TCCC CHARITY

Thai-Canadian Chamber of Commerce

EMBASSY DIPLOMAT SCREENS by AIS
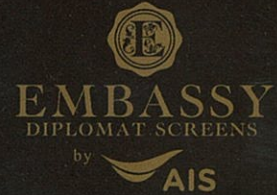
MOVIE NIGHT

BE THE FIRST TO WATCH

THE MAZE RUNNER

Official Thailand release date: 18 September 2014

Wednesday, September 17, 2014
Arrival & Networking: 7PM | Private Showing: 8PM
Hall 2, Embassy Diplomat Screens, Central Embassy

All proceeds from this luxurious private showing will be donated to the TCCC's "I for an Eye."

THE MAZE RUNNER
BASED ON THE BEST-SELLING NOVEL
GET READY TO RUN
SEPTEMBER 19

Is that a decomposed snail in my ginger beer?

Have you ever wondered about the specific ingredients and processes that go into the food that we purchase in supermarkets or in restaurants? It is not a thought which crosses our minds often because, we as consumers, are under the assumption that governmental agencies regulate and supervise the production and distribution of food before we purchase it. Given the very recent control exercised by Shanghai's government following a food safety scandal which revealed that an American-owned, Shanghai-based supplier of chicken products to fast-food chains was relabeling expired meat as "fresh". The new mandate requires all international food producers to disclose the source of every ingredient they serve in China.

How well do Thai authorities play this role? Below we outline the regulatory framework that goes into ensuring that the next time you peruse the aisles of your local supermarket, you don't end up buying contaminated or unsafe food.

The House of Lords decision in the landmark case of *Donoghue v Stevenson* in 1928 is considered to be the most influential to the development of the modern law of negligence. Ms. Donoghue had consumed a bottle of ginger beer, which had been manufactured by Stevenson. The bottle in question contained the decomposed remains of a snail which could not be detected until the contents of the bottle were partially consumed. The judgment gave rise to the "neighbor principle", whereby "you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor". The neighbor in this instance was defined as "persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question".

Though Thailand does not recognize *Donoghue v Stevenson* as a source of law, similar principles are contained in several legislative instruments such as the *Food Act B.E. 2522 (1979)* (the "Food Act"), the *Consumer Protection Act B.E. 2522 (1979)* (the "Consumer Protection Act") and the *Product Liability Act B.E. 2551 (2008)* (the "Product Liability Act") which work together to uphold the very principles for which *Donoghue v Stevenson* stands for.

The Food Act is aimed at protecting and preventing consumers from health hazards occurring from food consumption by regulating the production, sale and import of food in Thailand. The act states that the Ministry of Public Health is responsible for executing and administering the act and requires the owners of food production facilities to obtain a license from the Food and Drug Administration ("FDA"). The FDA has the authority to inspect food production facilities, and any failure during this inspection can result in the suspension or revocation of the food production license.

The Food Act sets out specific requirements regarding where a food production facility can be located, how it must be constructed, and how it and the machinery located inside it must be configured and maintained. Among other things, cleanliness, good lighting and adequate ventilation are a must, and of course keeping animals and insects – snails included - away from the production line is a priority. Production processes are also regulated, such as relating to the storage, cleaning and handling of raw materials, the cleanliness of the vessels and surfaces that will be used for processing the food, packaging and record keeping.

Various chemicals and other ingredients cannot be used in food products, so neither formaldehyde nor arsenic will make its way into your cookies but trans-fats and other less-harmful substances still might. A food production facility is also required to get their recipes (setting out all ingredients contained within each food product) approved by the FDA and cannot modify them in any way without further approval of the FDA.

There are other acts which also regulate the food products we purchase. The *Consumer Protection Act and the Product Liability Act,* work together to uphold the very principles for which *Donoghue v Stevenson* stands; even in restaurants. The sale of food, be it packaged or cooked, falls under the definition of the "manufacture" of a "product". If food "manufactured" in a restaurant causes personal injury to a customer as a direct result of the restaurant either knowingly serving unsafe food, or unknowingly serving unsafe food due to "severe negligence", the restaurant can be held liable under one or both of these acts. This principle is intended to cover all areas which "manufacture" and "retail" food products, from 5-star-Michelin restaurants to roadside mama noodle stalls.

What about the food on the street? Do the same principles apply to roadside vendors of moo-ping or somtam? If we as consumers incur "damage" or even die from eating this food, we still have an avenue of recourse against them. In such a case we would examine the food production and distribution supply chains to determine which party should be held responsible. Under the Product Liability Act the best approach may be to pursue the vendor in regard to who manufactured the ingredients used in the food which caused damage. If the vendor is unable to identify the manufacturer then the vendor will be held liable.

So, having conducted food production legal compliance reviews in the past, we can confirm that Thai food producers take these regulatory requirements seriously and we are confident there is no risk of finding a snail in the food we purchase from supermarkets unless we are looking to buy escargot.

⊙DFDL LEGAL & TAX

Kunal Sachdev (kunal@dfdl.com)
Thunyaporn Chartisathian
(thunyaporn@dfdl.com)