



A GREENWASH E O DIREITO À INFORMAÇÃO AMBIENTAL

THE GREENWASH AND THE RIGHT TO ENVIRONMENTAL INFORMATION

Recebido em	13/02/2024
Aprovado em:	04/03/2024

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RESUMO

O presente estudo visa fazer uma análise acerca da prática do greenwashing. Para tanto se abordará a conceituação do termo sustentabilidade, verificando a ligação entre a prática de greenwashing e o direito ambiental a informação. A metodo de pesquisa

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adotado para confecção foi o método dedutivo, através da estrutura de plano francês. O direito fundamental a informação ambiental é um dos elementos que constituem o Estado de Direito Socioambiental. Por esta razão as informações prestadas ao consumidor devem ser claras, verdadeiras e de fácil acesso, sob pena de violarem o meio ambiente. Ocorre que a prática do *greenwashing* engana os consumidores, levando-os a crer que determinados produtos e empresas são sustentáveis, quando na verdade está obedecendo apenas a legislação consumerista através de uma maquiagem de sustentabilidade.

PALAVRAS-CHAVE: Direito à informação ambiental. Greenwash. Sustentabilidade.

ABSTRACT

The present study aims to analyze the practice of *greenwashing*. For this purpose, the conceptualization of the term sustainability will be addressed, verifying the connection between the practice of *greenwashing* and the environmental right to information. The research method adopted for making was the deductive method, through the French plan structure. The fundamental right to environmental information is one of the elements that constitute the Socio-Environmental Rule of Law. For this reason, the information provided to the consumer must be clear, true and easily accessible, under penalty of violating the environment. It so happens that the practice of *greenwashing* deceives consumers, leading them to believe that certain products and companies are sustainable, when in fact this only obeys consumerist legislation through a sustainability makeup.

KEY-WORDS: Greenwash. Right to environmental information. Sustainability.

PRELIMINARY CONSIDERATIONS

The study presented here demonstrates an analysis of *greenwashing*. It is intended to start the discussion with sustainability analysis entering the concept of the term, currently so fashionable that it is *greenwashing* and its link with environmental law.



To face the problem, the scientific method of approach used was deductive. The deductive method conditions arguments tied to formulas: if “p”, then “q”; now “p”, then “q”, that is, affirmation of the antecedent and denial of the consequent (LAKATOS, 2021, p.106). In this premise, the right to environmental information is a constitutionally guaranteed fundamental right, a requirement for the constitution of the socio-environmental rule of law. So the environmental information on products and services for the consumer must be clear, true and easily accessible, under penalty of violation of environmental protection rules. However, *greenwashing*, which misleads consumers about sustainability characteristics, is only protected by consumer law rules. Thus, an environmental standard that perfectibilizes the right to environmental information, for the purposes of a socio-environmental state governed by law, is not being applied in the figure of *greenwashing*, requiring a dialogue of norms for a proper legal protection.

The research is structured under the model of the French plan, dividing the study into two parts, the first intended to expose the general fundamentals of the right to information as environmental and consumer protection and the second, aiming at deepening the problem of green marketing and the (un)necessary dialogue between consumer and environmental standards.

The environmental concern is not something new, in 1638, in the 17th century, it was already aimed at the creation of the New World Botanical Garden, in the city of Recife, in Pernambuco. There are also reports of the existence of one hundred and fifty texts by thirty-eight Brazilian authors, between 1786 and 1888, who condemned environmental destruction, so that the survival of society could be possible. The first global environmental agreement, however, was only signed in 1900: the Convention for the Preservation of Animals, Birds and Fish of Africa, which was signed by Great Britain, France, Germany, Italy, Portugal and Congo (BULHÕES, 2001, p.19).

The great movements started in the late sixties and seventies. In the United States, the National Environmental Policy Act of 1969 and the basis of the American Environmental Protection Agency of 1970 are used as references to establish a national environmental policy, balancing production with preservation (MÉO, 2017, p.24).



2 THE RIGHT TO INFORMATION TO PROTECT SUSTAINABILITY AND THE CONSUMERS

Sustainability arose, in 1560, from the German word *Nachhaltigkeit*, whose concern, at the time, was about the rational consumption of forests and their possibility of regenerating (BOFF, 2015, p.33). This word today has taken on a broad spectrum and enshrines several values under the term "sustainability".

Sustainability, although belonging to the field of environmental law, permeates all other branches, with emphasis on consumer law and must be detached from "development", although the Brundtland report or *Our Common Future* (1991, s.p)⁴ has connected sustainable development to economic growth, that is, the environment assumed a utilitarian stance solely for the enjoyment of human beings.

In this step, the concept of the Triple Bottom Line or sustainability tripod was developed, recognizing three dimensions or pillars of sustainability represented by the environmental – planet, social – people and economic – facets of profits (the so-called 3P: *People, Planet and Profit*). This means that there must be a harmony between the economic, the social and the environmental.

While sustainability requires a collaborative attitude of society and public entities, in an intention of environmental preservation, the figures of the consumer and the supplier stand out in the large group society.

A consumer is "any private individual or legal entity who acquires or uses products or services as the end user." 2 of the Consumer Protection Code), being a supplier "any individual or legal entity, public or private, national or foreign, as well as

⁴"The concept of sustainable development has, of course, limits – not absolute limits, but limitations imposed by the current stage of technology and social organization, with regard to environmental resources, and by the ability of the biosphere to absorb the effects of human activity. But both technology and social organization can be managed and improved to provide a new era of economic growth." (BRUNDTLAND, 1991, s.p.).



depersonalized entities, that develop production, assembly, creation, construction, transformation, import, export, distribution or commercialization of products or services" and product, "any property, movable or immovable, material or immaterial" (art. 3 and paragraph 1 of the Consumer Protection Code).

2.1 THE FALLACY OF SUSTAINABLE DEVELOPMENT AND CONSUMPTION

The term sustainable until the end of the 1970s meant that a certain ecosystem did not lose its resilience in the face of human aggression, a decade later, such an expression began to be used as a support for development, justifying non-environmentally friendly measures under the excuse of being sustainable (VEIGA, 2011, p.11-12).

In line with the thought of Boff (2011, p.27) "'sustainability' is, in ecological terms, everything that the Earth does so that an ecosystem does not fall and collapse". The difficulty in conceptualizing "sustainability" persists, however the great challenge is to separate doctrinal concepts from lines of research and divergent interests: economics and biology.

development and sustainability obey different and opposing logics. Development, as we have seen, is linear, must be increasing, supposing the exploitation of nature, generating deep inequalities – wealth on one side and poverty on the other – and privileges individual accumulation. Therefore, it is a term that comes from the field of industrialist/capitalist political economy. The sustainability category, on the contrary, comes from the scope of biology and ecology, whose logic is circular and inclusive. It represents the tendency of ecosystems to dynamic balance, cooperation and co-evolution, and is responsible for the interdependencies of all with all, ensuring the inclusion of each one, even the weakest. (BOFF, 2015, p.40).

There was an appropriation of the term to mask the market economy, characterized by hyper-consumption, with exploitation of labor and nature in favor of excessive profit.



In this context of sustainable development, sustainable consumption has been defended⁵, which is nothing more than the consumption, with respect, of natural resources, in a logic of solidarity with future generations, with choices of products that use less natural resources in their production, with adequate remuneration of the workforce and with the possibility of recycling. In short, it is when conscious choices are made, with sustainable intention.

The power is in the hands of the consumer, who is the one who has the attitude of consuming sustainably, glimpsing not only the simple acquisition of a product, but the entire chain that is behind its production and the entire chain that will be ahead in its disposal, when it deteriorates. The change in the consumer's attitude forces the supplier to adapt to serve him⁶. So that, in fact, power is in the hands of consumers through a conscious attitude, information cannot be lacking.

Sustainable consumption puts in vogue the common interest, to the detriment of the personal interest in the consumer's satisfaction with the acquisition of a certain good or service.

One of the sustainable development objectives (SDGs)⁷ is "Responsible consumption and production" in the form of "ensuring sustainable consumption and production patterns" (UNITED NATIONS, 2021, s.p.).

⁵There are those who differentiate green consumption from sustainable consumption. "The proposal of green consumption is that, if the consumer had access to more specific information about the production and composition of the product – for example, through more comprehensive labeling – it would be possible to create an environmental awareness, favoring the consumption of what less harms the environment and, consequently, inducing the industry to produce more this type of good", sustainable consumption "focuses more on collective actions and changes in public and institutional policies". (PASQUALOTTO; SARTORI, 2017, p.193).

⁶An example is the increase in vegan consumption, which has caused several companies that use animal products to adapt to the new and growing lifestyle. "This change in consumer behavior caused food companies to adopt entire lines aimed at the "plant-based" segments without meat and without animal origin" and also seek certifications that validate that the production process of the brand is in accordance with the values of the movement. " (EDITORA, 2021, s.p.).

⁷The Sustainable Development Goals are a global call to action to end poverty, protect the environment and climate, and ensure that people everywhere can enjoy peace and prosperity. (UNITED NATIONS, 2022, s.p.).



The Global Agenda 21, promoted by the United Nations, which is a planning instrument for the construction of sustainable societies, through methods of incentives for environmental protection, social justice and economic efficiency, published at Rio 92 (or also called the United Nations Conference on Environment and Development)⁸, brought a chapter dedicated to changing consumption patterns (chapter 04), in which it was recommended that:

Governments and private sector organizations promote the adoption of more positive attitudes towards sustainable consumption through education, public education programs and other means, such as positive *advertising* of products and services that use environmentally healthy technologies or stimulating sustainable patterns of production and consumption. (BRASIL, 2022, s;p., emphasis added).

Perhaps the recommendation in chapter 4 encouraged the growing wave of environmental advertising in products and services offered to consumers. It turns out that many of these advertisements are not true, serving as green marketing to mislead the consumer.

Regarding sustainability, we adopt the position that it is a separate expression from development. One cannot speak of joint development with sustainability, in the etymology used in that term, with evocation of GDP and the idea of accumulating to consume more and more.

The woes of the GDP have been severely criticized, mainly because it only covers commercial activities and ignores the depreciation of natural and human resources. This rightly provoked the current process of searching for changes and extensions, with the objective of transforming it into an indicator of sustainable prosperity, through calculation corrections, often called 'green GDP'. (GOMES, 2012, p.118).

The scientific revolution conceptualized nature as a machine and human reason as superior to the processes arising from this nature, and the needs are only met when goods and services are acquired in the market (CAPRA; MATTEI, 2018, p.239; 241).

⁸ Four documents were approved in Rio-92, namely the Rio Declaration on Environment and Development, the Convention on Climate Change, the Biodiversity Convention and Agenda 21.



In this ideological construct, one cannot speak of sustainable consumption when one acquires much more than one needs, obeying a capitalization and ostentation logic. "Consuming no longer aims to meet the needs and the exhaustion of the functionality of the product itself", the demand is synthesized in the tireless search for promotion and guarantee of status, social differentiation and construction of an identity (FILLA, 2018, p.1).

The hyper-consumption society, marked by the infinite desire to consume and with programmed obsolescence, encouraged marketing to appropriate emotions, since the act of consuming gained new meaning, leaving the ostentatious consumption that sought social differentiation for experimental or emotional consumption, in the search for immediate pleasures (FILLA, 2018, p.2).

In this regard, consumers justify the superfluous consumption under the pretext of having been carried out with recycled materials, or with low energy and water consumption, or even because there was reforestation somewhere on the planet as a way to compensate for CO2 emissions. Of course, this is a problem, however an even greater problem⁹ arises when companies disclose that sustainable practices are employed, while this is untrue, misleading the consumer.

2.2 RIGHT TO INFORMATION IN CONSUMER AND ENVIRONMENTAL RELATIONS

Preface, it is recalled that vulnerability¹⁰, which is a condition of weakness of one of the subjects of the consumption relationship, requires a differentiated treatment for the most fragile part, in favor of material equality. In relation to the consumer, this fragility is

⁹ "[...] truthfulness is perhaps the most important element, because false information harms the consumer [...] under the aspect of suppressing their self-determination [...]" (HARTMAN, 2009, p.217).

¹⁰ "The principle of vulnerability is a trait inherent to every consumer according to art. 4, item I of the CDC. Hyposufficiency is a personal brand of each consumer that must be earned by the judge in the specific case, in view of art. 6, item VIII of the CDC that provides as follows: The basic rights of the consumer are: VIII - the facilitation of the defense of their rights, including the reversal of the burden of proof, in their favor, in civil proceedings, when, at the discretion of the judge, the allegation is credible or when it is hyposufficient, according to the ordinary rules of experience. Therefore, it is wrong to use the terms as synonyms, since if it were so, every consumer would be entitled to the reversal of the burden of proof" (DUARTE, 2013, s.p.).



expressed in four types: technical, legal, factual and informational (MARQUES, 2011, p.323-324).

In this space of reflection, information vulnerability is highlighted, as it arises from the lack of information, or incorrect information, or even excess of unnecessary information for the consumer (MORAES, 2009, p.142).

The explanatory memorandum of the CDC (1989, p. 1663), based on UN Resolution 39/248 of 16 April 1985, already advocated "consumer access to adequate information that allows them to make very safe choices according to the wishes and needs of each one." (LA FLOR, 2015, p.174), demonstrating that this is not a pioneering discussion in the sphere of consumer law, but that it assumes an ecological feature when in line with the theme of environmental sustainability.

In this regard, it is inferred that information beyond consumer rights is a fundamental right, spreading even about environmental law: there is no way to talk about sustainability without adequate environmental information.

The decision to inform is to move from its scope of domain something immaterial to the other (MARQUES, 2011, p.336-337), that is, who holds the information is the supplier, who can, in his interest, disclose only what suits him. Thus, the environmental crisis is also a social and economic crisis, a domination of power with manipulation of knowledge or know-how, which reinforces the imperative of a systematic epistemology of sustainability (LA FLOR, 2022, p.40).

The right to information is a fundamental right (article 5, item XIV, CF/88), covering all relations of the individual. Both for consumer law, in which it recognizes it as a basic right, imposing "adequate and clear information on the different products and services, with correct specification of quantity, characteristics, composition, quality, taxes and price, as well as on the risks they present" (art. 6, II, CDC), as for environmental law, which envisages it as a fundamental socio-environmental right.



In consumer relations, the right to information stems from the principle of objective good faith¹¹, which advocates conduct based on loyalty and probity. The Consumer Protection Code lists several characteristics that must be covered by the information: clear, correct, complete, true, adequate and useful (arts. 12, 14, 18, 20, 30-34, 46, 48, 52 and 54 of the Consumer Protection Code).

In environmental law, the right to information (which is also a fundamental principle and duty) is umbilically linked to democracy, intergenerational responsibility and sustainability (LA FLOR, 2022, p.11). Suitable socio-environmental information accessible to consumers generates external control of suppliers, enabling democracy through social participation¹².

Environmental information promotes environmental awareness, the socialization of the proper management of resources and a cooperative vision with the whole, of the web of life that surrounds us. “To regain our full humanity, we have to regain our experience of connection with the whole web of life. This reconnection, or relinking, *religion* in Latin, is the very essence of the spiritual foundation of deep ecology” (CAPRA, 1996, p.23).

Environmental information is the prerequisite of a socio-environmental state and has facets: the prerogative to be informed, includes the right of access to information (having access to information) and diverges from the freedom of information that is the right to inform. The one, in fact, is contained in this (SARLET; MITIDIEIRO, 2021, p.241).

The consequences of the environmental crisis are felt at a global level, reaching the planet as a whole, in a perfect connection of the parties with the integral, in this desideratum, the right to information is perceived as a fundamental supranational social right (PIEROBON, 2007, p.1), since its interest overflows the nation-state.

¹¹ “[...] to inform is to communicate, is to share what is known in good faith, is to cooperate with others, is to make ‘common’ what was known only by one” (MARQUES, 2011, p.772).

¹² “El acceso a la información fortalece y hace eficaz el principio democrático” “Access to information strengthens and effectively the democratic principle”. (BERMUDEZ SOTO, 2010, s.p.)



Whereas the preservation of the environment is a rule expressed in art. 225 of the 1988 Federal Constitution, a fundamental duty of environmental information emerges, typical of solidarity rights¹³ and a principle, since fundamental rights norms assume a double condition of principles and rules (SARLET, MARINONI, MITIDIERO, 2021, P.118;155).

Only through environmental information will there be sustainable choices and popular charging on environmental management. In addition, one cannot talk about environmental education without the implementation of public policies that ensure the right/duty/principle of environmental information.

It is concluded that reliable, easily accessible and clear information is a condition for the protection of the consumer and the environment.

3 FALSE INFORMATION THROUGH GREEN MARKETING

The art. 37 of the Consumer Protection Code recognizes two types of illicit advertising (prohibited according to art. 6, IV, CDC): misleading and abusive.

Misleading consists of any type of information or communication of an advertising nature, wholly or partially false, or, in any other way, even by omission (when failing to inform about essential data of the product or service), capable of misleading the consumer regarding the nature, characteristics, quality, quantity, properties, origin, price and any other data on products and services (art. 37, §1 and 3, CDC). One kind of the misleading advertising genre is *greenwashing*.

The history of marketing is intertwined with the history of the consumer, as well as that of advertising is intertwined with the development of the economy (PASQUALOTTO, 1997, p.31).

¹³ Nabais brings the designation of "boomerang rights" or "rights with boomerang effect" to ecological rights, since sometimes they are rights and sometimes they are duties (NABAIS, 1998, p.53).



One of the rules that limits economic activity is the defense of the environment, however; the Judiciary has, for the most part, considered the disclosure of misleading, fraudulent or erroneous information about the environment that can be controlled only when they violate the consumer's right (BRITO; GONÇALVES-DIAS, 2021, p.101).

3.1 FALSE INFORMATION BY MEANS OF GREEN MARKETING

Greenwashing, or also called green makeup or washing (or even environmental), are marketing strategies used by companies to induce consumers through expressions such as: "environmentally friendly", "green product", "sustainable product", "environmentally friendly", etc.

Green makeup is understood as the advertising used by an organization or company in order to provide an ecologically responsible image of its products or services, which do not match the reality, inducing the consumer to false conclusions (BRASIL, 2012, s.p.).

The etymology comes from English, from the term "green", which means green and "wash" which means bath, which is summarized in, giving a bath of green ink to appear a false ecological aspect (PAGOTTO, 2013, p.44). This term began to be used by biologist Jay Westerveld in 1986, criticizing the hotel industry for promoting the reuse of towels to preserve the environment, while observing a poor environmental policy in other sectors of the company. However, it was only in 1996 that the expression became popular, with the publication of the book "Greenwash: The Reality Behind Corporate Environmentalism" (CORREA; MACHADO; JUNIOR, 2018, p.591).

The most common mistakes or sins in conveying environmental reports are classified into the following categories: a) The *sin of the hidden trade off* occurs when one draws attention to an attribute of the product cycle that is environmentally beneficial, but hides the other harmful impacts that occurred to the environment; b) The sin of the absence of proof is the environmental appeal that cannot be sustained in data; c) The sin



of the cult of false labels (*sin of worshipping false labels*) is a false label, giving the impression that is endorsed by a third party, which has no certification; d) The *sin of irrelevance* when the information is unimportant, although it may be true, to differentiate itself from the others; e) The sin of the “*lesser of two devils*” seeks to draw attention to a differential of the product, among those in the category, however all the rest of its chain is harmful; f) The *sin of fibbing* appears when the environmental appeal is false; g) The sin of uncertainty (*the sin of the vagueness*) occurs when vagueness, with the objective of confusing the consumer (PFEIFFER, 2011, p.51).

Pagotto (2013, p.76) systematized the characteristics of the elements that involve *greenwashing* (metatheoretical assumptions) in four dimensions: discursiveness, aesthetics, actions and the organization's portfolio, as shown in the table below:



Pressupostos	Manifestação	Bruno e Karliner, 2002	Gillspie, 2008	Pearse, 2012
Discursividade: o que a organização diz	Manipular o discurso ambientalista com exageros, afirmações irrelevantes, genéricas ou pretensões irreais.	•	•	•
	Omitir impactos ambientais negativos da operação de seu negócio, destacando apenas os positivos.	•		
	Mentir, usar dados falsos, fazer afirmações que distorcem a realidade ou que não podem ser provadas.		•	
	Utilizar jargão técnico incompreensível.		•	
Estética: o que a organização mostra	Usar imagens, sons ou vídeos ambientais sedutores.	•	•	•
	Omitir imagens da operação dos negócios.	•		
	Destacar parceiros que compartilham compromissos ecológicos.		•	•
	Utilizar uma identidade visual ambientalista.	•	•	•
Ações: o que a organização faz	Desviar atenção para projetos socioambientais paralelos.	•		•
	Tratar obrigações legais como investimentos em meio ambiente.	•		
	Alegar custo excessivo de medidas ecologicamente mais corretas.	•		
	Evitar intervenções externas alegando que resolverão o problema sozinhos.	•		
	Infiltrar-se na comunidade ambientalista.	•	•	•
	Incentivar clientes a contribuírem, estimular a propositura de novas formas de tornar a empresa mais "verde".			•
Portfólio: o que e como a organização vende	Vender produtos "ecológicos" que fazem mal às pessoas ou ao meio ambiente.	•	•	•
	Anunciar produtos "verdes" com celebridades.			•
	Criar eco-lojas.			•

(PAGOTTO, 2013, p.76).

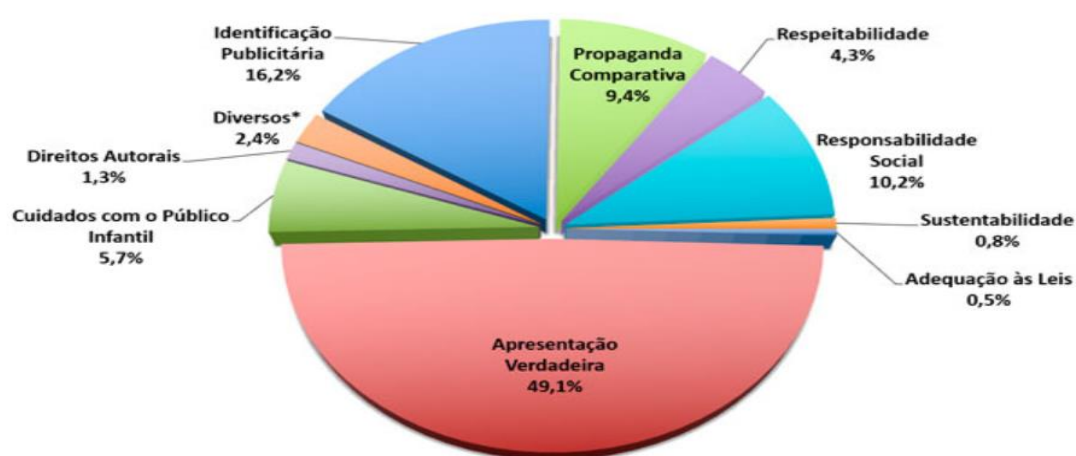
These are selective disclosures that the company chooses so that it looks sustainable¹⁴.

¹⁴ La littérature sur le greenwashing d'entreprise tend à être davantage théorique que de nature empirique et s'intéresse davantage à ses conséquences qu'à sa mesure. Cependant, pour des raisons tant sociétales (l'information des parties prenantes) que scientifiques (l'opérationnalisation du concept dans les études empiriques), il importe de progresser dans l'identification et la mesure du greenwashing "The literature on corporate greenwashing tends to be more theoretical than empirical in nature and focuses more on its consequences than on its measurement. However, both for social (information for stakeholders) and scientific reasons (the operationalization of the concept in empirical studies), it is important to advance in the identification and measurement of greenwashing" (CHANSON; TITE, 2018, p.77, free translation).



CONAR (National Council for Advertising Self-Regulation), statistically demonstrated the numbers of complaints for the year 2021. Although it is not fully possible to state the exact number of complaints about green marketing, at least they will be 1.7%, since they deal with “sustainability”.

Processos Instaurados em 2021 (Questionamentos)



Total de Processos Instaurados: 286

Cada caso pode ter mais de um enquadramento * Depreciação de imagem; discriminação; estímulo a excessos; excesso em mídia-externo; identificação publicitária; indução a atividade ilegal; indução a violência; leal concorrência; ofensa à dignidade; padrões de decência; proteção e uso de marcas de terceiros; proteção à intimidade; publicidade de serviços de saúde; segurança e acidentes

(CONAR, 2021)



Processos Instaurados em 2021 (Queixa de Consumidores)



Total de Processos Instaurados por queixa de consumidores: 183

Cada caso pode ter mais de um enquadramento* Discriminação; estímulo a excessos; identificação publicitária; indução a atividade ilegal; indução a violência; padrões de decência; preconceito; proteção à intimidade; segurança e acidentes

(CONAR, 2021)

The most used transmission medium in 2020 was the internet, representing 73.5% of the total sample. As for complaints involving sustainability, there was an increase in 2021, compared to 2020, on a scale of 0.4% and the percentage of the internet transmission medium remained stable, at 73.8%.

Many seals or certifications do not have control, which ends up giving little credibility to their acquisition and can mislead the consumer. Globally the best known is the ISO (International Organization for Standardization). In Brazil, there is no obligation for environmental labeling, it can occur indirectly when it concerns the health of consumers, such as genetically modified foods.

See that environmental labeling is voluntary and aims to capture more "customers", which are consumers open to sustainability. However, what is intended to be emphasized in this work is the need for environmental information, a fundamental right, which stems from the microsystems of consumer and environmental rights.



Evidently, the labeling that complies with the principles of transparency and veracity, generates credibility to the market, benefiting the competition itself, bringing added value to the product, however, the control cannot be done by the consumer himself.

Finally, it is emphasized that one only has freedom when one has information, so to deny this to the consumer is to restrict the freedom to choose products with lower socio-environmental impacts in defense of sustainability.

3.2 DIALOG BETWEEN ENVIRONMENTAL LAW AND CONSUMER LAW

According to the foregoing chapters, the right to information is a constitutionally expressed rule (article 5, XIV), specifically, the consumer's right is also based on the consumer protection rule (item XXXII, of the same article), combined with infra-constitutional legislation, with emphasis on articles 6, II and III and 31 of the Consumer Protection Code. Furthermore, by the principle of objective good faith and social function of the company and, consequently, the social function of economic property (art. 170, items III, IV and V of the Federal Constitution of 1988).

In the infra-constitutional legislation, Law 6.404, of September 15, 1976 (articles 116 and 154) already defended this social function of the company, and, more recently, the Civil Code demanding loyalty in contracting (article 421).

On the other hand, the same article 170, in its item VI, of the Federal Constitution of 1988, emphasizes the obligation to respect environmental protection in the "defense of the environment, including through differentiated treatment according to the environmental impact of products and services and their processes of preparation and provision". Standard that is expressed with the companies that supply products and services, culminating in compliance with the rule of art. 23 of the 1988 Federal Constitution.

Based on the premise that there is an obligation for the supplier to disclose correctly, as a result of consumerist rules and, starting the debate that the right to



environmental information is a fundamental socio-environmental right in defense of sustainability, the result is that the rules complement each other with the purpose of further safeguarding and protection.

For Erik Jayme, in order to have a fair and efficient system in the face of postmodern pluralism of legislative sources, there is a need for coordination between laws, abandoning the old criteria for solving conflict of laws in time, namely: anteriority, specialty and hierarchy, which the teacher called monosolution, replacing them with coherence, complementation, or also called subsidiarity, and adaptation.

Coherence is a new hierarchy and is given by constitutional values and human rights; subsidiarity (complementation) would be what we called a specialty and is constituted by the complementation or subsidiary application of special rules between them with time and order in this application, first the most evaluative, then in what fits the others; the new precedence is called “adaptation”, which is not related to the time of promulgation, but rather to the need to adapt the system each time a new law is inserted in it by the legislator (MARQUES, 2012, p. 31).

In this compass, dialogue is not only possible, but necessary, because it allows the application of two or more rules, in a subsidiary way or even at the choice of the party to enforce its right. Thus, even the annulment of a legal transaction by mistake or intent of the supplier that concealed environmental information to which it was decisive for the consumer's choice will be tangible.

Therefore, a dialogue of the norms inscribed in the Federal Constitution of 1988, in the Consumer Protection Code and in the Civil Code, protective of the consumer and the environment, are entitled to a dialogue, creating a complete protection of the environment for the purpose of perfectibilization of the socio-environmental State of Law, through the consumer, which also lacks special protective attention due to its vulnerability.

So environmental labeling is already mandatory, dispensing with a specific rule, because the dialogue with the right to environmental information justifies it. Environmental information is necessary for the purposes of environmental law, in any



relationship that is presented, even more so in the case of consumption, so that the freedom of the consumer is not restricted.

Nevertheless, a necessary regulation and public control of the disclosures is perceived, sometimes to test them as true, sometimes to prove them as effective. Effective in the sense that disclosing that they are “cage-free chickens” does¹⁵ not necessarily refer to loose chickens and with respect and animal welfare. Public policies and control of this type of disclosure, which although ‘true’, since the chickens, in fact, are not in cages, mask the reality of arduous and perverse suffering on the margins of environmental protection.

In this scenario of acceptance of dialogue, there is no need for specific rules, both to require labeling and for civil punishment for environmental violation through *greenwashing*, however criminal punishment, which is prohibited analogy, calls for regulation.

The dialogue of norms exposed here, although of great success and value, is only a means of promoting sustainability, which requires, first and foremost, an environmental awareness, or as Leff (2013, p. 2269) states, an environmental rationality, which is devoid of the criteria imposed by capitalism, hyperconsumption, appropriation of labor and exploitation of nature, for the reappropriation of nature, in an ethics of care, with responsibility for the other and promotion of values in a new political project.

4 CLOSING REMARKS

In this small study space, it was possible to verify that there is no regulation on environmental labeling in Brazil. However, through the method of dialogue of sources, it is possible to impose such an obligation on suppliers.

¹⁵ When the packaging hides reality: shocks, mistreatment and fraud in the lives of “cage-free” chickens. Behind images of chickens wandering the countryside, a story of dubious animal welfare conditions and serial labor violations.” (TARES, 2020, s.p.).



Two facets were assimilated to the right to information, which is a fundamental right, constitutionally prescribed: one environmental and the other consumerist.

While envisioning, through the right to environmental information, the protection of the environment, the fallacy of a possible sustainable “development” was perceived, considering the two terms as contradictory and incompatible, in Boff's line of thought.

The right to information was recognized as a basic consumer right and as a fundamental socio-environmental right, a requirement for sustainability. In this scenario, the growing wave of green marketing, or *greenwashing*, was verified, typical misleading advertising, prohibited by consumerist national legislation.

]Brazilian legislation does not have a specific rule for prohibiting the practice of *greenwashing*, using the rule that prohibits misleading advertising, which reflects in the productions of the Judiciary, which only controls such acts when they violate consumer rights. It turns out that, by the method of dialogue of sources, labelling that is considered voluntary becomes mandatory, and civil environmental sanctions are appropriate to the supplier that disseminated false information such as green marketing.

However, public control policies are necessary to test the veracity and effectiveness of companies' advertising. Therefore, a dialogue of the norms inscribed in the Federal Constitution of 1988, in the Consumer Protection Code and in the Civil Code, protective of the consumer and the environment, are entitled to a dialogue, creating a complete protection of the environment for the purposes of the socio-environmental State of Law, which, however, is not sufficient for sustainability, only acquired through an environmental rationality.

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