

# codex alimentarius commission



FOOD AND AGRICULTURE  
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Agenda Item 12

CX/FL 03/14

## JOINT FAO/WHO FOOD STANDARDS PROGRAMME

### CODEX COMMITTEE ON FOOD LABELLING

Thirty-first Session

Ottawa, Canada, 28 April - 2 May 2003

#### DISCUSSION PAPER ON MISLEADING CLAIMS<sup>1</sup>

#### Background

Paragraph 3.1 of the Codex General Standard For The Labelling of Prepackaged Foods (CODEX STAN 1–1985 (Rev.1-1991) states “Prepackaged food shall not be described or presented on any label or in any labelling in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect”.

At the Thirtieth Session of the Codex Committee on Food Labelling (CCFL) in May 2002, the United States of America (USA) tabled a discussion paper on misleading food labelling (CX/FL 02/12). The Committee agreed that Australia would lead a Working Group to examine how this issue could be further addressed by CCFL (ALINORM 03/22). The Working Group, which operates electronically, comprises: Australia (Chair); Brazil; Canada; Norway; United Kingdom; USA; Consumers International; and the International Association of Consumer Food Organizations. On 6 August 2002, the Working Group distributed a letter to participants to the CCFL calling for information and data. It was hoped that this data would build on the information and examples of misleading communication already contained in CX/FL 02/12, previously compiled by the USA with assistance from professionals of Universities and with cooperation from Brazil, Canada, Mexico and the European Commission.

#### Results of the consultation with CCFL participants

##### GENERAL OVERVIEW

Australia, Denmark, Norway and Consumers International submitted a total of thirty-five examples of misleading labelling illustrating case studies from nine different countries (Australia, Czech Republic, Denmark, Greece, Hong Kong, India, Latvia, Norway and Sweden). Denmark expressed the view that all examples need to be assessed on a case-by-case basis, that it is not possible to set up any objective legal criteria, and that it is difficult to set up any overarching principles with regard to misleading communications about food. Norway also submitted that case-by-case assessment is usually required but noted that prevention of misleading communication must be addressed throughout the work in Codex. Norway suggested the Working Group check whether existing Codex provisions might already cover some of the examples of misleading labelling outlined in CX/FL 02/12. Consumers International reported that its members have particular concerns about the concept of truthful but misleading labelling in that it could limit the labelling of genetically modified organisms (GMOs). While they hold the view that misleading labelling needs further urgent consideration within Codex, and they support greater harmonisation and simplification of food labels, they consider particular elements of CX/FL 02/12 to be problematic. Consumers International submitted that

<sup>1</sup> Prepared by an Electronic Working Group on Misleading Food Labels coordinated by Australia

unless the problems they foresee with regard to GMOs can be fully addressed, Codex should discontinue this work.

## SUMMARY OF CASE-STUDIES RECEIVED

### Different types of misleading communication

Part V of CX/FL 02/12 identifies five types of misleading communication but notes that the five categories are not always mutually exclusive. For example, a communication can mislead consumers both because it has confusing language and because it leads to false inferences. The five categories are:

1. Omission of a material fact – A communication is misleading because a material fact has been omitted;
2. Confusion-based misleadingness – A communication is misleading because of confusing language, symbols, or images;
3. Same-attribute misleadingness – A truthful communication about an attribute of a product leads to misleading inferences about the same attribute in that product or in other products in the same or similar category;
4. Different-attribute misleadingness – A truthful communication about an attribute of a product leads to misleading inferences about a different attribute in that product or in other products in the same or similar category; and
5. Source-based misleadingness – An endorsement by an organization or individual(s) leads to misleading inferences.

The Working Group requested examples of truthful but misleading communication. Some of the case studies submitted (see Table 1) may be considered false and therefore misleading.

**Table 1: Case studies submitted and categorised against the five different types of misleading labelling identified in CX/FL 02/12**

Type of communication	Case study submitted
Omission of a material fact  [N= 9 case studies, with 7 relating to place of origin of the product]	Jam made from imported berries labelled with the flag of the country where the jam was processed (Norway).
	Flavoured mineral water labelled as containing fluoride but failing to declare the product also contains sugar (Czech Republic via Consumers International).
	Orange juice not declaring added water content, labelled 'fresh' but containing preservatives, or labelled '100% juice' but comprising reconstituted juice and water (Hong Kong via Consumers International)
	Beef retailed in regional supermarkets poorly labelled re place of origin of the cattle (Australia).
	Juice containing 15% imported juice concentrate labelled as 'locally squeezed' (Australia)
	Imported olives marinated in local and imported ingredients failing to declare true country of origin (Australia).
	Strawberry yoghurt products containing imported strawberries labelled as local product (Australia)
	Confectionery labelled '100% Australian owned' when the company had a parent US based company (Australia).
	Fish labelled as caught in Australian waters failing to declare that it is also caught outside Australian waters (Australia).
Confusion-based misleadingness  [N=16 case studies of differing nature, difficult to group into any one class. Some submitters	Product called 'Burgere', a slang word for hamburger (Norway).
	Typical cases where illustrations imply the product contains something it does not or over-represent the content of an ingredient present in small amounts (Denmark).

	Typical cases where label information misrepresents the place or country of origin of the product (Denmark).
	Ingredients listed in Chinese and English where the information contained in the two lists differs (Hong Kong via Consumers International).
	Reconstituted juice labelled as 100% juice (Consumers International).
	'Light claims' ill defined in terms of the calorie content of products on which they appear, also infers other products without the claims contain more calories (Sweden via Consumers International).
	Artificial additives labelled either by the name of the additive or E+ number, or grouping substances as 'flavouring' (Sweden via Consumers International).
	'Organic margarine' (Sweden via Consumers International).
	Cooking oil claiming 'cholesterol free', 'zero cholesterol' or 'nutritious' (India via Consumers International).
	Fruit juice product labelled and advertised '100% whole fruit' and being described as strawberry and raspberry, but being a blend of reconstituted juices and purees with the principal ingredient grape juice (Australia).
	Juice label with true-to-life graphics of cherries and berries containing 98% apple juice (Australia).
	Muesli bars labelled 'makes you healthy'. Ambiguous claims of questionable meaning to the consumer (Australia).
	Apricot jam with the first ingredient pear (Australia).
	Fast food restaurant product labelled 'grilled chicken burger' when the patty is steamed, branded, frozen, thawed and finally cooked in a two-sided hot plate (Australia).
	Frozen fruit product labelled 'no added sugar' failing to declare the intrinsic sugar content of the product (Australia).
	Product called 'Fresh Premium Orange Juice' that contained reconstituted juice and preservatives (Australia).
Same-attribute misleadingness [N=5 case studies]	'Transfree' margarine (Norway).
	Iodised salt labelled 'low magnesium'. Other products with no claim were found to have lower magnesium levels (India via Consumers International).
	'Banana mango flavoured' or 'apple kiwi flavoured' cordial with pictures of real bananas, mangos, apples and kiwi fruit on the label but not containing actual fruit (Australia).
	Edible oil products promoting the benefits of their omega 3 fatty acid content, suggesting they were unique in providing those benefits and failing to present the total diet context (Australia).
	Product labelled 'low fat' but containing 5% fat, where Code of Practice criteria for low fat claims are the food must not contain more than 3% fat (Australia).
Different-attribute misleadingness [N=1]	Fish product labelled in different languages (Norway).
Source-based misleadingness [N=4]	An illegal pesticide found in an organic product (Norway).
	Manufacturers declaring on product labels that they donated funds to non-government organizations or for environmental protection. Consumers then inferred products carrying the declaration were a healthier or safer option (Greece via Consumers International).
	'Healthy Product' sign of quality awarded on basis of information provided by the manufacturer (Latvia via Consumers International).
	'Green Spoon' sign of quality awarded to products with 75% domestic grown food content (Latvia via Consumers International).

#### ASSESSMENT FOLLOWING THE CONSULTATION

The Working Group examined the submitted material and concluded that given the limited response to the request for data, it is unlikely that the views received are representative of such misleading claims in general.

The most consistent report received was that judgement of misleading communication tends usually to be applied on a case-by-case basis. There was some confusion as to the classification of examples against the framework proposed in CX/FL 02/12, but alternate or additional types of misleading communications were not suggested. Insufficient information was provided to allow comparison of existing principles enshrined in regulatory measures of different nations.

Norway re-emphasised the need to examine how adequately existing Codex provisions address misleading communication (refer ALINORM 02/22 Paragraph 109). Norway draws CCFL’s attention to the fact that some of the examples of omission of material fact presented here, that had been considered to be misleading with regard to country of origin according to national laws, would be acceptable according to the existing Codex General Standard For The Labelling Of Prepackaged Foods under Section 4.5.2<sup>2</sup>, as one example.

Through the Working Group, the USA also supported looking at existing Codex texts that are related to misleading labelling in more detail, as part of an effort to explore the extent to which overarching principles or guidelines might be identified that address misleading labelling for a broad range of issues.

The Working Group extracted relevant sections of existing Codex labelling standards and guidelines (Table 2). These should be further examined along with any other Codex guidelines designed to prevent misleading communication to determine whether all classes of misleading claims are addressed. Further examination of these sections in relation to work already ongoing within CCFL may provide some opportunity to address concerns about misleading communication without the need for CCFL to initiate new work. The Working Group intends to continue to focus its effort on truthful but misleading communication, rather than false and therefore misleading communication.

**Table 2: Codex texts relating to misleading communication**

**EXTRACTS FROM THE CODEX GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS**  
 REFERENCE: CODEX STAN 1-1985 (REV. 1-1991)

<p><b>Section 3 General Principles</b></p>	<p>Prepackaged food shall not be described or presented on any label or in any labelling in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect [Paragraph 3.1].</p> <p>Prepackaged food shall not be described or presented on any label or in any labelling by words, pictorial or other devices which refer to or are suggestive either directly or indirectly, of any other product with which such food might be confused, or in such a manner as to lead the purchaser or consumer to suppose that the food is connected with such other product [Paragraph 3.2].</p>
<p><b>Section 4.1 The Name Of The Food</b></p>	<p>The name shall indicate the true nature of the food and normally be specific and not generic [Paragraph 4.1.1].</p> <p>In the absence of (a name established in a Codex standard or a name prescribed by national legislation) either a common or usual name existing by common usage as an appropriate descriptive term which was not misleading or confusing to the consumer shall be used [Paragraph 4.1.1.3].</p> <p>There shall appear on the label either in conjunction with, or in close proximity to, the name of the food, such additional words or phrases as necessary to avoid misleading or confusing the consumer in regard to the true nature and physical condition of the food including but not limited to the type of packing medium, style, and the condition or type of treatment it has undergone; for example: dried, concentrated, reconstituted, smoked [Paragraph 4.1.2].</p>

<sup>2</sup> “When a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling”. Refer Codex Alimentarius Food Labelling Complete Texts. Codex General Standards For The Labelling Of Prepackaged Foods. Section 4.5.2.

<b>Section 4.5 Country Of Origin</b>	<p>The country of origin of the food shall be declared if its omission would mislead or deceive the consumer [Paragraph 4.5.1].</p> <p>When a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling [Paragraph 4.5.2].</p>
<b>Section 7 Optional Labelling</b>	<p>Any information or pictorial device written, printed, or graphic matter may be displayed in labelling provided that it is not in conflict with the mandatory requirements of this standard and those relating to claims and deception given in Section 3 – General Principles [Paragraph 7.1].</p> <p>If grade designations are used, they shall be readily understandable and not be misleading or deceptive in any way [Paragraph 7.2].</p>

**EXTRACTS FROM THE CODEX GENERAL GUIDELINES ON CLAIMS**  
**REFERENCE: CAC/GL 1-1979 (REV. 1-1991)**

<b>Section 1 Scope And General Principles</b>	<p>The principle on which the guidelines are based is that no food should be described or presented in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect [Paragraph 1.2.].</p>
<b>Section 3 Prohibited Claims</b>	<p>(Prohibited claims include) claims which could give rise to doubt about the safety of similar food or which could arouse or exploit fear in the consumer [Paragraph 3.5].</p>
<b>Section 4 Potentially Misleading Claims</b>	<p>The following are examples of claims which may be misleading:</p> <p>Meaningless claims including incomplete comparatives and superlatives [Paragraph 4.1].</p> <p>Claims as to good hygienic practice, such as “wholesome”, “healthful”, “sound” [Paragraph 4.2].</p>
<b>Section 5 Conditional Claims</b>	<p>The following claims should be permitted subject to the particular condition attached to each:</p> <p>Terms such as “natural”, “pure”, “fresh”, “home made”, “organically grown” and “biologically grown” when they are used, should be in accordance with the national practices in the country where the food is sold. The use of these terms should be consistent with the prohibitions set out in Section 3 [Paragraph 5.1 (iii)].</p> <p>Claims that a food has special characteristics when all such foods have the same characteristics, if this fact is apparent in the claim [Paragraph 5.1 (v)].</p> <p>Claims which highlight the absence or non-addition of particular substances to food may be used provided that they are not misleading and provided that the substance:</p> <ul style="list-style-type: none"> <li>(a) is not subject to specific requirements in any Codex Standard or Guideline;</li> <li>(b) is one which consumers would normally expect to find in the food;</li> <li>(c) has not been substituted by another giving the food equivalent characteristics unless the nature of the substitution is clearly stated with equal prominence; and</li> <li>(d) is one whose presence or addition is permitted in the food [Paragraph 5.1 (vi)].</li> </ul>

**EXTRACTS FROM THE GUIDELINES FOR USE OF NUTRITION CLAIMS**  
**REFERENCE: CAC/GL 23-1997**

<b>Section 5 Nutrient Content Claims</b>	<p>Where a food is by its nature low in or free of the nutrient that is the subject of the claim, the term describing the level of the nutrient should not immediately precede the name of the food but should be in the form “a low (naming the nutrient) food” or “a (naming the nutrient)-free food” [Paragraph 5.2].</p>
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<b>Section 6 Comparative Claims</b>	<p>Comparative claims should be permitted subject to the following conditions and based on the food as sold, taking into account further preparation required for consumption according to the instruction for use on the label:</p> <ul style="list-style-type: none"> <li>• The foods being compared should be different versions of the same food or similar foods. The foods being compared should be clearly identified [Paragraph 6.1].</li> <li>• A statement of the amount of difference in the energy value or nutrient content should be given. The following information should appear in close proximity to the comparative claim: <ul style="list-style-type: none"> <li>○ The amount of difference related to the same quantity, expressed as a percentage, fraction, or an absolute amount. Full details of the comparison should be given [Paragraph 6.2.1].</li> <li>○ The identity of the food(s) to which the food is being compared. The food(s) should be described in such a manner that it (they) can be readily identified by consumers [Paragraph 6.2.2].</li> </ul> </li> </ul>
<b>Section 7 Nutrient Function Claims</b>	<p>Claims relating to the function of a nutrient in the body should be permitted provided the following conditions are fulfilled:</p> <ul style="list-style-type: none"> <li>• The food for which the claim is made should be a significant source of the nutrient in the diet (Paragraph 7.2)</li> <li>• The nutrient function claim should be based on the scientific consensus which is supported by the competent authority [Paragraph 7.3]</li> <li>• The claim should not imply or include any statement to the effect that the nutrient would afford a cure or treatment for or protection from disease [Paragraph 7.4].</li> </ul>
<b>Section 8 Claims Related To Dietary Guidelines Or Healthy Diets</b>	<p>Foods should not be described as “healthy” or be represented in a manner that implies that a food in and of itself will impart health [Paragraph 8.5].</p>

**EXTRACTS FROM THE CODEX GUIDELINES ON NUTRITION LABELLING**  
REFERENCE: CAC/GL 2-1985 (REV. 1 – 1993)

<b>Purpose Of The Guidelines</b>	<p>Includes - To ensure that nutrition labelling does not describe a product or present information about it which is in any way false, misleading, deceptive or insignificant in any manner.</p>
<b>Principles For Nutrition Labelling</b>	<p><b>NUTRIENT DECLARATION</b>  Information supplied should be for the purpose of providing consumers with a suitable profile of nutrients contained in the food and considered to be of nutritional importance. The information should not lead consumers to believe that there is exact quantitative knowledge of what individuals should eat in order to maintain health, but rather to convey an understanding of the quantity of nutrients contained in the product. A more exact quantitative delineation for individuals is not valid because there is no meaningful way in which knowledge about individual requirements can be used in labelling.</p> <p><b>NUTRITION LABELLING</b>  Nutrition labelling should not deliberately imply that a food which carries such labelling has necessarily any nutritional advantage over a food which is not so labelled.</p>

**EXTRACTS FROM THE GENERAL STANDARD FOR THE LABELLING OF AND CLAIMS FOR PREPACKAGED FOODS FOR SPECIAL DIETARY USES**

REFERENCE: CODEX STAN 146-1985

Section 3 General Principles	Prepackaged Foods for Special Dietary Uses shall not be described or presented in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding their character in any respect [Paragraph 3.1].
Section 5.2 Claims	A food which has not been modified (as a food for Special Dietary Uses) but is suitable for use in a particular dietary regimen because of its natural composition, shall not be designated “special dietary” or “special dietetic” or any other equivalent term. However, such a food may bear a statement on the label that “this food is by its nature “X” (“X” refers to the essential distinguishing characteristic), provided that such statement does not mislead the consumer [Paragraph 5.2.3].

**EXTRACT FROM THE CODEX STANDARD FOR “GLUTEN-FREE FOODS”**

REFERENCE: CODEX STAN 118-1981 (AMENDED 1983)

Section 5 Claims	A food which naturally has no gluten may not be called “gluten-free”; however, a cereal or a food product containing a cereal which naturally has no gluten, may be labelled to show that it is naturally free of gluten and is suitable for use in gluten-free diet [Paragraph 5.2].
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**EXTRACTS FROM THE GUIDELINES FOR THE PRODUCTION, PROCESSING, LABELLING AND MARKETING OF ORGANICALLY PRODUCED FOODS**

REFERENCE: GL 32-1999, REV. 1 – 2001

FOREWORD	<p>The aims of these guidelines (amongst other things) are:</p> <ul style="list-style-type: none"> <li>• to protect consumers against deception and fraud in the market place and unsubstantiated product claims; and</li> <li>• to protect producers of organic produce against misrepresentation of other agricultural produce as being organic [Paragraph 2].</li> </ul> <p>For labelling purposes, the use of terms inferring that organic production methods have been used are restricted to products derived from operators under the supervision of a certification body or authority [Paragraph 4].</p>
Section 1 Scope	A product will be regarded as bearing indications referring to organic production methods where, in the labelling or claims, including advertising material or commercial documents, the product, or its ingredients, is described by the terms “organic”, “biodynamic”, “biological”, “ecological”, or words of similar intent including diminutives which, in the country where the product is placed on the market, suggests to the purchaser that the product or its ingredients were obtained according to organic production methods [Paragraph 1.2].
Section 7 Imports	An importing country may require, in order to avoid any confusion to the consumer that the product is labelled in accordance with the labelling requirements applied, in accordance with the provisions of Section 3 (Labelling and Claims), in the importing country for the products concerned [Paragraph 7.4 (c)].

**EXTRACTS FROM THE CODEX GENERAL STANDARD FOR THE LABELLING OF FOOD ADDITIVES WHEN SOLD AS SUCH**

REFERENCE: CODEX STAN 107-1981

<p>Section 3 General Principles</p>	<p>Food additives shall not be described or presented on any label or in any labelling in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding their character in any respect [Paragraph 3.1].</p> <p>Food additives shall not be described or presented on any label or in any labelling by words, pictorial or other devices which refer to or are suggestive, either directly or indirectly, of any other product with which such food additives might be confused, or in such a manner as to lead the purchaser or consumer to suppose that the food additive is connected with or derived from such other product; provided that the term “x flavour” may be used to describe a flavour which is not derived from, but reproduces the flavour of “x” [Paragraph 3.2].</p>
<p>Section 4.1 Details Of The Food Additive</p>	<p>The name of each food additive present shall be given. The name shall be specific and not generic and shall indicate the true nature of the food additive. Where a name has been established for a food additive in a Codex list of additives, that name shall be used. In other cases the common or usual name shall be listed or, where none exists, an appropriate descriptive name shall be used [Paragraph 4.1 (a)].</p>
<p>Section 4.5 Country Of Origin</p>	<p>The country of origin of a food additive shall be declared if its omission is likely to mislead or deceive the consumer [Paragraph 4.5 (a)].</p> <p>When a food additive undergoes processing in a second country which changes its chemical or physical nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling [Paragraph 4.5 (b)].</p>
<p>Section 8 Optional Labelling</p>	<p>Any information or pictorial device may be displayed in labelling provided that it is not in conflict with the mandatory requirement nor would mislead or deceive the consumer in any way whatsoever in respect of the food additive [Paragraph 8.1].</p>

**Conclusion**

On the basis of information gathered through consultation with participants to CCFL in 2002, it would be premature to attempt to draft principles with regard to management of misleading communication and food labels for the 31<sup>st</sup> CCFL session. The Working Group acknowledges that it is important for Codex to continue this work in order to elaborate appropriate approaches to prevent misleading communication with regard to food. Future work should involve further examination of relevant sections of existing Codex labelling standards and guidelines designed to prevent misleading communication, particularly communication that is truthful but misleading. It is anticipated that an expanded array of claims about food will emerge over time with continued developments in the food sector, particularly in the emerging area of “functional foods”. The Working Group expects misleading communication to increasingly be an issue for consideration by Codex in the future.