



Christopher Preston

Principal Legal Counsel, Australia

CONTENT

- ▶ **Session 1: Mandatory Labelling**

- Name of Food (Standard 1.2.2)

NOT brand or trade name

Name or description to indicate true nature of the food

Possible implications for % labelling

- Name and Street Address (Standard 1.2.2, TMA)

NOT PO Box

Address at which legal notices may be served

Does not need to be the same across all SKUs, in fact may be reasons to spread them

What to do if you change premises

- Lot Identification (Standard 1.2.2)

Big batches vs small batches

Use of date mark as lot identification

- Allergen and Sensitivity Statements (Standard 1.2.3)

The labelling that can kill!

Includes processing aids

Use VITAL not blanket statements

Remember lupins

- **Date Marking (Standard 1.2.4)**

Base on shelf life testing

USE BY illegal sales

- Ingredient List (Standard 1.2.5)

Two ways of declaring compound ingredients - make conscious choice

Highlight allergens as best practice

Two ways of declaring allergens

“Vitamin C” vs “Ascorbic Acid”

FOOD REGULATION AND MARKETING

- Country of Origin (ACL Information Standard)

Box, Logo, Barchart, Wording

Priority vs non-priority foods

Substantial transformation: identity, nature and essential character

Hierarchy: Product of, Made in, Imported

- Storage and Usage Instructions (Standard 1.2.6)

Only required in two cases: safety issues and durable life

Consider “after opening” instructions if appropriate

Use plain English

- Nutrition Labelling (Standard 1.2.8)

Read and know Std 1.2.8, there is a lot to get through

Panel format - get it right

%DI columns, vit & min declarations

Triggered extra nutrient declarations

- Percentage Ingredient Labelling (Standard 1.2.10)

Characterising Ingredients and Components

Rounding - “may be rounded”

Average quantity unless specified as minimum

- Quantity Marking (Trade Measurement Act)

NIL Average Deficiency vs AQS

Use of 'e' symbol

16 presentational requirements!

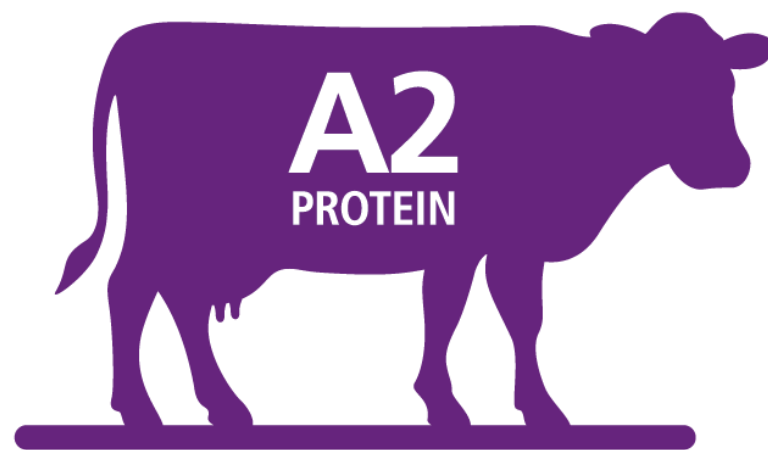
CONTENT

- ▶ **Session 1: Mandatory Labelling**
- ▶ **Session 2: Claims**

NUTRIENT CONTENT CLAIMS

- Presence, absence of nutrient
- Schedule 4-3
- Qualifiers
- Nutrients not in Schedule 4-3

Naturally A1 protein-free



a2 Milk™



Regular milk

GENERAL LEVEL HEALTH CLAIMS

- Wide definition
- NPS Calculator (Sch.4-6)
- Std 1.2.7 list in Schedule 4-5
- Self-substantiation through systematic review (Sch.6)
- Presentational AND contextual requirements

Milk also ... is a natural source of carbohydrate fo

HIGH LEVEL HEALTH CLAIMS

- Std 1.2.7 Schedule S4-4
- No alternative mechanism
- NPS Calculator
- Presentational and contextual requirements



INGREDIENTS THAT TRIGGER ALARMS

- ... used as a nutritional substance
- ... used as a food additive
- ... used as a processing aid
- added vitamins and minerals (and claims about them)
- prohibited or restricted botanicals
- novel foods
- GMOs
- Irradiated foods
- Apricot kernels, kava
- Watch out for contaminants and agvet residues

OTHER CLAIMS

- * Std 1.2.7 NIPs
 - * sugars
 - * salt
 - * nutrient extra labelling

ALL claims are regulated by the ACL

ACCC approaches

- * Nil, No, Free all mean not detectable (as distinct from insignificant)
- * Can understate but never overstate
- * Science is secondary to public opinion
- * Order in which things are stated is relevant

Read the s.87 undertakings!

AN EXERCISE



CONTENT

- ▶ Session 1: Mandatory Labelling
- ▶ Session 2: Health and Ingredient Claims
- ▶ **Session 3 : Australian Consumer Law**

THE RULE

A corporation must not, in trade or commerce, engage in conduct that is misleading or deceptive or that is likely to mislead or deceive.

ACL s.18

THE RULE

A corporation must not, in trade or commerce, engage in conduct that is misleading or deceptive or that is likely to mislead or deceive.

CL s.18

YOU ARE IN TRADE

YOU ARE (ALMOST CERTAINLY) A CORPORATION

BROAD TERM COVERS ALL ACTIVITIES

“LEAD INTO ERROR”

THE POSSIBILITY IS ENOUGH

“CREATE WRONG IMPRESSION”

THE TEST

- Does the impression created by the conduct
- In the minds of the range of consumers
- Comprising the target audience
- Possibly lead them into error
- Taking into account all the circumstances

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NOT INDIVIDUAL
ELEMENTS BUT
THE WHOLE
IMPRESSION

ALL OPEN
IMPRESSIONS
MUST BE
CONSIDERED

BOTH THE
EDUCATION AND
THE LESS
EDUCATED

AT WHOM IS
THE CONDUCT
DIRECTED?

SILENCE CAN
BE MISLEADING

HOW MUCH TIME
CAN THE
CONSUMER SPEND
THINKING?

NOT A 51%
TEST

SOME POINTERS

- Claims must be complete in themselves
 - Asterisk text can explain and refer but not qualify or vary the claim
 - Rear label qualifiers of the claim will be ignored
 - Need to consider the total packaging

SOME POINTERS

- Claims must be substantiable (ie able to be proven)
 - Evidence needs to be good quality
 - Evidence needs to match the claim
 - ACCC can demand to see your evidence
 - Reliance on third party documents may not be sufficient

SOME POINTERS

- Interpret claims from the consumer's perspective
 - Do not rely on technical or scientific meanings
 - Don't rely on fine distinctions
 - Refer to dictionaries for common meaning

ACTUALLY, NO!

EXAMPLES



EXAMPLES

BUT IS IT FREE RANGE?



EXAMPLES



“... We are doing an RRP review at present which is projected to be in line with CFI but take an opportunity to make some moves in June and July, let the Carbon tax take the blame, after all your costs will be going up due to it.”

LET THE
CARBON TAX
TAKE THE
BLAME?

EXAMPLES



EXAMPLES



CONTAINS STORED JUICE

EXAMPLES

USED TO CLAIM
“MADE WITH 65%
REAL FRUIT”



EXAMPLES

MADE WHERE?



EXAMPLES

DECLARED
FRUIT CONTENT
INCLUDED
SIGNIFICANT
AMOUNTS OF
ADDITIVES



HERO IMAGES

EXAMPLES

MYTH: MAKES YOU FAT

MYTH: ROTS YOUR TEETH

MYTH: PACKED WITH CAFFEINE

KERRY ARMSTRONG ON MOTHERHOOD & MYTH-BUSTING

HERE ARE SOME OF THE FACTS:

Myth: It's full of added preservatives and artificial flavors.

Myth: Makes you fat.

Myth: Rots your teeth.

Myth: Packed with caffeine.

Coca-Cola MYTHS BUSTED

For more interesting facts go to www.coca-cola.com.au

OFFENCES



- ▶ ACL s.203
- ▶ \$10 million per offence
- ▶ includes individuals “knowingly concerned”

CONTENT

- ▶ Session 1: Mandatory Labelling
- ▶ Session 2: Health and Ingredient Claims
- ▶ Session 3 : Australian Consumer Law
- ▶ **Session 4: Managing Risk**

MANAGING RISK

- Know how to IDENTIFY risk, known and unknown
- Assess LIKELIHOOD and CONSEQUENCE
- Choose to ACCEPT, MITIGATE or ELIMINATE
- What is PLAN B and how will it be implemented
- Establish clear risk APPROVAL / SIGN OFF

CRIMINALITY CANNOT BE MANAGED

- It is legitimate to explore the grey areas but it is NEVER legitimate to knowingly contravene a legal requirement on the basis that detection is unlikely

WHAT SHOULD GUIDE RISK?

- Retaining consumer trust in the brand
- Integrity of brand values
- Integrity of customer values
- Situational Competitor Awareness
- Situational Regulator Awareness

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- ▶ Session 4: Managing Risk
- ▶ **Session 5: Q & A**



THANK YOU

Christopher Preston

Principal Legal Counsel,

Australia