

BCCC 2011 Annual Conference

Labelling - Current Key Legal Developments and their Practical Implications

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6 April 2011

Key Legal Changes for labelling

- Nutrition and Health Claims Regulation
 - Nutrition claims
 - Health and slimming claims
- Proposed Food Information Regulation
 - Country of origin declarations
 - Print size and legibility
 - Front of pack nutrition info
 - Special interest proposals

The Nutrition and Health Claims Regulation 2006 transitions into effect

- Nutrition claims
 - Since 19 January 2010 must be in the Annex
 - Annex now includes omega claims
 - More claims to be added
- Health and slimming claims
 - More complicated
 - Many opinions expected on health and slimming claims - all due by June 2011
 - perhaps September 2011



Health Claims

- Two main streams
 - New science, proprietary, children's health and disease risk reduction (Arts 13.5 and 14)
 - Well established and understood claims (Art 13.1)
- Different transitional periods
- Different approval system
- ~~Different standard of proof?~~

If the claim is approved

- Nutrition Claims
 - Typical entry in the Annex is: *“A claim that a food is [low in energy], and any claim likely to have the same meaning for the consumer, may only be made where...”*
 - So some leeway in wording
- Health Claims
 - *“The claim”* is what is permitted by the EU Decision:
 - Approved wording
 - Approval may require further information too - Art 10.2 requirements:
 - A statement indicating the importance of a varied and balanced diet and a healthy lifestyle
 - Quantity and pattern of consumption to obtain the effect
 - If appropriate persons who should avoid the food
 - If appropriate warning of health risk if consumed to excess

Example of approved health claim

- Wording recommended by EFSA can be very technical, eg water soluble tomato concentrate:
 - Applicant: *"Helps to maintain a healthy blood flow and benefits circulation"*
 - EFSA: *"Helps maintain normal platelet aggregation"*
 - Commission: *"Helps maintain normal platelet aggregation, which contributes to healthy blood flow"*
- AND info that *beneficial effect is obtained with 3g in up to 250 ml of fruit juices or yoghurt drinks*

Health Claims – the law transitions into effect

- Generic list was to be adopted in batches
 - First batch expected to be voted on 11 October 2010
 - Major change of plan announced by EU on 27 September
 - All non-botanicals claims to be approved or rejected as a single batch during 2011
 - EFSA will then turn to botanicals and look at possible conflict with the legislation on Traditional Herbal Medicinal Products

Approved claims - Impact of Nutrient Profiles

- For how long will the approved claim you use *be legal on your product?*
- Article 4 says claims can only be made for foods that meet the relevant 'nutrient profile'
- Nutrient profiles still to be adopted
- If profiles are adopted
 - May be necessary to reformulate
 - Or, find a different way to promote the product
- Will nutrient profiles be introduced?
 - Attempt in European Parliament to remove Article 4
 - Much debate still to occur
 - Much lobbying still to be done
 - If this could affect you, monitor the nutrient profile proposals

Practical application- nutrition claims

- Forthcoming amendments to the Annex:
 - “reduced” to be reduced from -30% to -25%
 - “now reduced” claims – 10% or 15% less energy/fat/saturated fat/sodium/salt/sugars
 - valid for 1 year after reformulation
 - “no added sodium/salt” – so long as naturally present salt is <0.12mg/100g or ml
- UK advice to TSOs – don’t prosecute these for the time being
- If a claim is not going to get listed in the Annex
 - Use a nutrition table instead
 - Rely on consumer knowledge
 - Turn to the media

Practical application - health claims

If the claim is not approved

- Make a nutrition claim
 - and rely on consumer knowledge and the media
- Re-apply, making a better case
- Conduct fresh research and then re-apply
- Find a new proposition to market the product to the consumer
- Go to court to challenge to EFSA/Commission
 - procedural errors
 - challenge on basis of free speech (cf USA)
- Use other routes to **continue** to make the claim



Health claims - Using other routes

- Background:
 - NHCR applies to “nutrition and health claims made in commercial communications” (Art. 1.2) in the labelling, presentation and advertising of foods placed on the market in the Community” (Art. 3)”

Health claims - Using other routes

- The media
 - They can carry articles which make the claims
 - But
 - possible risk if what they do is regarded as “presentation” or “advertising” or “commercial”
 - associated advertising must avoid making the claim
 - labelling cannot make the claim
 - Is the act of providing information to the media a “commercial communication presenting or advertising the food”?
- Where the product is placed in the shop
 - Health claim “by association”

Health claims - Using other routes

- Websites
 - Situate them outside EU?
 - Offences if organised by companies/persons inside the EU
 - Test in UK criminal law is did a substantial measure of the activities constituting the offence take place in the UK?
 - Even if the crime is avoided:
 - how do consumers get to the website?
 - labelling and advertising campaign cannot make the claim
 - PR risk: “Company X is making a claim on an offshore website which would be illegal onshore”
 - if you don’t make the claim, will less reputable competitors do so?
 - argue that the claim is true and EFSA are wrong?

NHCR - Implications for the Food Sector

- Reduction in the nutrition, slimming and health claims that can be made
- Impact on unethical competitors
- May reduce demand for certain foodstuffs and ingredients
- Products will be reformulated so that claims can be made or introduced
- Changes to the sales proposition for some products
- New ability to make a claim for disease reduction may stimulate the sale of certain foodstuffs and ingredients
- NHCR may stimulate research directed at developing new products, new ingredients or new strains of crops
 - NB apparent “quasi patent” for proprietary claims

Proposed Food Information Regulation

- The easy bit
 - Re-enacting the existing Food Labelling Directive
- The hard part:
 - Will there be new rules on –
 - Font size for labels
 - Front-of-pack nutrition labelling
 - Country of origin
 - Other bits and pieces?

Origin Labelling

- Current Law
 - If consumer might be misled about place of origin or provenance, must state it
 - What about multi-origin products?
 - Place of last processing?
- Original Proposal
 - As current, plus
 - If origin or provenance of one or more “primary ingredients” is different then that place/those places must also be stated
 - For meat (except beef and veal) may only give a single country of origin or place of provenance if born, reared and slaughtered in that country or place

Origin Labelling

- EP June 2010:
 - Compulsory for
 - meat, poultry, dairy products, fresh fruit and veg
 - other single-ingredients products
 - meat, poultry and fish when used as an ingredient
 - For meat and poultry may only give a single country of origin or place of provenance if born, reared and slaughtered in that country or place
 - To be conditional on a sector-by-sector impact analysis
- EC February 2011
 - Compulsory for
 - beef, swine, sheep goat and poultry meat only
 - Commission to report on extension to dairy and meat products, single ingredient products and other products
- EP rapporteur March 2011
 - Only explore extending to
 - swine, sheep goat and poultry meat only (beef is already covered)

Origin labelling

- EP March 2011
 - MEPs more divided on this than any other topic. A mix of
 - animal welfare
 - protectionist motive
 - concern about barriers within the single market
 - meat and fish not enough
- Political pressure in many countries
- Italy is proposing to legislate
 - has notified new law to EU
 - national origin labelling for all products
 - EU Commission is investigating

Font size

- Current law
 - “Clearly legible”
 - Desire for something more precise
- Original proposal
 - Minimum 3mm “x” size
- Became
 - Minimum 1.2mm “x” size
 - Less info required for small packs
 - What is a small pack? – 25cm² or 75cm²?
 - Smaller font size 0.9mm?
 - A further “tiny” size pack with no label required at all? <10cm²?
 - Rules on contrast with background – in Reg or to be determined later?

Front of Pack Nutrition Labelling

- Traffic lights or GDA
 - or just some info?
- Which nutrients?
- Should it go on the front of the pack at all?
- EU Commission and EU Parliament rapporteur preferred GDA
- UK's FSA and many consumer groups prefer traffic lights

Front of Pack Nutrition Labelling

- EP June 2010
 - Full nutrition table compulsory for most products
 - Front of pack – energy, fat, saturates, sugars and salt (with energy in bottom right corner) AND
 - Back of pack - protein, carboh, fibre, natural and artificial transfats AND
 - Front of pack means face most likely to be displayed.
 - Confusion about GDA percentages to be declared or not – probably was intended they should be
- EC February 2011
 - Full nutrition table compulsory for most products
 - energy, fat, saturates, carboh, protein, sugars and salt
 - Cannot say which is “front” of a pack – so no location requirement
 - No requirement for GDA or traffic lights
- EP Rapporteur and the EP March 2011
 - Lack of consensus on which nutrients, GDA/traffic lights or note, trans fats, etc
 - Consensus that “front of pack” is not difficult to define
 - Per 100g/ml and/or per portion?

Other bits and pieces - I

- “National schemes”
 - Where a matter not specifically harmonised then member state can adopt a national provision
 - Council supports
 - Rapporteur against
 - The Single Market?
- Ingredient listing for alcoholic drinks?
 - or for some alcoholic drinks like alcopops?

Other bits and pieces - II

- No plan to change “use by” and “best before”
- Possible requirement to declare that meat made from pieces is “made from combined meat pieces”
- Possible ban on reference to a reduction in sugar or fat content if overall calories are not reduced
- Possible ban on saying a product does not contain an ingredient if that kind of product never does – eg fat in wine gums
- Possible requirement to declare if meat from halal slaughter

Food Information Regulation - Timing

- Parliament carrying out its second reading
- Progress has been very slow to date – originally published early 2008
- Progress likely to remain slow
- Possible adoption 2011 or 2012

- Transition periods – up to five years?

- Keep your eyes on the proposals
 - help BCCC/FDF with *examples* of difficulties that particular wording would create

The Future

- Sustainability labelling
 - Can it be done accurately and fairly enough
 - to achieve a useful end
 - to prevent unfair competition?
 - Could pan-European agreement ever be achieved?
 - If agreement cannot be reached in the EU, it cannot become legally compulsory

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