

codex alimentarius commission



FOOD AND AGRICULTURE
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Agenda Item 10

CX/FL 04/10

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON FOOD LABELLING

Thirty-second Session

Montréal, Canada, 10 – 14 May 2004

DISCUSSION PAPER ON MISLEADING CLAIMS

REPORT OF THE WORKING GROUP ON MISLEADING LABELLING

SUMMARY

The Working Group considers that whilst truthful but potentially misleading labelling is problematic and is likely to become more evident with greater sophistication in consumer demand for information, the capacity to progress this discussion objectively ahead of the resolution of some of the issues on the CCFL agenda is limited. It therefore recommends to the CCFL that it retain a watching brief on the issue and reconsiders its approach to truthful but misleading labelling once some of the outstanding labelling issues are resolved.

1. In 2002, the Codex Committee on Food Labelling agreed to establish an electronic working party, chaired by Australia and comprising representatives from Brazil, Canada, Norway, United Kingdom, United States, Consumers International and the International Association of Consumer Food Organisations to examine the issue of misleading food labelling. This followed consideration of the discussion document on misleading labelling prepared by the USA (with assistance from academics from the American University and others) (CX/FL 02/12).
2. The US discussion paper identified three broad types of communication to consumers from food labels:
 - Truthful and non-misleading
 - False
 - Truthful but misleading
3. For this latter category (truthful but misleading), the paper went on to identify five general categories of misleading communications where the information presented on the label could be truthful yet mislead consumers. These were briefly elaborated in the document and included:
 - a) Omission of material fact - A communication is misleading because a material fact has been omitted.
 - b) Confusion-based misleadingness – A communication is misleading because of confusing language, symbols, or images.
 - c) 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.
 - d) 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.

- e) Source-based misleadingness – An endorsement by an organisation or individual(s) leads to misleading inferences.
4. The paper also argued that cultural factors and other contextual issues greatly influenced interpretation of what was considered misleading with different views between different countries and even among different community sectors within a country. What may be considered a ‘material fact’ for some may be an irrelevant consideration for others. This makes developing objective measures to manage misleading labelling that could be reflected in standards difficult where there is no agreed consensus understanding.
 5. The working group reported to the Food Labelling Committee in 2003 (CX/FL 03/14). This report reflected analyses of a number of examples of what were considered misleading labelling drawn from members of the CCFL, and provided an initial analysis of the Codex labelling texts that addressed misleading labelling. The analysis of examples reaffirmed the observation in the US discussion document regarding the importance of cultural and other factors in the determination of misleading labelling.
 6. Following discussion by the Committee in 2003, and despite concerns and objections raised by some delegates, the Committee agreed to allow further consideration of the issue ahead of a decision at the meeting in 2004 on whether this issue should be added to the Food Labelling workplan.
 7. The working group held an informal discussion with CCFL delegates at the Codex Food Labelling meeting in 2003, and elicited a number of additional examples, all of which were variants of examples previously presented in the working group report.
 8. Two options for progressing the matter were identified: further elaboration of the framework and examination of the types of misleading communications as outlined in the US discussion paper; or critical examination of existing Codex labelling texts to determine where these did not adequately respond to and manage misleading communications.
 9. It is clear that the Codex labelling texts have sought to ensure that all labelling is truthful and non-misleading, with both general provisions and ‘principle’ statements and with specific requirements where practical problems were identified.
 10. For example, the Codex General Standard for the Labelling of Prepackaged Foods includes in Section 3 General Principles:
*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, emphasis added].
 11. This phrase is repeated, with minor variation at the start of other labelling standards and guidelines and has generally been accepted by the CCFL as an overarching principle in ensuring truthful labelling.
 12. In subsequent text in the general standard, more specific labelling requirements are added where the potential for deception has been identified (see CX/FL 03/14). On analyses, these texts address issues that could be described as addressing the following categories of misleading communications (omission of material fact; confusion-based misleadingness; same-attribute misleadingness; and different-attribute misleadingness). Source-based misleadingness appears to be addressed predominantly in the overarching principle statement.
 13. The key question remains whether the existing Codex Labelling texts adequately address misleading labelling.
 14. The working group noted two factors that would impact on such an assessment. In many member countries, labelling requirements may vary in part or in detail from the adopted Codex texts and this can be a significant source of variation in the determination of the degree of misleadingness in labelling, and its analysis against Codex requirements. In addition, the working group recognised that in each member country, food standards operate within an enabling legislative framework, and that this framework may

have an impact on the interpretation and implementation of the standards themselves. For some countries, the legislative obligation for truthful labelling are in such enabling legislation and provides a significant adjunct to the standard itself for both interpretation and enforcement of the requirements as regards misleading labelling. This is less clear in other circumstances and this variability adds a further degree of complexity in the examination of misleading labelling.

15. An analysis of the examples presented in the previous report of the Working Group (CX/FL 03/14) shows that the majority of case studies can be related to existing provisions in Codex labelling texts (see Table 1 below).

Table 1: Case-studies submitted and categorised (refer CX/FL 03/14) against the five different types of misleading labelling identified in CX/FL 02/12 [Prepared by Norway for the Working Group on Misleading Food Labels]

Type of communication	Case study submitted	Codex standard or guideline that could be addressed
1. 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).	General standard for the labelling of prepackaged foods 4.5.2
	Flavoured mineral water labelled as containing fluoride but failing to declare the product also contains sugar (Czech Republic via Consumers International).	General Standard for the labelling of prepackaged foods 4.2.1.2
	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)	The General Standard for the labelling of prepackaged foods 4.2.1.2 and The General standard on claims 5.1.iii
	Beef retailed in regional supermarkets poorly labelled re place of origin of the cattle (Australia).	General Standard for the labelling of prepackaged foods 4.5
	Juice containing 15% imported juice concentrate labelled as 'locally squeezed' (Australia)	General standard for the labelling of prepackaged foods 4.5.2
	Imported olives marinated in local and imported ingredients failing to declare true country of origin (Australia).	General standard for the labelling of prepackaged foods 4.5.2
	Strawberry yoghurt products containing imported strawberries labelled as local product (Australia)	General standard for the labelling of prepackaged foods 4.5.2
	Confectionery labelled '100% Australian owned' when the company had a parent US based company (Australia).	General standard for the labelling of prepackaged foods 3.1
	Fish labelled as caught in Australian waters failing to declare that it is also caught outside Australian waters (Australia).	General standard for the labelling of prepackaged foods 3.1

2. Confusion-based misleadingness [N=16 case studies of differing nature, difficult to group into any one class. Some submitters suggesting similar examples belong in different classes]	Product called ‘Burgere’, a slang word for hamburger (Norway).	General Standard for the labelling of prepackaged foods 4.1.1.3
	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).	General Standard for the labelling of prepackaged foods 3.1, 5.1
	Typical cases where label information misrepresents the place or country of origin of the product (Denmark).	General Standard for the labelling of prepackaged foods 4.5
	Ingredients listed in Chinese and English where the information contained in the two lists differs (Hong Kong via Consumers International).	General Standard for the labelling of prepackaged foods 8.2.2
	Reconstituted juice labelled as 100% juice (Consumers International).	General Standard for the labelling of prepackaged foods 4.1.2 Such issues are also addressed in other official standards such as Codex Standard for orange juice 45-1981 section 6.1.2.2
	‘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).	Guidelines for use of nutrition claims 6.4
	Artificial additives labelled either by the name of the additive or E+ number, or grouping substances as ‘flavouring’ (Sweden via Consumers International).	General Standard for the labelling of prepackaged foods 4.2.2.3
	‘Organic margarine’ (Sweden via Consumers International).	
	Cooking oil claiming ‘cholesterol free’, ‘zero cholesterol’ or ‘nutritious’ (India via Consumers International).	The General standard on claims 5.2 (vi)
	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).	Such issues may be addressed in other official standards such as Codex Standard for orange juice 45-1981, section 6.1.2.2
	Juice label with true-to-life graphics of cherries and berries containing 98% apple juice (Australia).	General Standard for the labelling of prepackaged foods 3.2
	Muesli bars labelled ‘makes you healthy’. Ambiguous claims of questionable meaning to the consumer (Australia).	The General standard on claims 3.3
	Apricot jam with the first ingredient pear (Australia).	General Standard for the labelling of prepackaged foods 4.1, 3.1

	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).	General Standard for the labelling of prepackaged foods 4.1
	Frozen fruit product labelled 'no added sugar' failing to declare the intrinsic sugar content of the product (Australia).	General Standard for the labelling of prepackaged foods 3.1 Codex guidelines on nutrition labelling 3.2.2
	Product called 'Fresh Premium Orange Juice' that contained reconstituted juice and preservatives (Australia).	General Standard for the labelling of prepackaged foods 4.1.2 Such issues may also be addressed in other official standards such as Codex Standard for orange juice 45-1981, section 6.1.2.2
3. Same-attribute misleadingness [N=6 case studies]	'Transfree' margarine (Norway).	General guidelines on claims 3.5
	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).	General Standard for the labelling of prepackaged foods 3.1, 5.1
	Iodised salt labelled 'low magnesium'. Other products with no claim were found to have lower magnesium levels (India via Consumers International).	General guidelines on claims 3.3
	'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).	General Standard for the labelling of prepackaged foods 3.1
	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).	Guidelines on health claims are under construction in the CCFL.
	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).	Codex guidelines on nutrition labelling 5.1 and table of conditions for nutrient contents
4. Different-attribute misleadingness [N=1]	Fish product labelled in different languages (Norway).	General Standard for the labelling of prepackaged foods 8.2
5. Source-based misleadingness [N=4]	An illegal pesticide found in an organic product (Norway).	Guidelines for production, processing, labelling and marketing of organically produced foods: annex 2 table 2.

	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).	Codex general guidelines on claims 3.3
	‘Green Spoon’ sign of quality awarded to products with 75% domestic grown food content (Latvia via Consumers International).	

16. Many of the examples in Table 1 may be considered to be in conflict with the existing Codex labelling text requirements, and if so would be readily classified as non-compliant and therefore misleading. Some, particularly examples that reflect country of origin labelling, are consistent with Codex labelling requirements, yet are considered misleading because of changed consumer expectations in some member countries.
17. The increasing sophistication of consumer expectations for adequate and truthful information for informed choice in food purchases is a significant market factor in many member countries. This is impacting on the sophistication of labelling statements and messages, increasing the potential for misleading labelling. This is more problematic where consumer expectations provide a clear marketing advantage in certain representations on foods.
18. In conclusion, the working group considers that whilst such misleading labelling is problematic and is likely to become more evident with greater sophistication in consumer demand for information, the capacity to progress this discussion objectively ahead of the resolution of some of the issues on the CCFL agenda is limited. It therefore recommends to the CCFL that it retain a watching brief on the issue and reconsiders its approach to once some of the outstanding labelling issues are resolved.