Consumer Rights Protection on Misleading Advertising: Recent Trends in Australia and Malaysia Compared

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ABSTRACT:
Advertisements play a vital role in this digital age of modern commercialism. In today's fast-paced, high-tech age businesses use advertising to make prospects aware of their products and services and to earn profits through increasing their sales and sales turnover. The traditional laws of advertising, which apply to ordinary sales, are enacted in the interest of all consumers to prevent deceptive and unfair acts or practices. The Australian and Malaysian consumer protection legislations contain a number of rules that businesses must follow when advertising and selling products and services. The procedure for granting remedies, the requirements placed on the consumer and the extent of enforcement and protection vary between countries. The recent enactment in Australia intending to protect consumers absolutely and imposing strict liability on the part of advertisers is a tremendous success. On balance, Malaysian consumer protection laws, having equivalent legal provisions as in Australia, is above average and moving in a right direction, though weak surveillance and enforcement practices slow down the pace of improvements. This research paper briefly reviews the regulatory and legal environment of consumer protection on misleading advertisements in Australia and Malaysia and the effect of enforcement actions will be analysed through recent reported cases. This comparative study will reveal the adequacy or inadequacy on the protection afforded to consumers on misleading advertising in both countries and will attempt to point out several changes to be effected in the system for absolute consumer rights protection.

Keywords: Misleading and deceptive conduct, consumer protection, advertising

1. INTRODUCTION
Honest advertising practices are not just good for business but they are required by law (ACCC). The emergence of globalization has created more dimensions for researchers to explore the role of advertising in products and services performance including consumers’ attitude (Kanso & Nelson, 2007). Advertising is a significant social phenomenon, which stimulates utilization, economic activity and life-styles (Urban, 2004). Nowadays, advertising is considered as a big business and is the main means of competing with other organizations. Furthermore, it is claimed that advertising provides information’s to customers about the quality or the accessibility of numerous products. This is very imperative for customers so the time is saved that is consumed in searching the right product (Jerry, 1978). Misleading advertising occurs when a claim about a product or service is materially false or misleading, in an attempt to persuade the consumer to buy it. An advertisement becomes misleading when the advertiser gives wrong or false information to consumers. Every consumer will come across numerous advertisements every day in their life, in newspapers, television, super markets, posters, notices, instantaneous communications like email, internet messages, websites, etc. When a tooth paste advertisement says that it prevents cavities and it is clinically proven whiter teeth in 14 days and it is properly tested and approved by Dental Council of Singapore and Malaysia, one expects that the manufacturer to have the data to prove this. If he fails to do that, he is making a false scientific claim just for the purpose of attracting customers. General consumers who buy these will have an impression in their mind that it is a product with superior quality and that it cost high compared to the other products in the market. This trading activity on the part of the advertiser is nothing but an unfair trade practices which is misleading. There are several laws on false advertising in most industrialized countries. In many jurisdictions, it is illegal for a company to make any false claim in any type of
advertising, whether intentional or not.

The purpose of this paper is to contrast consumer laws in Australia and Malaysia in relation to misleading and deceptive advertising and consider how the laws of Malaysia may be improved in the light of Australian laws. The arguments highlighted in this paper tend to address the current concerns. The paper is organized into four sections: First, it introduces the concept of misleading and deceptive conduct in general. Second, it looks into the laws which govern misleading advertisements in Australia and Malaysia. Third, it discusses the recent trends in Australia highlighting the two latest reported court cases and followed by a comparative study on the protection afforded in these countries.

2. METHODOLOGY

The paper is conceptual in nature. Research in this area involves the analysis of legislative enactments and case laws. The sources of research include both primary and secondary. The statutes are the primary sources while the case laws are the secondary sources. The primary sources include various consumers protection laws legislated in Australia and Malaysia. The secondary sources are mainly the books and articles written by eminent authors and experts, electronic data made available on the Internet by various websites, periodical and news sources.

3. MISLEADING ADVERTISING

Any advertising or promotion that misrepresents the nature, characteristics, qualities or geographic origin of goods, services or commercial activities. For a claim to be misleading, it must be proven that: (i) a representation has been made, (ii) to the public, (iii) to promote a product or business interest, (iv) that is literally false or misleading (or with a false or misleading general impression) and (v) that the claim is “material” (i.e., likely to influence a consumer into buying or using a product or otherwise altering their conduct). Unfortunately despite several laws meant to protect consumers against such unfair trade practices, false and misleading advertisements continue to exploit the consumer. A number of institutions are involved in regulating advertising. They are self-regulation by the industry and regulation by the Government.

Some examples of misleading or false representations:

<table>
<thead>
<tr>
<th>ADVERTISEMENT</th>
<th>REALITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special price – only $ 9.99</td>
<td>Normal price is $ 10</td>
</tr>
<tr>
<td>Goods from $10</td>
<td>Only one available at $10. Rest considerably more.</td>
</tr>
<tr>
<td>Special clearance price.</td>
<td>Price at the normal price</td>
</tr>
<tr>
<td>Free Seats 10,000; Fly free.</td>
<td>The ticket fare is 0, still have to pay taxes and</td>
</tr>
<tr>
<td>70% off on All products.</td>
<td>Limited products at 70% off</td>
</tr>
<tr>
<td>Free seats 5,000, Fly for free.</td>
<td>No ticket available at 0 fares.</td>
</tr>
<tr>
<td>Buy 1 get 1 free.</td>
<td>No evidence of single sales</td>
</tr>
</tbody>
</table>

4. PROTECTION OF CONSUMER RIGHTS ON MISLEADING ADVERTISING

4.1 AUSTRALIA:

In Australia, consumer protection has traditionally been the responsibility of the states, not the Commonwealth. For constitutional reasons, consumer protection in Australia had previously been found in 20 separate national, State and Territory consumer laws. In 1974 the Trade Practices Act changed this to some extent by introducing a range of consumer protection laws that applied to trading and financial corporations. The Australian Consumer Law (ACL) is an Act passed by the Commonwealth Parliament. From 1 January 2011, the Australian Consumer Law replaced the consumer protection provisions of the Trade Practices Act of 1974. Each state or territory has also made it a law of its jurisdiction, so that the same provisions operate across Australia. The ACL replaced this array of consumer laws. As a result of ACL all firms in Australia will be subject to the same set of consumer laws.

The ACL also contains powerful prohibitions on unfair practices. The ACL includes a general ban on misleading and deceptive conduct in trade or commerce; bans on specific unfair practices in
trade or commerce; a general ban on unconscionable conduct in trade or commerce; specific bans on unconscionable conduct in consumer and some business transactions.

One of the most significant provisions in the ACL is the prohibition of misleading conduct. Section 18 says: ‘A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive’. Section 18 of the ACL is similar to s. 52 of the Trade Practices Act.

Section 52 of the TPA provided “A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.”

The difference between the two sections is that the Trade Practices Act only applied to corporations.

Key provisions prohibiting misleading advertisements under Australian legislative enactments:

**4.1.1 Self-Regulation**

The aim of self-regulation is to maintain high advertising standards and ensure consumer trust and protection for the benefit of all of the community. It provides an effective and efficient way for advertisers to engage with consumers and to respond to consumers’ concerns about advertising. It ensures consumer protection by providing a free and fast route for consumers to express their views about advertising and to have an impartial body to contact. Today, Australia’s internationally-recognised system of self-regulation remains under the control of AANA (Australian Association of National Advertisers) codes, as administered through the Advertising Standards Bureau and Advertising Standards Board. The AANA sponsored the formation of the Advertising Standards Bureau and Board in 1998, since when it has operated under separate management, funded by a levy on advertising administered by the Australian Advertising Standards Council Ltd. With advertisers, marketers and media sharing a common interest in promoting consumer confidence in and respect for advertising and marketing communications, the self-regulatory system has industry-wide backing.

Complaints about advertising are determined by the Advertising Standards Board, while competitive complaints are referred to the Advertising Claims Board.

The Advertising Standards Bureau complies absolutely with the European Advertising Standards Alliance (EASA) Best Practice principles. These principles form part of the EASA Best Practice model which was designed for member countries to use when establishing, maintaining and evaluating...
effective and efficient systems of advertising self-regulation. The model is also invaluable when members wish to identify areas within their self-regulatory system for enhancement or improvement.

EASA best practice principles:
- The consumer should benefit from the self-regulatory system and should be the focus of attention.
- Self-regulation must be, and be seen to be impartial and independent of government, specific interests and interest groups.
- The self-regulatory system must be transparent and accessible.
- Self-regulation must be effective, rapid, flexible, current and applied in a non-bureaucratic manner.
- Self-regulatory rules and procedures should be applied in both the spirit and the letter and should be regularly reviewed.
- Consumer complaints should be handled free of charge.
- A self-regulatory system must have adequate sanctions which can be enforced.
- Self-regulation must always be in compliance with the law.
- Self-regulatory systems must be sufficiently resourced and supported to be able to meet their objectives.

4.1.2 Enforcement
The ACCC has a monitoring and enforcement role under the Competition and Consumer Act. The enduring goal of the ACCC is to serve the long term interests of consumers through enforcing compliance with the Competition and Consumer Act 2010. Its main goals are to: maintain and promote competition and remedy market failure, and protect the interests and safety of consumers and support fair trading in markets. With these goals in mind the ACCC takes action to:
- stop unlawful conduct
- deter future offending conduct
- where possible, obtain remedies that will undo the harm caused by the contravening conduct (for example, by corrective advertising or securing redress for consumers and businesses adversely affected)
- encourage the effective use of compliance systems
- where warranted, take action in the courts to obtain orders which punish the wrongdoer by the imposition of penalties or fines and deter others from breaching the Act.

Its role is to focus on those circumstances that harm the competitive process or result in widespread consumer detriment. It exercises its enforcement powers independently in the public interest with integrity and professionalism and without fear, favour or bias. The ACCC’s enforcement response is proportionate to the conduct and resulting harm, and the implementation of the ACCC’s enforcement policy is governed by the following guiding principles: transparency, confidentiality, timeliness, consistency and fairness. To achieve its compliance objectives it employs three flexible and integrated strategies:
- enforcement of the law, including resolution of possible contraventions both administratively and by litigation.
- encouraging compliance with the law by educating and informing consumers and businesses about their rights and responsibilities under the Competition and Consumer Act.
- working with other agencies to implement these strategies.

Legal action is taken where, having regard to all the circumstances, the ACCC considers litigation is the most appropriate way to achieve its enforcement and compliance objectives. The ACCC is more likely to proceed to litigation in circumstances where the conduct is particularly egregious, where there is reason to be concerned about future behavior or where the party involved is unwilling to provide a satisfactory resolution.

4.2 MALAYSIA
The principal legislation for the protection of consumers in Malaysia is the Consumer Protection Act 1999 (Act 599). The aim of this Act is to provide for the protection of consumers, the establishment of the National Consumer Advisory Council and the Tribunal for Consumer Claims, and for matters...
connected therewith. The term ‘advertisement’ under Section 2 of the Act is defined as “Advertisement” includes every form of advertisement, 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, and includes advertisement—

- by the display of notices;
- by means of catalogues, price lists, circulars, labels, cards or other documents or materials;
- by the exhibition of films or of pictures or photographs; or
- by means of radio, television, telecommunication or any
- other similar means;

“false”, “misleading” or “deceptive”, – Section (8) (a) – under the Act is defined as “in relation to conduct, representation or practice, includes conduct, representation or practice which is capable of le

Section 9 deals with misleading conduct as, “No person shall engage in conduct that: in relation to goods, is misleading or

(a) deceptive, or is likely to mislead or deceive, the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity, of the goods; or
(b) in relation to services, is misleading or deceptive, or is likely to mislead or deceive, the public as to the nature, characteristics, suitability for a purpose, or quantity, of the services.”

False or misleading representation was well established under Section 10 of the Act as, “No person shall make a false or misleading representation that:

a) the goods are of a particular kind, standard, quality, grade, quantity, composition, style or model;
b) the goods have had a particular history or particular previous use;
c) the services are of a particular kind, standard, quality or quantity;
d) the services are supplied by any particular person or by any person of a particular trade, qualification or skill;
e) a particular person has agreed to acquire the goods or services;
f) the goods are new or reconditioned;
g) the goods were manufactured, produced, processed or reconditioned at a particular time;
h) the goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits;
i) the person has any sponsorship, approval, endorsement or affiliation;
j) concerns the need for any goods or services;
k) concerns the existence, exclusion or effect of any condition, guarantee, right or remedy; or
l) concerns the place of origin of the goods.

Section 12 deals with misleading indication as to price, which says that, “A person commits an offence a) if he gives to a consumer an indication which is misleading as to the price at which any goods or services are available; or
b) if an indication given by him to a consumer as to the price at which any goods or services are available becomes misleading and he fails to take reasonable steps to prevent the consumer from relying on the indication.

Section 13 deals with bait advertising as “No person shall advertise for supply at a specified price goods or services which that person a) does not intend to offer for supply; or b) does not have reasonable grounds for believing can be supplied, at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

We do have another important legislation which can be invoked to prohibit misleading advertisements

The Trade Description Act 2011 (Act 730), which was passed in August 2011, came into force on Nov 1, 2011. The purpose of the Act is to reform the trade description law, and it replaces the Trade Description Act 1972 (1972 Act). The 2011 Act aims to promote good trade practices by prohibiting false trade descriptions and false or misleading statements, conducts and practices in relation to the supply of goods and services, thereby protecting the interest of consumers. Part III of the Act deals with Misstatements other than Trade Descriptions (Sections 14 – 20).
4.2.1 Self-Regulation

The Advertising Standards Authority Malaysia is the independent body responsible for ensuring that the self-regulatory system works in the public interest. The ASA, set up in 1975, administers the Malaysian Code of Advertising Practice. The code was drawn up by several organisations representing advertisers, advertising agencies and the media owners to self-regulate their advertising activities. In the third edition of the code, new sections have been added to cover environmental claims, motoring, property advertising and database marketing.

The primary object of this Code is the regulation of commercial advertising. It applies therefore (except as expressly provided) to all advertisements for the supply of goods or services or the provision of facilities by way of trade, and also to advertisements other than those for specific products which are placed in the course of trade by or on behalf of any trader.

The Code contains principles describing the essence of good advertising.

- All advertisements should be legal, decent, honest and truthful.
- Advertisements must project the Malaysian culture and identity, reflect the multi-racial character of the population and advocate the philosophy of RUKUN NEGARA.
- Advertisements must not identify or typecast each particular racial group or sex with vocations, traditional values and backgrounds.
- Advertisements must comply in every respect with the Law, common or statute.
- All advertisements should be prepared with a sense of responsibility to consumers and to society.
- All advertisements should conform to the principles of fair competition as generally accepted in business.
- No advertisements shall bring advertising into disrepute or reduce confidence in advertising as a service to the industry and to the public.
- Advertisements must be clearly distinguishable as such.

Advertisers and promoters bear principal responsibility for the advertisements and promotions they produce and must be able to prove the truth of their claims to ASA: they have a duty to make their claims fair and honest and to avoid causing offence. Advertising agencies have an obligation to create advertisements that are accurate, ethical and do not mislead or offend. Publishers and media owners recognize that they should disseminate only those advertisements that conform to the Code.

4.2.2 Enforcement

The Tribunal for Consumer Claims is an independent body established under section 85, Part XII of the Consumer Protection Act 1999. The tribunal operates under the Ministry of Domestic Trade, Co-operatives and Consumerism. The primary objective of establishing the tribunal is to provide an alternative forum for consumers to file claims in a simple, inexpensive and speedy manner.
5. RECENT TRENDS – REPORTED CASE STUDIES
In Australia, recently, a Malaysian company registered in Australia as a foreign company, was sued for misleading conduct on advertisements by ACCC, an Australian Competition watchdog.

5.1 ACCC V Air Asia (2012)
In Brief
In this case, the respondent, AirAsia Berhad Company, carries on business as an international airline based in Malaysia which supplies air travel services to consumers located in Australia. It does so under the trade name “AirAsia”. It published on its website www.airasia.com (“the Website”) the prices of airfares for travel out of or into Australia. The ACCC commenced a proceeding in the Court alleging that, in publishing on the Website, from around March – August 2011 until 21 January 2012 (“the relevant period”), the price of air travel services for certain routes without specifying in a prominent way and as a single figure the price including applicable taxes and charges, the respondent contravened s 48(1) of the Australian Consumer Law (“ACL”) which appears as Schedule 2 to the Competition and Consumer Act 2010.

The Law
Section 48 of the ACL (formerly s 53C of the Trade Practices Act 1974) relevantly provides that: A person must not, in trade or commerce, in connection with: (a) the supply, or possible supply, to another person of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; or (b) the promotion by any means of the supply to another person, or of the use by another person, of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption;……

Conduct
AirAsia published and continues to publish the Website which is directed to consumers in Australia and includes prices for flights offered from Australia to international destinations and facilities for making a booking. A separate entity, AirAsia X Sdn. Bhd. (“AirAsia X”) is the company which conducts connecting flights outside of Australia. The relevant prices and facilities for booking on the Website were displayed over a series of pages (together, “the Booking Sequence”).

On Page 2, AirAsia published fares offered to consumers (“the Fare Amounts”) to supply air travel services for flights between airports at the following locations: Melbourne and each of Macau, London, Ho Chi Minh City, New Delhi, Hangzhou and Chengdu; Perth and each of Taipei, Phuket, Osaka, London, Ho Chi Minh City and Hangzhou; and the Gold Coast and Ho Chi Minh City. It was the publication of the Fare Amounts on Page 2 that gave rise to the contravention.

Submissions
The ACCC submitted that the contravening conduct was serious as it failed to “do exactly what s 48 required” and was “undertaken in a medium of mass communication, in the context of sales and marketing material, and with facility to proceed directly to capture a sale”. The ACCC submitted that the extent of the contravening conduct was substantial as it spanned a period of 6 – 10 months during which 16,389 bookings were made. It also submitted that no credit or weight should be given to the statement on Page 2 that the Fare Amount did not include taxes and charges, or to the disclosure of the single price on the pages subsequent to Page 2 which would be viewed by a consumer proceeding to booking.

AirAsia countered that, whilst the purpose of s 48 of the ACL is to provide consumers with the protection that they be able readily to identify the price they will pay for a product or service, weight should be given to the “prominent and proximate” nature of the statement that “Fares shown exclude taxes and fees”. Air Asia also emphasised the importance of the disclosure of a single price on Pages 3 – 9 of the Booking Sequence. In light of the fact that the consumer could not avoid viewing Pages 3 – 9 of the Booking Sequence in making a booking, AirAsia submitted that the Court should consider the whole of the booking process rather than Page 2 in isolation.

Claims
The ACCC sought declarations, pecuniary penalties and publication orders in relation to the aforementioned conduct of the respondent. It does not, however, press its application for an injunction against AirAsia and has instead indicated acceptance of AirAsia’s offer to give an undertaking in like
terms. AirAsia has admitted that its conduct, though inadvertent and due to a “systemic error”, was in contravention of the ACL in the manner alleged by the ACCC.

**Verdict**

The Court stated that “The principal vice to which s 48 of the ACL is directed is the seductive effect of a quoted price which is lower than the actual amount which the consumer will have to pay in order to receive the relevant service. Unless the full price is prominently displayed the consumer may well be attracted to a transaction which he or she would not otherwise have found to be appealing and grudgingly pay the additional imposts rather than go to the trouble of withdrawing from the transaction and looking elsewhere. The company which is seeking to attract business in contravention of s 48 will also obtain an advantage over competitors who are compliant.” The fine of $200,000 imposed as compared to the range of $520,000-$650,000 sought by the ACCC reflected the court's acknowledgement of the lack of any intention to mislead on the part of AirAsia. In addition to the penalty; Justice Tracey made a declaration by consent that Air Asia Berhad contravened section 48 of the Australian Consumer Law. Justice Tracey also accepted a court undertaking from Air Asia Berhad restraining it from engaging in similar conduct for 3 years.

**5.2 Google INC v ACCC (2013)**

In a recent land mark case decided by the apex court in Australia, the High Court, in, unanimously allowed an appeal from a decision of the Full Court of the Federal Court of Australia, in which it was found that Google Inc. ("Google") had engaged in misleading or deceptive conduct contrary to s 52 of the Trade Practices Act 1974 (now s18 of the Australian Consumer Law) by displaying certain internet search results.

In this case, the Google search engine displayed two types of search results in response to a user's search request: "organic search results" and "sponsored links". Organic search results were links to web pages that were ranked in order of relevance to the search terms entered by the user. A sponsored link was a form of advertisement. Each sponsored link was created by, or at the direction of, an advertiser, who paid Google to display advertising text which directed users to a web site of the advertiser's, choosing.

The ACCC claimed that particular sponsored links displayed by the Google search engine between 2005 and 2008 had conveyed misleading and deceptive representations. By publishing or displaying those search results, Google was said to have contravened s 52 of the Act, which provided that a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

The ACCC had two main allegations against Google:

1 - That Google had engaged in misleading and deceptive conduct (or conduct likely to mislead or deceive) by insufficiently distinguishing the paid advertisements from the organic search results.

2 - That Google had itself engaged in misleading and deceptive conduct (or conduct likely to mislead or deceive) by publishing the advertisements.

At first instance, the primary judge found that although the impugned representations were misleading and deceptive, those representations had not been made by Google. Ordinary and reasonable members of the relevant class of consumers who might be affected by the alleged conduct would have understood that sponsored links were advertisements and would not have understood Google to have endorsed or to have been responsible in any meaningful way for the content of those advertisements. Therefore, it was held that Google had not engaged in misleading or deceptive conduct or conduct likely to mislead or deceive by either failing to sufficiently distinguish between organic search results and advertisements, or by failing to identify the advertisements. The court took the view that the "sponsored links" were clearly distinguishable from the organic search results and that "ordinary and reasonable" consumers are likely to understand that Google generates revenue by causing advertisements to appear on its results page. The court found in considering Google's conduct as a whole, that it was merely communicating what the vendor or advertiser was representing rather than adopting it or endorsing the representation for itself.

The ACCC successfully appealed to the Full Court of the Federal Court, which unanimously found that Google had itself engaged in misleading or deceptive conduct by publishing and displaying the
sponsored links. The Full Court concluded that it was Google that was displaying the sponsored link in response to the search, rather than merely the advertiser. It was significant that the user makes a request and that Google provides a response in accordance with Google’s AdWords program which was designed for this purpose. Google also sought to rely on s 85(3) of the Act, the defence used in the lower court, for publishers who merely publish or arrange advertisements and do not know or have no reason to suspect that an advertisement contravenes a provision. Again, it was relevant that Google took a more active role than merely publishing advertisements. Rather, the AdWords program was designed to interact with users and to target advertisements to specific searches. Furthermore, Google employees made recommendations to advertisers on how to get the best use out of the AdWords program. There was evidence that this included utilising the names of competitors. Hence, Google actively engaged in the misleading and deceptive conduct.

By special leave, Google appealed to the High Court. The High Court unanimously allowed the appeal. Google did not create the sponsored links that it published or displayed. Ordinary and reasonable users of the Google search engine would have understood that the representations conveyed by the sponsored links were those of the advertisers, and would not have concluded that Google adopted or endorsed the representations. Accordingly, Google did not engage in conduct that was misleading or deceptive.

ACCC welcomed the judgment of the High Court to say that they have instituted a complaint and took these proceedings against Google to clarify the law relating to advertisement practices in the internet age. They also added that they intend to make providers of online content should be accountable for misleading or deceptive conduct when they have significant control over what is delivered. ACCC also pointed out that the High court did find the advertisements misleading. From the above case, it is well evident that this decision has important consequences for advertisers should take care not to use names of competitors’ products or business names (whether or not that name is a trade mark), as such conduct is likely to be in breach of the Australian Consumer Law.

6. COMPARITIVE STUDY
Table: Comparing the Australian and Malaysian Approaches towards Misleading Advertising

<table>
<thead>
<tr>
<th>AUSTRALIA</th>
<th>MALAYSIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who can sue?</td>
<td>Consumers, Competitors, ACCC (Australian Competition watch dog). Action by ACCC will be suo motto.(e.g. Air Asia)</td>
</tr>
<tr>
<td>Law to be invoked?</td>
<td>Australian Consumer Law in Competition and Consumer Act 2010.</td>
</tr>
<tr>
<td>Burden of proof</td>
<td>Defendant</td>
</tr>
<tr>
<td>Remedies</td>
<td>There are no pecuniary penalties available for a breach of section 18. However, for a breach of many of the related provisions in the Australian Consumer Law, the Australian Competition and Consumer Commission (ACCC) can seek pecuniary contravention may result in severe penalties (both civil and criminal)</td>
</tr>
</tbody>
</table>
penalties of up to $1.1 million from corporations and $220,000 from individuals.

7. CONCLUSION AND FUTURE WORKS
Advertisements must be fair and truthful. The influence of advertisements on consumer choice is undeniable. Misleading advertisements largely affects or violates several basic rights of consumers as stated under the regulatory codes of practice. It is necessary to look at the self-regulation in both these countries to arrive at a conclusion on this matter. Self-regulation occurs where an industry sets certain standards for itself. These standards are not laws. An industry will voluntarily assume certain minimum standards of conduct in the hope that to do so will obviate the necessity of passing laws regulating such conduct and that’s the purpose of having any self-regulation even though there are laws that deal with advertising. Widely accepted opinion is that both self-regulation and legal controls should work in synergy. In Australia, there are stronger legal controls over the advertising. On the other hand the industry’s self-regulation is effective. Australian consumers and businesses have a high level of awareness of the existence of consumer laws. Consumers are also generally aware that there are ways in which to resolve disputes if needed and that there are consumer agencies that can assist them. However, some people are concerned about the effectiveness of these avenues for seeking redress. The ACL replaces a multitude of national, state and territory consumer laws, updates and simplifies the law and introduces robust new investigation and enforcement powers and it is well evident through reported cases and judgments. In Malaysia, unfortunately despite several laws meant to protect consumers against such unfair trade practices, false and misleading advertisements continue to exploit the consumer. Self-regulation plays a very limited role. The need of the hour, therefore, is improved enforcement and effective regular surveillance by the authorities. The statutory body constituted in Malaysia should improve the complaints handling system with an emphasis on continuous review and improvements to the system. This will revitalize the advertising authority as a more effective, efficient and transparent self-regulatory organisation. This research study is further to be explored to investigate consumers’ awareness and reactions to advertisements containing misleading information in Malaysia and the steps to ensure and strengthen absolute consumer protection.

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The Fair Trading Act 1999 (Vic).

The High Court in Strickland v Rocla Concrete Pipes Ltd (1971) 124 CLR 468 gave an expansive interpretation of the corporations power contained in s. 51(20) of the Constitution. Therefore the Trade Practices Act in general and s. 52 in particular was drafted as a law with respect to corporations.


Uchenna Cyril Eze & Chai Har Lee; Consumers’ Attitude towards Advertising, International Journal of Business and Management; Vol. 7, No. 13; 2012

