

## FOOD LAW



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## Making claims: Ribena case a warning to industry

**The prosecution of GlaxoSmithKline for making misleading vitamin C content claims underscores the need for food manufacturers to be careful of their claims.**

In the age of the obesity epidemic it is common for food manufacturers to try to influence consumer purchasing decisions by touting a product's nutritional, natural or health qualities. But if the product's contents do not deserve the producer's claims, the consequences can be severe as we have seen in the recent high profile Ribena case.

One of the world's largest multinational food companies, GlaxoSmithKline has been fined NZ\$227,500, and ordered to undertake a nationwide campaign of corrective advertising for misleading its customers about the blackcurrant drink Ribena. The company had promoted Ribena by claiming that blackcurrants had four times the vitamin C of oranges.

The Commerce Commission argued that this claim, while literally true, was likely to mislead consumers about vitamin C in Ribena and orange drinks. As an example of the true comparison, Ribena syrup diluted in the recommended way has only one and a half times the vitamin C of orange juice. GlaxoSmithKline pleaded guilty to 10 charges of breaching the Fair Trading Act in relation to these "four times" claims and a further five charges over the incorrect labelling of the ready-to-drink product which contains no detectable level of vitamin C.

### The Fair Trading Act 1986

The Fair Trading Act protects consumers from false, misleading and deceptive claims and representations regarding goods and services. Specifically, it prohibits misleading or deceptive conduct generally (section 9), conduct that is liable to mislead over "the nature, manufacturing process, characteristics and suitability for a purpose" of goods (section 10) and false or misleading representations as to the quality, composition, style or nature of products (section 13).

In practical terms, these requirements apply to both product labelling and advertising. Labelling will breach the Fair Trading Act if, through words or pictorial representations, they mislead or deceive or have the potential to mislead or deceive shoppers about characteristics of the food such as composition, origin, quantity or desirability.

Under the Fair Trading Act it is necessary to consider the overall impression created by labelling. Labelling may comply with the requirements of the Food Code, Food Act and other advertising regulations and codes of practice, however be found in breach of the Fair Trading Act if the overall impression given by the advertising is misleading. It is therefore essential to seek practical guidance



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if you are in any doubt as to whether a product's labelling or marketing creates an overall false or misleading impression.

### Across the Tasman

Last year the Australian Competition and Consumer Commission (ACCC) released new food descriptor guidelines in an attempt to assist food manufacturers to comply with the Australian Trade Practices Act (largely equivalent to our Fair Trading Act). The guide was developed with Food Standards Australia New Zealand (FSANZ) and, in recognition of the trans-Tasman nature of the food and beverage industry, the New Zealand Commerce Commission.

As New Zealand's comparable publication is no longer in print, the guide provides an up-to-date indication of the ACCC and Commerce Commission's current views on what constitutes misleading representations in food labelling and packaging. It covers the following key compliance issues:

- fine print and disclaimers;
- omissions;
- qualifying claims;
- images and pictures;
- comparative claims;
- the overall impression; and
- representations about the quality, quantity, composition and origin of the food or beverage.

### Risky descriptors

Specific food and beverage descriptors that have been identified as likely to raise issues under the Fair Trading Act are 'pure', '100%', 'fresh', 'natural', 'trim/lean', 'genuine' and 'real'. For example, the descriptor '100% pure' should not be used when the product contains added preservatives or additives nor should 'natural' be used to describe foods that have been altered by chemicals.

This year in the United States, a multinational food and beverage company announced its decision to change the labelling of a soft drink, after public debate on the validity of its 'all natural' claims. In April last year the product was reformulated to contain what it termed only '100 per cent natural' ingredients. TV advertisements claimed it "tastes better than ever because we stripped out all the artificial stuff," and showed cans of the drink being picked from fruit trees or harvested from the ground. However, these ads and the company's "all natural" claim were criticised because the product contains high fructose corn syrup – an ingredient which is arguably not 'natural' because its chemical bonds are broken and rearranged in the manufacturing process.

### Health claims

As regulators seek to prevent health-conscious consumers being misled by labels that exaggerate the presence of healthy ingredients, new laws are being created to curb market behaviour. The European Commission has introduced new legislation which provides that nutrition claims can only be made if the product meets a so-called 'nutritional profile'. For example, food products with lots of fat and sugar cannot be labelled with claims such as 'contains vitamin C'. In 2003, the Australia and New Zealand Food Regulation Ministerial Council agreed to a new policy for Health, Nutrition and Related Claims. It was intended to guide FSANZ in developing a new standard to allow certain recognised health claims and provide a framework for investigating and approving other health claims. The final recommendations on the new standard are expected to be ready for consideration by the Council in October 2007. Until a new health claims standard is adopted, all health claims on food and beverage labelling remain prohibited.

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