

Dear IACL Members,

Warm welcome to the International Association of Consumer Law, April 2021 Newsletter. The pandemic is still with us and while some lockdown end, others start. We hope that all members are safe and sound and send our best wishes to you all.

This newsletter, put together thanks again to the hard work of Serkan Kaya, covers the news from the jurisdiction, conferences, journals, call for papers and articles. Our thanks to our contributors.

The purpose of the newsletter is to keep members up to date with the latest developments in our association and across the world.

Please do circulate it to any new person you think may want to take part in our activities and become a member. Please feel free to also send your news items via email to serkankaayaa@yahoo.com. For any items that may not be able to wait that long, you can contact us to post on our website <http://www.iacl.net.au> or our Facebook page <https://www.facebook.com/IACLaw/> or Twitter @iacl_net

Dr Christine Riefa, on behalf of the IACL board.

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1. NEWS FROM THE JURISDICTIONS

AUSTRALIA

Reported by Tuyen Tran, Project Manager, AANZFTA Consumer Affairs Program (CAP) tuyen.tran@accc.gov.au

The ASEAN Economic Community Blueprint 2025 asserts the role of consumer protection as ‘an integral part of a modern, efficient, effective and fair marketplace’. With an increase in cross-border trade, e-commerce and unique challenges arising due

to COVID-19, the role of consumer protection in ASEAN is now more important than ever.

It is therefore timely that the Australian Competition and Consumer Commission (ACCC) has recently launched a consumer law-focused technical cooperation program with ASEAN and New Zealand, the 'ASEAN-Australia and New Zealand Free Trade Area Consumer Affairs Program' (CAP). CAP facilitates technical exchange, capacity building and cooperation between the ACCC, New Zealand Commerce Commission (NZCC), and members of the ASEAN Committee on Consumer Protection. CAP's launch has been made possible thanks to support from Australia's Department of Foreign Affairs and Trade and the ASEAN-Australia and New Zealand Free Trade Area (AANZFTA) Economic Cooperation Support Programme.

On a demand-driven basis, CAP is working bilaterally, sub regionally and regionally to deliver demand driven agency-to-agency cooperation projects to support ASEAN consumer protection authorities implement consumer law and achieve goals under the ASEAN Strategic Action Plan on Consumer Protection. CAP draws heavily on the very practical experience of the ACCC in implementing the Australian Consumer Law, including in cooperation with other ACL regulators and the NZCC under the auspices of Consumer Affairs Australia and New Zealand (CAANZ).

To date, AANZFTA CAP has focused on enhancing expertise on themes such as consumer product safety, consumer scams, e-commerce issues and consumer law investigations and enforcement skills. Owing to COVID-19 modalities engaged are purely online, and include: video interviews, blogs, case studies and virtual workshops. Content is developed and presented by leading agency subject matter experts active in the field who have practical insights, perspectives and an appreciation of issues facing the development and implementation of consumer law and policy in the region.

CAP complements and extends the ACCC's existing cooperation with ASEAN countries, including under the AANZFTA Competition Law Implementation Program (CLIP). Since 2014, the ACCC has been delivering practical capacity building assistance to ASEAN countries under CLIP to effectively protect and promote competition in regional markets.

*Subscribe now: [AANZFTA Consumer and Competition Law Digest](#)

CAP has launched a monthly newsletter, the AANZFTA Consumer and Competition Law Digest. The digest compiles the latest significant consumer and competition law news, articles, speeches and reports from official AANZFTA sources. The digest is designed to raise awareness of how consumer and competition law are being implemented in this exciting region and boost cross-sharing of information between competition and consumer law practitioners and interested observers.

To subscribe please type your email using this link [Subscribe C&C Digest](#)

CONTACT INFORMATION

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MEXICO

Reported by Rodrigo Escartín Arciniega, coordinator of the working group on Consumer Law and Advertising Regulation of the National Association of Business Lawyers, escartin@escartin.mx

‘Important reforms in Mexico regarding the labeling of food and non-alcoholic beverages, e-commerce and advertising.’

The government of Mexico is determined to make substantive changes regarding the legal framework that affects consumers in Mexico. Last year the Official Mexican Standard that regulates food and non-alcoholic beverages called NOM 051 was modified, which has been the most controversial legal regulation in the entire history of food and meal regulation in the history of the country, because changed many paradigms on this subject, mainly because it provides for the inclusion of black warning octagons in products that have some excess of sugar, fat or salt, it is also ordered the inclusion of warning legends for those products that contain sweeteners and caffeine so that are not consumed by children. Finally, this year an article of said rule came into force that specifically prohibits the inclusion of child characters, cartoons, athletes, games, etc., in those products that have a warning seal of the aforementioned, which came to completely revolutionize the advertising of all those products.

Likewise, an amendment to the regulation of the general health law on advertising is about to be published in the official gazette, which will prohibit the use of children's characters, cartoons, athletes, etc., in all advertising of products that have octagons or legends of warning, completely revolutionizing the advertising and food industry in Mexico.

On the other hand, as part of major changes in e-commerce in Mexico, this year the Code of Ethics in e-commerce and a digital badge endorsed by the Mexican Federal Consumer's Office was published for the first time, so that voluntary, those companies that participate in the e-commerce market, follow new parameters regarding respect for the personal data of consumers, respect for their human rights and new principles of equality, non-discrimination, etc. in the advertising contained in said platforms.

As you can see, since last year and in the present, there have been great changes that affect in a very relevant way consumers in Mexico, food and beverage companies, the entire advertising industry, as well as companies. that carry out e-commerce, that is

why it is so important to know these changes for those actors that participate in Mexico or have commercial interests in our country.

SPAIN

Reported by Patricia Suárez, p.suarez@asufin.com

The Ministry of Consumption in Spain approved last 20 of January a new bill (Royal decree law) defining the figure of the vulnerable consumer. You can find the complete bill here:

- [Real Decreto-ley 1/2021, de 19 de enero, de protección de los consumidores y usuarios frente a situaciones de vulnerabilidad social y económica \(pdf in Spanish\)](#) // Royal Decree-Law 1/2021, of January 19, on the protection of consumers and users against situations of social and economic vulnerability
- [Also in html \(in Spanish\)](#)

We already had a definition of [vulnerable consumer in energy sector](#) and also in some COVID-19 urgent measures (like moratoria) but this Royal decree law modifies the Spanish Consumer and User Law giving a **frame** that should be applied in all sectoral laws.

The definition is as follows:

Tienen la consideración de personas consumidoras vulnerables respecto de relaciones concretas de consumo, aquellas personas físicas que, de forma individual o colectiva, por sus características, **necesidades o circunstancias personales, económicas, educativas o sociales**, se encuentran, aunque sea territorial, sectorial o temporalmente, en una especial situación de subordinación, indefensión o desprotección que les impide el ejercicio de sus derechos como personas consumidoras en condiciones de igualdad

Vulnerable consumers are those that, with respect to specific consumption relationships, those natural persons who, individually or collectively, due to their characteristics, needs or *personal, economic, educational or social circumstances*, are, even territorial, sectorial or temporarily, in *a special situation of subordination, defenselessness or lack of protection* that prevents them from exercising their rights as consumers under conditions of equality.

2. NEW BOOKS / ARTICLES TO BE AWARE OF ...

Shmuel I. Becher & Uri Benoliel, Law in Book and Law in Action: Readability of Privacy Policies and the GDPR, in: CONSUMER LAW AND ECONOMICS (SPRINGER, 2020) pp. 179-204

The most systematic legislative attempt to make more order in the chaotic world of privacy is the EU General Data Protection Regulation (GDPR). The primary objective

of the GDPR is to level the playing field and give individuals more control over their personal data. Among other things, the GDPR aspires to force companies to be more transparent around data collection and usage. Along these lines, the GDPR requires firms to clearly communicate privacy terms to end users by using “clear and plain language” in their privacy agreements. In this study we ask whether, half a year post-GDPR, firms offer users online privacy agreements that are written in a readable manner. To that end, we empirically examine the readability of privacy policies of 300 highly popular websites. The results indicate that in spite of the GDPR’s requirement, users often encounter privacy policies that are largely unreadable. After presenting the empirical results we further discuss the legal and policy implications of our findings.

Lauren E. Willis, ‘Deception by Design’ *Harvard Journal of Law & Technology* 115 (2020)

Big data, ubiquitous tracking, and artificial intelligence are enabling businesses to disseminate rapidly proliferating permutations of digital marketing and sales materials, each of which can be micro-targeted to particular consumers in real time and space. When the algorithms that design and deliver these advertisements, websites, and apps are optimized only for profit and deception is profitable, consumers will be deceived. Yet at the same time that digital deception is becoming inevitable, it is racing toward immunity from liability. The accepted evidentiary methods for proving deception, from direct application of the reasonable person standard to controlled experiments demonstrating the deceptiveness of a defendant’s conduct, are neither practicable nor scientifically valid when applied to vast numbers of unique, micro-targeted communications. This article identifies and explains this emerging threat to the legal regulation of the consumer marketplace and suggests ways in which the law might give businesses sufficient incentive to engage in fair marketing by design.

Shmuel I. Becher & Anne-Lise Sibony, *In Search of a Lightbulb Moment: The Law and Policy of Product Obsolescence*, *COLUMBIA JOURNAL OF EUROPEAN LAW* (forthcoming 2021) (available [here](#)).

This Article offers a principled and holistic approach to the regulation of product obsolescence. Part I presents the different forms of product obsolescence. The typology we offer in this Part highlights some types of obsolescence that escaped legal scrutiny. Thereafter, Part II reviews the harms that product obsolescence causes to consumers, competitors, the environment, and society. In doing so, we demonstrate how product obsolescence is at odds with two key EU commitments: a high level of consumer protection, and a proclaimed shift towards more ambitious environmental objectives. Next, Part III critically assesses the existing legal framework and its (in)ability to tackle effectively the problem of product obsolescence. Finally, Part IV offers policy recommendations, aimed at better utilizing existing and novel regulatory tools to cope with product obsolescence.

Shmuel I. Becher & Sarah Dadush, *Relationship as Product*, UNIVERSITY OF ILLINOIS LAW REVIEW (forthcoming 2021) (available [here](#)).

This Article explores the problematic aspects of relationship as product from a legal and policy perspective. Part I illustrates how firms make relationship a product through the use of “love promises” and illusions of intimacy and affection. Part II explores the forces that may account for the rise of relationship as product, particularly the deepening loneliness epidemic, which facilitates the exploitation of consumers’ trust and cognitive biases. Part III explains how relationship as product can be viewed as a defective product that harms individual consumers and society at large. Part IV recommends avenues for expanding consumer law and policy to address these challenges.

Shmuel I. Becher & Uri Benoliel, *Sneak in Contracts*, 55 GEORGIA LAW REVIEW 657-729 (2021) (available [here](#)).

This Article examines 500 sign-in-wrap contracts of the most popular websites in the United States that use such agreements. We find that the vast majority of consumer contracts in our sample are “sneak in” contracts—that is, they allow firms unilateral and broad discretion to covertly change consumers’ rights and obligations after consumers accept them. This study’s findings raise concerns as to whether sneak in contracts are aligned with prominent core values and principles of contract law, such as consent, promise, reliance, consideration, freedom, choice, empowerment, and community. The study thus calls for greater transparency in the law that governs the modification of consumer contracts.

Jessica C. Lai & Shmuel I. Becher, *Front-of-Pack Labelling and International Trade Law: Revisiting the Health Star Rating System*, 21 MELBOURNE JOURNAL OF INTERNATIONAL LAW 145-189 (2020) (available [here](#)).

In this article, we propose that the HSR system be made mandatory. Thereafter, we analyse the compliance of a mandatory HSR system with international trade law. We conclude that Australia and New Zealand would need to narrowly frame their objectives for making the HSR system mandatory, backed by evidence. In doing so, Australia and New Zealand would likely have to recognise the FoP systems of some other jurisdictions.

3. CONFERENCES – CALL FOR PAPERS

Call for Papers: International conference: Regulation of abusive informal debt collection practices - could the Scandinavian model serve as a model for EU regulation?

The conference follows up on two previous successful events. The first is the 2018 international conference titled “*The Responsible Consumer in the Digital Age – International Nordic Perspectives in Consumer Financial Protection*” that resulted in the publication of a special issue of Tilburg Law Review. The second is the 2019 international conference “*Fair and Non-Discrimination Access to Financial Services*” which resulted in a number of videos and podcasts totalling over 4000 views and a collaborative monograph published in 2020.

The conference will gather a strong core of highly accomplished scholars and practitioners whose experience in financial services and consumer law enables them to address one of the more important challenges of our time: providing an adequate level of consumer protection against abusive IDCs, without hindering the right of creditors to recover their debts.

The conference and publication output will expand legal knowledge concerning all the above by addressing the systemic differences between EU Member States, sharing experiences and identifying answers to common challenges posed by abusive IDCs. Thus, the conference will enable participants to make a first, big step and lay the foundation for solid research and long-term academic cooperation in the field in the EU.

[International conference: Regulation of abusive informal debt collection practices - could the scandinavian model serve as a model for eu regulation?](#) (pdf)

The conference welcomes proposals/contributions. Proposals must be submitted with a suggested title, author’s name and affiliation, an abstract not exceeding 500 words and an indication of the panel, by email to Catalin Gabriel Stanescu (catalin-gabriel.stanescu@jur.ku.dk) until the 8th of May 2021. The final decision will be communicated to the authors by the 15th of May 2021.

The choice of proposals will seek to ensure a balanced representation of the various aspects of the conference theme and ensure a wide representation of jurisdictions. Contributors are expected to submit a full draft paper for the conference by the 1th of September 2021 and a final version no later than by the 30th of October 2021.

There is no registration fee for conference speakers. Lunch, tea & coffee and refreshments will be provided for all participants during the conference. Speakers will also be invited to our speakers’ dinner free of charge. **The conference envisions full coverage of funds for travel and accommodation for all participants.**

Call for Papers: Facilitating Sustainable Consumption through Private Law

Dr Joasia Luzak (University of Exeter) and Prof Marco Loos (University of Amsterdam) are guest editors of a special issue of an open access journal *Laws* (by

MDPI). They are inviting authors to send in their papers on the topic: 'Facilitating Sustainable Consumption through Private Law'.

The deadline for submission of interest/ abstracts is June 30, 2021 (to j.luzak@exeter.ac.uk and m.b.m.loos@uva.nl)

The deadline for submission of full papers: October 15, 2021.

Message from the Guest Editors:

In this Special Issue, we would like to focus on the discussion of rules, which would accommodate sustainable consumption, leading to a structural change of consumer lifestyles and allowing to fulfil global commitments. We refer here to the UN 2030 Agenda for Sustainable Development, including specifically UN Sustainable Development Goal 12 (SDG-12), relating to sustainable production and consumption, as well as the European Commission's New Consumer Agenda prioritising the green transition.

The contributions to this Special Issue may discuss various areas of private law that could either help empower consumers to reach for 'the green transition' or motivate producers and traders to use new materials, products or engage in new business practices. Any areas of private law that could help with the promotion of more sustainable consumption could be discussed in the contributions to this Special Issue, whether it would be sales or services contracts, online or offline contracts, contract or tort law, substantive or procedural rules, etc. We leave it to our contributors to decide and discuss whether and how this could be achieved, e.g. by:

- reframing the current rules on:
 - ✓ consumer information,
 - ✓ non-conformity,
 - ✓ remedies, or
- designing new rules around the concepts of:
 - ✓ product safety
 - ✓ product liability, or
- banning or preventing planned obsolescence,
- encouraging updates and upgrades of goods and digital content,
- relating consumer rights to corporate social responsibility claims and policies.

With this Special Issue we plan to further contribute to the growing body of academic work in this area, continuing the discussion on various regulatory and self-regulatory solutions. We especially welcome contributions with an interdisciplinary angle, e.g. testing suggested solutions for boosting sustainable consumption empirically.

**Call for Papers: The 2021 Global Forum for Financial Consumers (GFFC),
Organized by the International Academy of Financial Consumers (IAFICO)**

IAFICO is pleased to announce its 8th annual conference, the 2021 Global Forum for Financial Consumers (GFFC) on August 6~7 in a hybrid format of online-onsite webinar, hosted by Seoul National University. This year's theme for the Conference will be "Financial Consumer Protection (FCP): Linking Theories and Evidences to Policy Practices," under which the organizers would like to invite on-going research papers, both theoretical and empirical, on those behavioral patterns and policy practices that are relevant to FCP. Topics of interest will include, but not limited to, financial literacy and wellbeing, digital divide and its remedies, business ethics and other means of self-regulation, alternative legal and regulatory frameworks, conflict resolution mechanisms, and behavioral inducement ("nudge"), and other sectoral (i.e., insurance, borrowing, or investment) issues of relevancy. We hope and expect the meeting to be a valuable forum for exchanging and sharing ideas among colleagues from a diverse set of countries.

Date: August 6 ~ 7, 2021

Format: Online and onsite

Onsite venue: Seoul National Univ., Seoul, Korea

Theme: Financial Consumer Protection, Linking Theories & Evidences to Policy Practices

Research topics of relevancy:

- Financial literacy and wellbeing
- Digital divide and its remedies
- Business ethics and other self-regulations
- Alternative legal/regulatory frameworks
- Conflict resolution mechanisms
- Behavioral inducement (nudge) for FCP
- FCP during COVID19 pandemic
- Sectoral (insurance/lending/investment) issues of relevancy

Important dates:

- Deadline for abstract submission: May 15
- Notification for acceptance: May 31
- Deadline for full paper submission: June 30

Abstract/paper submission and inquiries: IAFICO e-mail (iafico@kdis.ac.kr); or contact persons: Mr. Dongwook Kim (ehddnr14@kdis.ac.kr), Mr. Jeongyun Lee (jylee0628@gmail.com).

For more information on IAFICO and the call for paper for the 2021 GFFC, please visit our website at <https://www.iafico.org/> and <https://www.iafico.org/2021>.