



VU Climate & Sustainability Law Clinic - Experience from two pilot projects

Broodje onderwijs - 13 April 2021
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Setting up a sustainability-focused law clinic

- The 'sustainability wave' at the VU Faculty of Law
- Experience and mentoring from existing law clinics in the Faculty (eg. Migration Law Clinic, International Law Clinic, the StartUp Clinic)
- External mentoring from a supportive network of clinical law educators



CSLC's rationale and values

- Extending CLE to issues of sustainability - i.e. exposing students to law and its role in transforming ecosystems by way of reflective praxis and experiential learning
- Forming students to be flexible with disciplinary / thematic skills and engage with intra- and inter-disciplinary forms of practice

- Pursuit of socio-environmental justice at the local and global level
- Exposing students to strategic transnational legal action for the climate



Vision

- Elective course of 6 ECTS credits for LLM students (2 periods, one per semester)
- Clemens and David coordinate activities by sourcing projects via an extending network of NGOs, other law clinics, and *colleagues in the Faculty who would like to co-structure sustainability-related projects within the clinic*
- Structure: 7 weekly meetings having a mix of teaching/preparation, coordination with the partner, feedback on outputs
- Part of a network as much as possible linked to local marginalised communities, and communities and students from the Global South

Project 1: case studies investigation and portfolio compliance analysis of the Belgian Investment Company for Developing Countries



Project's context





Student activities

- Two tailored seminar sessions on international development law and law & development issues
- Composition of BIO's climate & energy portfolio
- Identification of sensitive case studies in terms of compliance with environmental and social standards
- Desktop investigation (no interviews) on two cases of BIO investments (Ivory Coast & Madagascar)
- Coordination with Antwerp law clinic students and the research team
- Presentation of outcomes to commissioning NGOs (very positive feedback)



Lessons learned and challenges

- ✚ ☐ Training students in new intra-disciplinary domains (steep learning curve or lack of capacity)
- ✚ ✚ Delegating and promoting equality in the team led to high involvement and productive outcomes
 - ☐ Time flexibility for full project involvement and completion vs. academic semester's structure

Project 2: challenging misleading advertising in the context of the climate crisis



Project objectives

- Challenge 1: dependence on environmental NGOs as external partners for projects
- Challenge 2: “typical” climate-related projects may be “too big” for students, or too far removed from concrete legal practice

→ can projects be “**self-generated**” that are “**clinic-sized**” (and involve **no legal risk**)?

Challenging misleading advertising: four pathways

EU/national law

Unfair Commercial Practices Directive



Dutch law



civil court

ACM

OECD

OECD Guidelines for Multinational Enterprises



National contact point

Industry self-regulation

ICC Marketing Code



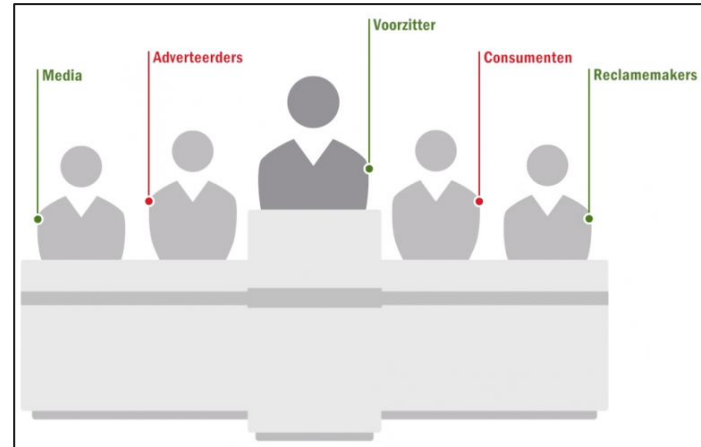
Nederlandse Reclame Code



Reclame Code Commissie

Reclame Code Commissie

- Industry self-regulation; “soft law”
- Rules
 - Nederlandse Reclame Code
 - Prohibition of advertising that is misleading
- Procedure
 - complaint decided by Reclame Code Commissie
 - appeal possible to College van Beroep
- Standing
 - low (or no) standing requirements
 - all consumers can lodge complaint
- no costs + legal risks





Project: challenging advertising that misleads about “CO2 compensation”

- Clients: Greenpeace NL, Reclame Fossielvrij
- task: write a complaint against an advertising that promotes “CO2 compensation”



Complaint

- Submitted yesterday
- 95 pages
- issues addressed:
 - climate science
 - Climate policy,
 - carbon measurement and accounting,
 - marketing psychology
- findings:
 - “Driving CO₂-neutral is impossible”
 - “Shell promotes product that does not, and cannot do what is promised”

“Driving CO₂-neutral”
is impossible.

Complaint to the *Reclame Code Commissie* against Shell's misleading promotion of forest-based “compensation” for its fossil CO₂-pollution in the Netherlands.

Shell promotes a product that does not, and cannot, do what it promises. Shell thereby violates the *Nederlandse Reclame Code*.



Some media attention



Trouw

OPINIE | RELIGIE & THEOLOGIE | DUURZAAMHEID & NATUUR | COÖPERATIE

CO2-compensatie

Studenten dienen klacht in tegen 'misleidende' reclame van Shell



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Studenten dienen klacht in: reclame Shell 'misleidend'

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Metro · Duurzaamheid · 12 apr 2021 / 17:28 uur

Studenten dienen klacht in tegen 'misleidende' reclame Shell



Foto met de studenten Climate and Sustainability Law Clinic. Foto: Greenpeace / David Jo Bradley



With hindsight

- **I thought it would be easier** - I considered challenging misleading advertising as a relatively “easy” project; however, the clients’ chosen topic of “CO2 compensation” turned out to be extremely challenging
 - Pre-manage projects better?
 - Or accept unexpected challenges?
- **The classroom really flipped** - I researched + strategized alongside the students: they saw me think + write, and I saw them think and write
 - Integrate researching + teaching
 - However, this may limit autonomous work of students?
- **9 students on one project is a lot**, at least when working over Zoom
 - Make smaller teams?
 - Or accept that what may look like chaos is in fact self-organization in the making?

→ Advertisement complaints seem viable as projects for a climate law clinic



Possible future projects

- Explore new legal areas that provide opportunities to self-generate projects
 - Challenging financial transactions (insufficient climate risk disclosure in public offerings; maybe under EU taxonomy?)
 - Shareholder activism
 - Involvement in cyclical regulatory/ law-making processes: eg. UN climate change negotiations
- Explore local concerns + possible legal remedies:
 - e.g., air + noise pollution in Amsterdam / around the VU - connecting the global problem with local concerns
- Develop collaboration with non-law programs:
 - Misleading advertising: marketing + communications, psychology
 - Financial transactions + shareholder activism: business + economics
 - Air + noise pollution: environmental science
- Explore new methods of action
 - Misleading advertising “hackathon”
 - Involve law firms in supervision