of the industry. This paper aims to view these laws and the loopholes that might be apparent in them and suggest reforms for the marketing of dietary supplements.

Keywords: Food Laws, dietary supplement, deceptive marketing.

https://dx.doi.org/10.15405/epsbs.2018.12.03.45
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Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

1. Introduction

The dietary supplement industry is growing globally due to the impact of globalization. Although the growth of the industry contributes to the increase of economic development in Malaysia, it seems to lack legal force. The nutrition supplement which is a term used interchangeably with the dietary supplement industry is considered as one of the fastest growing industries in the world which makes a significant contribution to the global economy, which is approximately about USD 32 billion in 2012. According to the Nutritional Business Journal, it is projected to double that by topping USD 60 billion in 2021. However it can be projected that the inadequacy of the existing law such as The Trade Description Act 2011, The Consumer Protection Act 1999, and The Food Act 1983, related guidelines, circulars and directives that regulate the marketing of the dietary supplement industry may threat the sustainability of the industry.

To date there are many studies that have been carried out on the marketing technique to the food-based product industry, the scientific research on the innovation of new food-based product, the social science studies on culture diversion relating to consumption of dietary supplement, the impact of deceptive marketing on obesity in children. However, there is an absence of studies on the Malaysian legal protection to curb the deceptive marketing of dietary supplements. Thus, this study intend to identify the regulatory framework governing the dietary supplement industry in Malaysia with the aim of examining the strength and flaws of the regulatory framework to control the misleading/ deceptive marketing of dietary supplements. Following the first objective the study aims at suggesting appropriate reformation of the current legal framework on the stated matter to delineate the proper scope of such protection. This research adopts qualitative methods that are primarily based on the doctrinal study supported by semi-structured interviews, workshop and focused group discussion. The doctrinal study is carried out using the library-based approach. The selection of the respondents for the focused group discussion and semi-structured interviews adopts the purposive approach. The interviews are exploratory in nature as the research sought to investigate how the respondents perceived the extent of effectiveness of the existing regulatory framework and monitoring tools. The discussion will utilize the descriptive approach and explanatory approach on the existing regulatory framework. The outcome of the study may contribute to the existing field of knowledge and help in designing an optimal global development agenda for dietary supplement industry.

2. Problem Statement

The rise of dietary supplements is very much contributed by the effect of globalization where it has bred a modern lifestyle that is comprehensive and somewhat dependent on energy booster products to maintain one's energy. In light of this development, the interest to consume dietary supplement is very much influenced by advertising techniques that supplies information promoting the 'remarkable' functions of the dietary supplement such as anti-aging, anti-wrinkle, and even prevention of cancer, just to name a few. Malaysians are now more health conscious (Mohd Noor, Sheau, Liew, & Rajah, 2014) and there is generally a greater awareness of the importance of nutrition for overall well-being. In recent years, many consumers also rely on a variety of "dietary supplements" to improve their health. Following this development there is increase in demand from the consumer that has led to the emergence of a mass

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production of dietary supplements. A manufacturer or merchant shall choose a mark that will distinguish his product in the form of a picture, design, letters or word. The owner of such a mark is given exclusive rights and tension arise between the desire to secure to producers the benefits of their labours by avoiding consumer deception as to the source of goods, and the desire to keep free the means of expression necessary for effective competition.

Due to this, issues of transparency in the manufacturing process becomes blurred and the complexities of dietary supplement products that are developed and manufactured using advanced technology has in a way impeached the rights of consumers to reliable information. Furthermore, Brown (2017) revealed that the market is flooded with contaminated product labelled as dietary supplement. The dietary supplement industry is associated with many issues that include the absence of control over viral marketing that may lead to misleading/deceptive information (Thelen, 2015). The existing regulatory framework such as the Trade Description Act 2011, Consumer Protection 1999, Food Act 1983 and food related guideline, directive and circular is absent in addressing this issue. To date there are an abundance of studies on the control of medicinal/ pharmaceutical marketing yet the in depth study on the need for regulatory framework for food based supplement product remain unattended. Thus it is the intent of this study to discuss the regulatory framework for dietary supplement industry in Malaysia.

3. Research Questions

Does the current legal framework effectively govern the issue of deceptive marketing within the dietary supplement industry in Malaysia?

4. Purpose of the Study

1. To examine the regulatory framework governing the marketing of the dietary supplement industry in Malaysia.
2. To suggest appropriate reformation of the current legal framework for marketing of dietary supplement in Malaysia.

5. Research Methods

This research adopts qualitative methods that are primarily based on the doctrinal study supported by interviews, workshops and focused group discussions. The doctrinal study is carried out using the library-based approach. This method provides a deeper understanding of the doctrinal content, particularly the current laws, administrative regulations and enforcement tools associated with the governance of the dietary supplements industry in Malaysia. The discussion used the descriptive approach and explanatory approach on the existing law. The aim of the library-based research is to analyse the laws related to the dietary supplement industry which consist of the existing relevant statute, administrative regulations, statistics, relevant reports, and policies of Food Quality and Safety Department (FQSD) and National Pharmaceutical Regulatory Agency (NPRA) Practice Code and Manual. The research data is also collected from semi-structured interviews, and focused group discussion with the policy-makers and major players of the industry. The selection of the respondent was made using the purposive approach. The interviews are exploratory in nature as the research sought to investigate how

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the respondents perceived the extent of effectiveness of the existing legal, administrative regulations and monitoring tools. An electronic voice recorder was used throughout the semi-structured interviews session, with the consent of the respondents. The outcome of this study showcases intensive, detailed and in-depth results, examining the intricacies and complexities within the dietary supplement industry.

6. Findings

6.1.The Concept of Dietary Supplements.

There are diverse products of dietary supplements that are freely available through a myriad of outlets. These products are also termed as many names including health supplement product, nutritional product that includes nutraceutical where all of these products are claimed to be supposedly for the maintenance, prevention and even treatment of chronic diseases. They may range from foods modified to have special properties or pure forms of vitamins and minerals to extract of various botanical or animal products. Brown (2017) identify that the common types of dietary supplements are vitamins or mineral supplements, specialty supplements, botanicals/herbs and sports supplement (Thelen, 2015) and three main categories that is commonly associated with medical problem are products for sexual enhancement, weight loss and sports performance. The general definition of dietary supplement product as in accordance to the Merriam Webster dictionary that states the medical definition of dietary supplement is any product taken orally that contains one or more ingredients (such as vitamins or amino acids) that are intended to supplement one's diet and are not considered as food. According to Fontanarosa et al., (2003) dietary supplements encompass a wide spectrum of products, including vitamins and minerals, such as folate and calcium; herbal therapies and botanical agents, such as ephedra and ginkgo biloba; and enzymes or extracts from organs or glands, such as some "hormone" preparations.

In the United States, dietary supplements may contain multiple ingredients, including vitamins, minerals, herbs or other botanicals, and amino acids; (Yetley, 2007) dietary substances for use by humans to supplement the diet by increasing the total dietary intake; concentrates, metabolites, constituents, and extracts; or combinations of one or more of these ingredients (Davis & Finnin, 2011). Similarly, Huat (2010) defined dietary/health supplement products may include active ingredients such as vitamins, minerals, amino acids, natural substances of plant/animal origin, enzymes, and substances with nutritional/physiological function. Basically, the physiological function of these product includes to boost the overall health and energy (Sax, 2015), provide immune system support, reduce the risks of illness and age-related conditions, and improve performance in athletic (Sax, 2015) and mental activities as well as to support the healing process during illness and disease.

The European Commission proposed to define food supplements as concentrated sources of nutrients (primarily vitamin and mineral salts) marketed in dose form (e.g., capsules, tablets, sachets, etc.) to supplement the nutrient intake in a normal diet. The United Nation's Codex Alimentarius completed similar international standards for food supplements.

In Malaysia, there is no specific definition of dietary supplement products. Some of these products are not clearly defined as “food” or “drugs”. Such products include a variety of so-called health products and have been termed as “food-drug inter-phase (FDI) products” as per in the Drug Registration Guidance Document (DRGD). In order to better define and regulate the FDI products, both the National

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Pharmaceutical Regulatory Agency (NPRA) and the Food Safety and Quality Division (FSQD), Ministry of Health Malaysia has formed the Committee for the Classification of Food-Drug Interphase Products in 2000. The main term of reference of the Committee is to assist both Divisions in classifying, in a consistent manner; an application from the industry which is not clearly defined either as a food or drug product. The procedure to be adopted before launching a food supplement (which are treated as health supplements or dietary supplements) product is generally regulated in a manner similar to that of pharmaceutical products. However, there may be a need to identify certain supplements as "pharmaceutical" or "food" products due to the presence of multiple ingredients.

In light of this, the Committee for the Classification of Food-Drug Interface Products has developed a classification system to determine whether the launch of a product in question is to be regulated by the Drug Control Authority ("DCA") of the National Pharmaceutical Control Bureau or the Food Quality Division ("FQD").

If a product contains 80% or more of food-based ingredients, singly or in combination, with equal to or less than 20% of biologically active ingredients (such as vitamins, minerals, amino acids), the product is considered as a food product and shall be regulated by the FQD. Food products do not have to be registered but the products must comply with the standards and the labelling requirements under the Food Act 1983 and the Food Regulations 1985.

If a product contains less than 80% of food-based ingredients, with more than 20% of the active ingredients, the product is considered as pharmaceutical product and shall be regulated by the DCA. A product which contains solely natural ingredients that are not traditionally used as food and possesses medicinal value such as alfalfa, spirulina, royal jelly, noni juice, rooibos tea, pegaga tablet and other herbal products, is regulated by the DCA.

In the event of any uncertainty about the classification of the products, the applicant can always submit the documentation showing the intended use and formulation of the product to the DCA to be evaluated. For health supplement products that are regulated by the DCA, the products must be registered with the DCA prior to being manufactured, sold, supplied, imported, possessed or administered in Malaysia, unless an exemption applies (Aziz, 2017).

According to the DRGD, FDI products are products for oral consumption containing a combination of food ingredients with active substances for oral consumption. Examples of food ingredients are fruit, vegetables, meat, poultry, milk, cocoa and cereal. Examples of active substances are vitamins, minerals, herbs, enzymes, probiotics, prebiotics, amino acids, peptides, coral calcium, and fatty acids.

Food supplement products have been considered by health authorities as being part of health supplement products, which have been defined as "products that are intended to supplement the diet taken by mouth in forms such as pills, capsules, tablets, liquids or powders and not represented as conventional food/sole item of a meal or diet" (para 9.1 Guidance Notes for Health Supplement Products, Drug Registration Guidance Document, August 2010, issued by the National Pharmaceutical Control Bureau, Ministry of Health, Malaysia). On the other hand, the nutritional supplement products are usually categorized under the production of the pharmaceutical industry as health and food supplement which also includes traditional medicines (Cardas Research & Consulting Sdn. Bhd, 2015).

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6.2.Regulatory Framework Governing the Dietary Supplement Industry.

6.2.1 Viral Marketing

In the wake of sophisticated and highly efficient digital communication, viral marketing has become much cheaper compared to the traditional ways. The adoption of social media such as Facebook and YouTube combined with an increased trust in other people's opinions makes viral marketing very efficient and widespread. In user-generated marketing, crowds of consumers help the business spread its commercial messages sometimes with the result that the marketing messages are spread in the form of audiovisual clips or links like a virus, while blogs, groups, discussion forums and other social media are used by private individuals to pass on commercial messages (Willis & Stafford, 2016). The development in the use of mobile devices will further enhance the rapid and cheap communication in digital social environments. (Trzaskowski, 2011).

The rise of viral marketing has impacted many industries including the dietary supplement industry which comes under the food industry (Willis & Stafford, 2016). According to Ernst (2008) there is a proliferation of food-based products following the diversified consumer demand and an expanding diversity in channels of distribution where advertisement has become a significant tool for a successful marketing of a food-based product. The rise of viral marketing as an advertisement mechanism supplemented this need. Linking to this development of viral marketing as a channel of advertisement, Ernest also cautioned the industry on the need to balance between the need to plan an effective advertising of food-based product and to avoid exaggeration of description/testimony of the food-based product. Although advertising is a constitutionally protected form of commercial speech, it is subject to extensive regulation (Pawar & Arundel, 2016). Food and food-based products in light of its health and safety issues are subject to more regulatory oversight than other consumer product.

In a study conducted by Salleh & Wook (2010), it was reported that many consumers felt so strongly about the potential health benefits of some of the dietary or health supplement products that they reported that they would continue to take them even if they were shown to be ineffective in scientifically conducted clinical studies. This is also one of the significant impacts of viral marketing for such product. The main issue is the widespread of exaggerated benefits of these products that were not certified through reliable clinical trials. This creates a potential threat to the consumer’s safety and may lower the quality of product. Dagerman (2012) shared the same concern on safety issue associated with dietary supplement product as this product has not been medically tested.

On deceptive advertisement, few authors (Hoogenraad & Duivenvoorde, 2015; Ippolito, 2003-2004; Sax, 2015; Mohd Nor, Sheau, Liew & Rajah, 2014; Handsley & Nehmy, 2014) discussed on the doubt that advertising provides much information useful to consumers or competition. Some fear that without strong and legal constraints, the selling intent behind advertising will lead to considerable deception and consumer harm and competitive forces will not fill in important missing information (Gibson and Taylor, 2005).

6.2.2 Control of Misleading Advertisement for Medical or Pharmaceutical Products

The Medicines (Advertisement and Sale) Act 1956 (Malaysia) is supplemented by a guideline i.e., the Guidelines on Medical Products and Appliances 2009 (Malaysia). The guideline prohibits the

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dissemination of any statement which may mislead consumers about any product. It is an offence under the guideline to advertise medical products with unreliable, inaccurate or non-truthful information. However, the unreliable, inaccurate and non-truthful information are limited to the information that guarantee medical ailments or information that declare the product as having medical functions (Hassali, Saleem, Aljadhey, & Khan, 2012). Marimuthu (2013) described both the Act and guidelines as comprehensive and detailed. However, there are loopholes in this Act and guidelines which permits the deceptive advertisement to still occur in the society. Among the loopholes are the limited regulatory controls during the pre-market approval of advertisements, the monitoring of non-compliance with advertising law as well as the enforcement activities.

Despite its negative connotations, advertising regardless plays an important role in promoting competition, efficiency, and education for consumer. As internet consumers have grown savvier, Internet advertisers have struggled to capture and keep consumers' attention (Suh, 2005). According to the Trade Descriptions Act 2011 ('TDA') and the Consumer Protection Act 1999 ('CPA'), advertisement is meant to include every form of advertising (whether or not accompanied by or in association with spoken or written words or other writing or sounds and whether or not contained or issued in a publication) by the display of notices or by means of catalogues, price lists, circulars, labels, cards or other documents or materials or by the exhibition of films or of pictures or photographs, or by means of radio or television, or in any other way. The wording of both provisions is almost similar in verbatim (Salleh & Wook, 2010).

6.2.3 Offences and Remedies under the Trade Description Act 2011(TDA)

In relation to a false description of dietary supplement product, the TDA creates two major criminal offences of strict liability. The first is applying false trade descriptions to goods in the course of a trade or business. Examples of 'applying description' include descriptions in writing, descriptions in verbal statements or descriptions by conduct. The Trade Description Act 2011(TDA) being the pertinent statute governing false description made through deceptive marketing on the dietary supplement products.

The second offence is supplying or offering to supply in the course of a trade or business any goods to which a false trade description is applied. Thus a person exposing goods for supply, for instance in a shop, or having them in his possession for supply, such as in a storeroom, is deemed to offer to supply them for the purpose of the Act.

6.2.4 Consumer Protection Act 1999(CPA)

Part II of the CPA (s.9 & 10, CPA) provides for the offence relating to misleading and deceptive conduct and false representation and Part IV provides for the penalty. Section 9 of Part II of the CPA provides that any conduct that is misleading or deceptive or would be likely to mislead or deceive on the manufacturing process, characteristic, suitability for its purpose is an offence punishable under section 25(1). Section 10 of TDA 2011 further provides for false and misleading representation. Both sections, may be used to charge any person who deceivingly described the untrue functions of a dietary supplement product or any statement or conduct that may mislead the consumer to believe that the product are able to function in certain ways which is not true. On this note, it can be said that this provision is overlapping with the provision under the Trade Description Act 2011. As the CPA is supplemental in nature

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(Rajadurai, 2014; Amin & Aziz, 2015) the issue of applicability of this part of the provision in solving the deceiving marketing of the dietary supplement product may not be relevant.

6.2.5 Control of Safety and Quality for Drug-Based Product

Currently, the laws addressing the principles of safety, quality and efficacy of pharmaceutical products are provided under the Dangerous Drugs Act 1952 (DDA), Poisons Act 1952, the Sales of Drugs Act 1952(SODA), the Control of Drugs and Cosmetic Regulations 1984 (revised 2009) (CDCR) including circulars, directives and guidelines. DDA aims at controlling and monitoring the abuse in drug usage covering the import and export activities, formulation, selling and personal usage. PA monitors the usage of poison in the formulation of pharmaceutical products that aims at protecting the safety of the consumer. It combats drug trafficking activities in Malaysia while Monitoring and control of raw materials are under the jurisdiction of PA and SODA where the control includes the declaration of information on composition process and ingredients, safety and the quality aspects. On the other hand, CDCR, DDA and SODA monitor and control of the finished product in terms of marketing, selling, labelling and advertisement.

The operations of these main statutes are supported with the current circulars, directive and guidelines issued by NPCB. The National Pharmaceutical Regulatory Agency (NPRA) is named as a regulatory agency and the Drug Control Authority (DCA) has the task of monitoring the quality assurance and regulatory affairs of pharmaceuticals. These regulations help to monitor and control the production, distribution, usage of medicine and cosmetic in Malaysia. If the dietary supplement products fall as a subject of medicine, then the products are governed by these regulations.

All pharmaceutical products need to be registered with NPRA prior to the application for halal certification and the requirements of safety, efficacy and quality are subsets to halal requirements. All applications for registration must be submitted online through DCA's website. Generally the control mechanism used by NPRA in safeguarding the safety, quality and efficacy the halal pharmaceutical products can be divided into two stages i.e., the pre-marketing and post-marketing stage. Pre-marketing control aims at preventing harmful and substandard pharmaceutical from getting into the market.

i. Registration of products/ Licensing of pharmaceutical company or owner

   Control of Cosmetic and Drugs Regulation 1984(Revised 2009) (CDCR) (regulation 7(1) (a)) requires all pharmaceuticals and drugs to be registered before they can be manufactured, sold, supplied, imported, (Part II, CDCR) possessed or administered in Malaysia. Prior to registration approval, NPCB will inspect the raw materials that include the inspection on the Active Pharmaceutical Ingredients (API) and the excipient. However, there is no inspection done on empty capsules as they are not a category of drugs or medicine. The inspection carried out for pharmaceutical products are comprehensive as they that include physical and performance test, quality test and safety test.

ii. Labelling requirement/ Consumer Medication Information Leaflets

   In June 2014 NPRA revised the DRGD and inserted an amendment that requires the declaration of source of ingredients that derived from animal origin (active and excipient) including starting materials, gelatine and the source of capsule shell on immediate container and outer carton

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labelling of all registered products through the Drug Registration Guidance Document. It is interesting to note that besides labelling, NPCB has also introduced the Consumer Medication Information Leaflets. The leaflets are available for prescription and non-prescription medicines registered for use in Malaysia. These leaflets are targeted for the consumer as it contains information on how the drug works, methods of us, the precautionary action, use of the drug in pregnancy, what to do if you miss a dose, and possible side effects or interactions. Other than the two requirement discussed above NPRA conduct product bans, batch marking and product certification prior to the marketing of any pharmaceutical product. In controlling the safety aspect, the NPCB requires that all pharmaceutical production to comply with the guideline on Good Manufacturing Practice (GMP) and other safety related regulations whereby products will receive appropriate certification to certify certain steps have been fulfilled. Meanwhile product bans is a mechanism that involves immediate action of the authority to ban and prohibit the marketing and selling of a pharmaceutical product. This is usually associated with pharmaceutical products that are reported to cause adverse effect to the consumer. Batch marking is a classification of product labels that becomes the measurement method for the producer to know the risk of the product that they have registered. Although this is done during the pre-marketing period, yet it functions as an aid in monitoring post-marketing activities and control.

iii. Product recall/product withdrawal

One of the effective post-marketing controls of the pharmaceutical product is product recall or product withdrawal. Pruit and Peterson (1986) explained that product recall is a mechanism when the products are identified to be potentially harmful to the consumer or having substandard quality. Product recall is where the authority collects the pharmaceutical products from the consumer and product withdrawal prohibits the supplier or seller from supplying and engaging in any future transaction of the pharmaceutical products. Product recall functions as an alarm and sets as an exemplary precedent to other pharmaceutical industries. In United States of America, the Food Drug Authority (FDA) can remove any dietary supplement product for misidentification, mislabelling or false claims (Brown, 2017). Similar to product bans, product recall is significant due to the sensitivity of halal related industry to the Malaysian society. The act of product recall may tarnish the reputation of the manufacturing company and cause great monetary loss. Thus complying strictly with the halal pharmaceutical requirements will not be compromised in the future. The post-marketing control provides for continuous monitoring on the pharmaceutical to avoid any illegal variations to the registered product or to react instantaneously to any report of adverse drugs reaction.

6.3.Laws of Other Jurisdiction on Deceptive Marketing

6.3.1. European Union

European marketing law has gradually grown to an expansive regulation of commercial practices. The two main Directives on this matter are the Unfair Commercial Practices Directive (2005/29/EC) and the Misleading and Comparative Advertising Directive (2006/114/EC — codified version). The

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Directives deal with the protection of traders and consumers, respectively (Dickens, 2015; Ernst, 2008). The Commercial Practices Directive, which provides full harmonisation of unfair business-to-consumer commercial practices, will be the main subject for this analysis, as the users will in most circumstances act as consumers. In addition to the general Directives, businesses engaging in user-generated marketing should also consider more regulation concerning particular media, product, and particular commercial practices.

Products may be pure single entities of known or unknown chemical constituents, mixtures of which all or some of the components are known, or mixtures of unknown chemical components. Note that ingredients not traditionally recognized as having nutritional characteristics such as botanicals and hormones are included.

6.3.2. Hong Kong

Various studies conducted by the Hong Kong Consumer Council reported that in the past decade, there are major problems for consumers in relation to misleading or deceptive sales and marketing practices of businesses in Hong Kong (Lo, 2008). The existing legal remedies for consumers to seek redress for losses which they may suffer as a result of misleading marketing practices are, in most industry sectors, limited to the common law. This is in contrast to legal regimes elsewhere such as Australia and the European Community (Fontanarosa, Rennie, & DeAngelis, 2003) where broad statutory prohibitions on misleading marketing practices exist. The limitations in the existing law in Hong Kong in this area reflect the wider problem for consumers in Hong Kong resulting from the lack of a comprehensive and cohesive system of consumer protection regulation. There is a strong case to be made for general reform of the consumer protection regulatory scheme in Hong Kong to provide better protection for consumers; however, this paper focuses on the particular area of misleading marketing practices with such practices constituting a significant proportion of the problems arising in Hong Kong. The Hong Kong Consumer Council has recently put forward proposals recommending a general statutory prohibition on unfair marketing practices, including misleading or deceptive acts or omissions, giving consumers the right to seek remedies for losses suffered therefrom. The concept of 'misleading or deceptive conduct' adopted under the Australian Trade Practices Act 1974, s. 52 and in Hong Kong under the existing prohibition in the Telecommunications Ordinance, s. 7M.

7. Conclusion

From the discussion above, it seems that there is a need to have a more comprehensive regulatory framework specifically for the marketing of dietary supplements. The laws which are in place are somewhat insufficient as a means of controlling the marketing techniques for the players in this industry. A consumer may take legal action only after the damage is done. Preventive measures such as the regulations available for medical and pharmaceutical products are non-existent for dietary supplements. We often hear of reports about consumers of dietary supplements becoming victims of misleading or deceptive advertisements. The damage that they suffer are not only monetary damage but also it affected their health; in a worst case scenario, the victims who consumed these dietary supplements have an existing medical condition such as diabetics, heart conditions and even cancer patients. These people even

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stop all medication prescribed by their doctors in the belief that the dietary supplements that they bought will cure them from their illness. As a result, most of these people's condition became worse. Hence, there is an urgent need for a stricter control on the marketing of dietary supplements in Malaysia.

On the flipside, these control measures will also ensure the sustainability of the industry in the long run, as it significantly contributes to economic growth of the country, as stated earlier in the paper.

Acknowledgments

The author wish to thank the Ministry of Higher Education (MOHE) for funding this project under the Research Acculturation Grant Scheme (RAGS) and the Research Management Centre, Institute of Research Management and Innovation (IRMI) Universiti Teknologi MARA, Shah Alam, Selangor, Malaysia for managing the grant.

References

Amin, N., & Aziz, N. A. (2015). The liability of the producer of false halal products under product liability law. *Asian Social Science*, *11*(15), 295.

Aziz, N.A. (2017). *The need for legal and administrative framework for halal pharmaceutical industry in Malaysia* (Doctoral Thesis), International Islamic University, Malaysia.

Brown, A. C. (2017). An overview of herb and dietary supplements, efficacy, safety and government regulations in the United States with suggested improvements part 1 of 5 series. *Food and Chemical Toxicology*, *107*, 449-471.

Cardas Research & Consulting Sdn. Bhd. (2015). *Malaysian nutrition & supplement industry: An overview*. Retrieved from http://www.crcg.com.my/v3/wp content/uploads/2015/04/Malaysian_Nutrition_Supplement_Industry_2015_Report_Final_Abstract.pdf

Dagerman, M. (2012). Incentivizing safety in the dietary supplements industry. *The Review of Litigation*. *31*(1), 173-183.

Davis, T. M., & Finnin, M. (2011). *Global regulation of herbal products*. Andrew Ashwin (Ed.), (pp.109-115). Detroit: Gale Cengage Learning.

Dickens, M. (2015). Safe until proven unsafe: Solving the growing debate around dietary supplement regulation. *Wake Forest Journal of Business & Intellectual Property Law, 15*(4), 577.

Ernst, T. S. (2008). Advertising food products. *Bus. L. Today*, *18*, 25.

Fontanarosa, P. B., Rennie, D., & DeAngelis, C. D. (2003). The need for regulation of dietary supplements—lessons from ephedra. *Jama*, *289*(12), 1568-1570.

Gibson, J. E., & Taylor, D. A. (2005). Can claims, misleading information, and manufacturing issues regarding dietary supplements be improved in the United States? *Journal of Pharmacology and Experimental Therapeutics*, *314*(3), 939-944.

Handsley, E., & Nehmy, C. (2014). A children's right perspective on food advertising to children. *International Journal of Children's Right, 22*, 93-134.

Hassali, M. A., Saleem, F., Aljadhey, H., & Khan, T. M. (2012). Evaluating the content of advertisements for dietary supplements in Malaysian women's magazines. *Drug Information Journal*, *46*(6), 723-728.

Hoogenraad, E., & Duivenvoorde, B. (2015). Stricter rules on food advertising directed at children in the Netherlands. *Eur. Food & Feed L. Rev.*, *54*.

Huat, K. G (2010). *Differences and similarities in food supplement regulations*. Lexmundi file:///C:/Users/User/Downloads/GPG_FSR_LS_Malaysia.pdf

Lo, S. H. (2008). Consumer remedies for misleading or deceptive marketing practices: Reform of the law in Hong Kong. *Common Law World Review*, *37*(2), 117-146.

Marimuthu, S. B. (2013). The regulation of the advertising of medicinal products in Malaysia. *Malayan Law Journal*, *3*: cxlv

Mohd Noor, N.A., Sheau F.Y., Liew, K. H & Rajah, E. (2014). Consumer attitudes toward dietary supplements consumption: Implications for pharmaceutical marketing. *International Journal of Pharmaceutical and Healthcare Marketing*, *8*(1), 6-26.

Pawar, R. S., & Arundel, E. (2016). Overview of regulation of dietary supplements in the USA and issues of adulteration with phenethylamines (PEAs). *Drug Test Analysia*, *9*, 500-517. DOI:10.1002/dta.1980.

Pruitt, S. W. and Peterson, D. R. (1986). Security price reactions around product recall announcements, *Journal of Financial Research*, *9*, 113-122.

Rajadurai, M.M (2014). Unfair Contract Terms in Malaysia: The Gap in the Consumer Protection (Amendment) Act 2010, *LNS*, *1*, xx

Suh, J. (2005). Intellectual property law and competitive internet advertising technologies: why "legitimate" pop-up advertising practices should be protected. *St. John's Law Review*, *79*(1), 161-194.

Salleh, A.S., & Wook, I. (2010). Bait and switch tactics in advertising under Malaysian law. *Malayan Law Journals, 1*, i.

Sax, J. K. (2015). Dietary supplements are not all safe and not all food: How the low cost of dietary supplements preys on the consumer. *American Journal of Law & Medicine*, *41*, 374-394. doi:10.1177/0098858815591523

Thelen, A. M. (2015). Dietary supplement use among college athletes and their sources of information. *D'youville College ProQuest Dissertations Publishing*, Masters International.

Trzaskowski, J. (2011). User-generated marketing–legal implications when word-of-mouth goes viral. *International Journal of Law and Information Technology*, *19*(4), 348-380.

Willis, E., & Stafford, M.R. (2016). Health consciousness or familiarity with supplement advertising: what drive attitude toward dietary supplements? *International Journal of Pharmaceutical and Healthcare Marketing*, *10*(2), 130-147.

Yetley, E. A. (2007). Multivitamin and multimineral dietary supplements: Definitions, characterization, bioavailability, and drug interactions. *The American Journal of Clinical Nutrition*. *85*(1), 269S-276S.