

Representations About Food

User guide

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Background

In this user guide, the ‘old Code’ means Volume 1 of the *Food Standards Code* (the *Australian Food Standards Code*). The ‘new Code’ means Volume 2 of the *Food Standards Code* (the *Australia New Zealand Food Standards Code*). The ‘New Zealand regulations’ means the *New Zealand Food Regulations 1984*.

In adopting the new Code in November 2000, the Ministerial Council agreed to a two-year transition period. After this, the new Code will replace both the old Code and the New Zealand regulations.

During this two-year phase-in period, foods in Australia may comply with either the old Code or the new Code (but not a combination of these). In New Zealand, foods may comply with the old Code or the new Code or the New Zealand regulations (but not a combination of these).

It is anticipated that both the old Code and the New Zealand regulations will be repealed in December 2002, and then all food sold in Australia and New Zealand will have to comply with the new Code.

The new Code will mean changes in the way manufacturers and retailers make and present food for sale.

Food Standards Australia New Zealand has developed this user guide, in consultation with Australian and New Zealand government and industry representatives. It provides manufacturers, retailers and food officers with collated information from the standards in the new Code that are relevant to representations about food. The guide also provides additional information to that contained in those standards.

This user guide, unlike the standards themselves, is not legally binding. If in any doubt about interpreting the standards, you should seek independent legal advice.

As well as complying with food standards requirements, you must also continue to comply with other legislation. In Australia, this legislation includes the *Trade Practices Act 1974*, the *Imported Food Control Act 1992* and the various State and Territory Fair Trading Acts and Food Acts. In New Zealand, this legislation includes the *Food Act 1981* and *Fair Trading Act 1986*.

Purpose

This guide is intended to provide advice on voluntary representations about food, and to provide broad, non-definitive assistance for manufacturers considering the inclusion of voluntary representations as part of the marketing of their products.

The representations about food must be consistent with the mandatory requirements for labelling within the *Food Standards Code*, which need to appear on the food package. This includes the Standards within Part 1.2 - Labelling and other Information Requirements. In particular attention should be given to:

- Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations;
- Standard 1.2.4 – Labelling of Ingredients;
- Standard 1.2.8 – Nutrition Information Requirements;

Standard 1.2.10 – Characterising Ingredients and Components of Food;
Standard 1.5.2 – Food Produced Using Gene Technology;
Standard 1.5.3 – Food Irradiation;
Standard 2.2.1 – Meat and Meat Products;
Standard 2.2.3 – Fish and Fish Products;
Standard 2.6.3 – Kava; and
Standard 2.6.4 – Formulated Caffeinated Beverages.

This guide is not intended to be, nor will it become, a replacement for trade practices and/or fair trading legislation or indicators of precisely when a representation is or is not false, misleading or deceptive, or likely to be misleading or deceptive.

It is not a guide to the mandatory food labelling requirements contained in the new Code. These are covered by several other Food Standards Australia New Zealand user guides (see *Where can I get more information?*).

What has changed?

In line with Council of Australian Governments policies and also New Zealand regulatory policy, one of the principles in developing the new Code was to avoid the unnecessary duplication of existing legislation. Furthermore, it was a fundamental principle of the *Final Report of the Policy Review* (National Food Authority, 1993) that foods, where possible, should be regulated in a consistent manner. In the case of representations about food it was determined that the provisions of the existing old Code, as they related to representations about foods, were arbitrary and inappropriate. Further, it was considered that there were adequate existing provisions in the Commonwealth *Trade Practices Act 1974* and the various State, Territory and New Zealand Food Acts and Fair Trading Acts regulating representations about all food products. For these reasons it was decided that the few outdated provisions in the old Code regulating representations about food were unnecessary and any such representations about food should be regulated by the provisions in the Commonwealth *Trade Practices Act 1974* and the various State, Territory and New Zealand Food Acts and Fair Trading Acts.

The key point in considering representational issues was that the provisions relating to false representations, misleading or deceptive conduct or conduct likely to mislead or deceive in the Commonwealth *Trade Practices Act 1974* and the various State, Territory and New Zealand Food Acts and Fair Trading Acts provided the most appropriate means of regulating representations concerning food. Food Standards Australia New Zealand considered that consumers' interests were better protected by considering the overall representation of a food product, rather than developing standards that regulated specific representational issues concerning particular foods. For example, Food Standards Australia New Zealand could not see how the interests of consumers were furthered by retaining a provision such as subclause 3(3) in Standard O4 – Soft Drinks and Soft Drink Products which has the effect of specifically prohibiting representations (whether by expression or by picture) that soft drinks contains fruit juice when in fact they do not. For this reason, it was decided that the best means of protecting the interests of consumers was to rely on the provisions relating to false representations, misleading or deceptive conduct.

What is representation?

For the purposes of the Code, representation is any statement or impression made or implied about a product.

The law allows manufacturers to make voluntary representations about their products as long as the representations are not false, misleading or deceptive or likely to be misleading or deceptive to consumers.

A representation includes:

- any particular claim made in writing or verbally;
- any advertising associated with the representation; and
- any important facts that manufacturers have left out.

If manufacturers make a representation about their product then they should be able to substantiate it if required by a court of law.

When assessing whether a representation is unlawful, consideration must be given to the overall impression it creates. Therefore, manufacturers need to ask themselves if the representation about their product could send a message that creates or could create the wrong idea in the minds of others.

The competitors of manufacturers may also take action on unlawful representations.

Representations about food

A representation about food is anything that sends a message to someone about a food whether stated or implied.

The following elements can contribute to a representation about food:

- the food itself (e.g. what a food itself looks like);
- advertising in newspapers, magazines, television, radio;
- the label of a food;
- particular aspects of the packaging and display of a food; and
- verbal statements made about a food.

The prospective consumer

It is unlawful to mislead or deceive or likely to mislead or deceive *any* consumer—not only the majority of consumers.

Consumers include those who:

- have little or no knowledge of food technology or food law;
- are typical members of the community in terms of their age, education, experience and sophistication; and
- will not read all the labelling of every food product, or every time they buy the same product.

Misleading consumers includes:

- lying to them;
- leading them to a wrong conclusion;
- creating a false impression;
- leaving out (or hiding) important material information; and
- making false or inaccurate claims.

Manufacturers should:

- not assume that consumers have any special knowledge or ability;
- not rely on compliance with the *Food Standards Code* as the *only* requirements that apply;
- be aware that complying with specific requirements in the *Food Standards Code* may mean that extra information may need to be provided;
- be aware that compliance with the relevant food standard does not necessarily mean compliance with the Australian *Trade Practices Act 1974* or the New Zealand *Fair Trading Act 1986*; and
- recognise that consumers make understandable but incorrect assumptions that manufacturers may need to correct.

It is not necessary to prove that a manufacturer deliberately intended to mislead or deceive consumers. It is only necessary to prove that consumers *were* misled or deceived or *could* have been misled or deceived.

Whether there is a legal breach depends on the overall impression created in the minds of the target audience (consumers). The manufacturer must consider what consumers would think and not assume that consumers would have special knowledge or insight.

The failure to make any mention of a particular matter can also mislead. If an important element is not stated, consumers may be induced to act on the basis of ignorance.

Food Legislation

Australian State and Territory and New Zealand food legislation contain provisions which, in general terms, make it an offence to pack, label or advertise a food in a manner which is false, misleading or deceptive. Public health officers in their respective jurisdictions enforce these provisions. Food that is not safe or suitable is illegal to sell and breaches the State and Territory Food Acts.

The following examples (not considered an exhaustive list) of expressed or implied conduct is considered to be false, misleading or deceptive for the purposes of the State and Territory and New Zealand Food Acts:

- A description of the food that conceals or omits the fact that the food is of a particular class, quality or description which it is not (for example selling day old bread where it is assumed to be fresh).
- A description of the food that represents the food as being of a particular class, quality or description which it is not.
- The food contains, or is mixed or diluted with a substance in a quantity that significantly diminishes its food value or nutritive properties as compared with the food it is represented to be.
- The food contains, or is mixed or diluted with a substance of lower commercial value than the food it is represented to be.
- A constituent of the food is wholly or partly removed so that its properties as compared with the food it is represented to be are diminished.
- The food is expressly or represented to imply it is of a particular description for which there is a standard in the *Food Standards Code* and it does not comply with that standard.

- The food, in a package or attached to a label, is wholly or partly removed and substituted with another substance.
- Advertisements that create an untrue or misleading impression (which is intended or unintended) in the mind of a reasonable reader, listener or viewer-even if every particular of the advertisement is true.
- Falsely representing compliance with a provision of the food hygiene standards.

Other Legislation

The Australian *Trade Practices Act 1974*, State and Territory Fair Trading Acts and the New Zealand *Fair Trading Act 1986* state that a person, manufacturer or vendor must not engage in misleading or deceptive conduct or conduct likely to mislead or deceive.

Provisions in this legislation also make it an offence to make certain false or misleading representations about goods including representations relating to the standard, quality, grade, composition, use or benefit and country or place of origin.

These laws are enforced by the Australian Competition and Consumer Commission (ACCC), the consumer affairs bureaus in each State and Territory, and by the New Zealand Commerce Commission respectively.

Food Standards Australia New Zealand is not an enforcement agency and does not have enforcement powers. Manufacturers should consult respective enforcement agencies if they are interested in the enforcement policies of these agencies. Food Standards Australia New Zealand does not dictate the enforcement policies or priorities of enforcement agencies.

Manufacturers should also be aware that consumers or competitors may also take action if they believe that a manufacturer could be misleading or deceiving consumers or engaging in conduct likely to mislead or deceive consumers.

Qualification of a representation

A manufacturer may choose to put an initial representation into context by providing additional information to help the interpretation of an initial representation.

This ‘qualification’ of an initial representation can create the correct ‘overall impression’ about a product. However, there are dangers in this approach particularly when the main selling point for a product may make such a strong impression that no amount of qualification can dispel it. Manufacturers should note that the only risk-free representation is one that does not require qualification and creates the correct overall impression about the food in the consumer’s mind.

This means that:

- qualifiers should be bold, precise and as compelling as the body of the initial representation;
- consumers cannot be expected to search for the facts about a representation;
- manufacturers should note that relying on the ingredient list alone for qualifying information may not be sufficient; and
- qualifiers should be accurate and clear so that it can be understood in the same way as the initial representation.

Some advertising mediums—such as television or billboards—may not be suitable to convey complex representations. The better options for conveying these representations may include careful print advertising and the use of well-drafted brochures and fully informed sales people.

Complaints and avoiding problems

Food Standards Australia New Zealand and enforcement agencies regularly receive complaints from consumers regarding representations about food products. Depending on the nature of the complaint, consumers may be encouraged to contact the manufacturer in the first instance. This means that manufacturers will have an opportunity to ‘put it right’ and should not overlook the benefits that can result from listening to complaints. Complaints can:

- identify problems;
- give manufacturers an idea of how their consumers think and give them feedback; and
- allow manufacturers to correct problems and minimise losses to competitors or action by enforcement agencies.

Complaints are also a chance to turn dissatisfied consumers into satisfied consumers and create long-term buyer loyalty. Therefore, manufacturers should have a complaints handling system that is effective and easy for consumers to use.

For further information, Standards Australia has a *Standard on Complaints Handling* (AS 4269) which details what is needed for an effective complaint handling system.

Substantiation

Ensure all representations can be substantiated.

Do not make representations based on opinions unless you know they are true, and you have some supporting evidence.

It is the responsibility of manufacturers to decide what substantiation is necessary for a particular representation. Options include, analytical determinations and written records of facts.

Specific representations

Pictorial representations

Pictorial representations include logos, stylised flags, emblems, symbols, photos, designs or drawings that may be used in a label or in the advertising of a food product.

Pictures can be easily misinterpreted

Manufacturers need to ensure that their pictorial representations do not give a misleading overall impression about their products.

The things to be considered by manufacturers using pictorial representations include:

- A manufacturer should not give a pictorial representation that an insignificant ingredient is present in significant amounts; or that a significant ingredient is not present or present in insignificant amounts.

For example, when making pictorial representations about a fruit juice product which contains a mixture of a small amount of raspberry juice (1%) and a large amount of apple juice (99%), the manufacturer must determine if a picture of a raspberry is appropriate, especially given the small amount of raspberry juice in the product. It may be better to avoid raspberry pictures and instead represent the product as ‘apple juice with a dash of raspberry’.

If the manufacturer proceeds with the picture of a raspberry on the label, the manufacturer must ensure that the presence of apple juice is obvious to consumers and that consumers are also aware that the product is mainly apple juice with a little raspberry juice present. The manufacturer must do this so that the picture of one ingredient does not imply the absence of another important ingredient.

- Food labels may include pictures that are not foods or ingredients but which may imply the presence of foods or ingredients related to the pictures, or imply an origin to the food.

For example, a picture of a cow on a package of milk does not imply that the package contains a cow but that the food is a dairy food or contains milk or milk constituents from a cow. Likewise, shortbread packaged in a box with tartan may suggest that the shortbread is Scottish in origin. Manufacturers must think carefully about how consumers will interpret the pictures.

- Many foods are flavoured either with flavourings or with small amounts of foods. If the flavouring of an ingredient has been added and a picture of the ingredient is used by a manufacturer, then the manufacturer must ensure that the consumer can determine that a flavouring of the ingredient has been added and not the actual ingredient.
For example, a manufacturer may market a soft drink product containing orange flavouring and place pictures of oranges on the label. The manufacturer must ensure that the consumer understands that orange flavouring has been added. This becomes complicated when both flavouring and the ingredient itself have been added, e.g. orange flavouring and orange juice. However, the principle is the same—manufacturers must ensure that consumers are not misled about the nature of the ingredients.
- A pictorial representation may demonstrate the use or serving suggestion of a food. This can be useful information for consumers and useful for marketing the food, providing the label does not mislead consumers into thinking that the foods illustrated are contained in the product.

To avoid this confusion, the pictorial representations for the purposes of demonstrating the use or serving suggestion of a food should be clear that the pictorials are for demonstration purposes only and that the pictorials are not representing the ingredients of the food.

Placing the words ‘serving suggestion’ in the bottom corner of a label or near the picture will not always be seen or recognised by consumers as a serving suggestion for a food. It needs to be clear that the pictorials are demonstrating the use or serving suggestion of a food. A means of achieving this would be for pictorials to include;

- other foods with which the food is to be eaten (e.g. milk to be added to breakfast cereal); or
- utensils used to serve or consume the food (e.g. pictures of the food on plates).

Advertising

The same guidelines that apply to pictorial representations on labels also apply to advertisements for food.

The advertising must not give a misleading or deceptive overall impression about the food being advertised. Manufacturers must look at the overall impression created by the advertisement and be sure that the prospective consumer is not likely to be misled or deceived.

It is critical that the way in which a representation is made is appropriate to the particular media used. Complex representations about food are not appropriate for short 'grabs' on television. Similarly, representations with a strong reliance on visual cues for accuracy are not appropriate for radio.

The naming and representation of a food

In representing a food to consumers, manufacturers must make sure that the name of the food *and* the overall impression of the food is consistent with the nature of the food i.e. the food is what it says it is and the food is what it looks like.

The *Food Standards Code* has some specific sections that relate to the name or description of food that appears on labels. This is also discussed in the user guide, Overview of Food Labelling. The names of food or ingredients should be sufficiently detailed and accurate to ensure they are not false, misleading or deceptive, or likely to mislead or deceive.

Clause 1 of Standard 1.2.2 – Food Identification Requirements includes the requirements for naming food.

Clause 4 of Standard 1.2.4 – Labelling of Ingredients includes the requirements for naming ingredients.

The following are some guidelines that manufacturers can use to ensure that the name of the food and its overall impression are consistent with the nature of the food.

Blended foods

Foods may be named and represented as mixtures or blends. This means that general names for foods may be used but manufacturers should not mislead consumers by:

- representing a food as a blend when it is not. For example, representing a bottle of soybean oil as 'blended vegetable oil'; or
- representing a blended food as a single component food. For example, representing a bottle of olive oil and soybean oil as 'olive oil'.

There are no prescribed words for describing a blended food or mixtures of foods. However, manufacturers should choose words that consumers would be familiar with. For example, one would not describe a mixture of nuts as 'blended nuts' when a more useful expression may be 'mixed nuts', nor would one describe a pie that only contains pumpkin as a vegetable pie. Ultimately, it is the manufacturers' responsibility to make the right representation.

Placement of the name: Manufacturers should properly and accurately represent their products to consumers so that consumers can quickly and easily identify the food.

Providing more information can be better than less information: Some consumers want particular products. For example, if a manufacturer markets a product as 'soybean cooking oil' then consumers of both cooking oil and soybean oil can identify and possibly purchase

the product, whereas only purchasers of cooking oil are likely to buy a product represented as simply ‘cooking oil’.

Generally, manufacturers should aim to represent a food with the specific source of origin. For example, ‘apple juice’ instead of ‘fruit juice’. At the same time, manufacturers need not go as far as to say ‘granny smith apple juice’, although there is nothing to prevent more information being provided as long as the information is not false, misleading or deceptive to consumers.

Manufacturers should be satisfied that the use of a general term is accurate and not likely to mislead or deceive consumers: For example, ‘tropical fruit juice’ should contain significant amounts of the juice of tropical fruits.

Proportion of ingredients

If the name of more than one ingredient is included in the name of the food then it is good practice to list the ingredients in descending order of their proportion in the product (e.g. ‘orange and mango juice’. This indicates there is more orange than mango juice in the product. Conversely, ‘mango and orange juice’ indicates there is more mango juice than orange juice). In accordance with Standard 1.2.10 this product would require a percentage labelling declaration listing the ingredients in order of descending ingredients on the label.

Where the name of the food is a common name, which is widely understood and does not misrepresent the food, then it is appropriate that this common name be used even though the name may not accurately reflect the proportion of ingredients (e.g. chocolate chip ice cream, steak and kidney pie). Consumers are likely to be more familiar with these common names rather than ‘ice cream with chocolate chip’ or ‘kidney and steak pie’. While this is the case, **manufacturers should still be satisfied that consumers would get the correct overall impression about their products.** Manufacturers should also be aware that, just because an expression or representation may have been used for many years, this does not mean that the term is not misleading or deceptive.

The name of a food should only include words to describe major ingredients of the product and not draw attention to minor ingredients unless:

- the major ingredients are also included in the name; or
- the minor ingredients are characterising ingredients (see *Characterising ingredients*).

For example, if a fruit juice is a blend of apple (80%), strawberry (15%) and mango (5%), it would be misleading to name the juice ‘apple and mango juice’ because attention would be drawn to a minor constituent without naming a constituent that is present at higher levels. The product could be called ‘apple, strawberry and mango juice’ or even ‘blended fruit juice’. Again the name and representation of the product would trigger a percentage labelling requirement under Standard 1.2.10 to list the ingredients in their descending order.

Nature of ingredients

The name and representation of the food should accurately reflect the ingredients. For example, a product called a ‘fish pattie’ or ‘fish burger’ would need to satisfy Standard 2.2.3 - Fish and Fish Products to be able to use the word (or representation of) ‘fish’.

Characterising ingredients

Characterising ingredients and characterising components are defined in Standard 1.2.10 – Characterising Ingredients and Components in Food. A detailed explanation of these terms is contained in the user guide on percentage labelling.

Reference to flavourings

Manufacturers must ensure that consumers can determine if the flavouring of an ingredient has been added to a food and not only the particular ingredient.

Where the name of a food includes the name of an ingredient and a flavouring of that ingredient has been added, then the name of the food should indicate the presence of the flavouring where its omission would mislead or deceive consumers.

Manufacturers may inform consumers that a flavouring has been added to an ingredient in a number of ways.

- They may clearly name the food as a flavoured food.
- Clear statements may be included, such as ‘with added flavouring’. Such statements can be positively worded as long as the positive statements are not false, misleading or deceptive, e.g. ‘with natural strawberry flavouring’.

The manufacturer must send the message that a flavouring has been added if the omission of this information could mislead or deceive consumers.

Sometimes the nature of a food means that it may be obvious that a flavouring has been added, e.g. strawberry bubblegum, vanilla ice cream. In these situations, a manufacturer must remember that consumers will not necessarily know as much about the food as the manufacturer does. **The manufacturer must be satisfied that consumers can quickly and easily understand that the food in question is a flavoured food.**

Imitation ingredients

Where the name of a food includes the name of an ingredient and an imitation version of that ingredient has been added, then the name of the food should indicate the presence of the imitation ingredient where its omission would mislead or deceive consumers. For example, a cherry pie made from imitation cherries would need to be named and labelled so that consumers can discern that the pie is made from imitation cherries rather than typical cherries.

Where the food contains a mixture of imitation and typical ingredients then the name and representation of the food should be such that consumers can discern that imitation ingredients have been used. For example, a pie containing imitation cherries and cherries could be named or represented as ‘imitation cherry pie with natural cherries’.

Even where imitation ingredients or foods are not referred to in the name of a food, it may still be necessary for manufacturers to be clear as to the presence of imitation ingredients. For example, a ‘fruit muffin’ may have pictures of blueberries in the label and may send the message to consumers that the product contains actual blueberries. If the product contains imitation blueberries then the manufacturer must make sure that consumers can quickly and easily determine this.

The name to identify the source of ingredients

Where the name of a food includes the name of an ingredient then the source of this ingredient or of the food should be included in the name of the food where the omission of this source would mislead or deceive consumers.

If the source is one that consumers would not expect to be the source of the food or of the particular ingredients then the source should be stated clearly and noticeably.

The word ‘source’ should be interpreted broadly to include references to geographical/country/place of origin sources (e.g. ‘Bowen tomatoes’ or ‘Ohakune carrots’), nature of the food or ingredient (e.g. ‘goat’s milk’). Some other examples of foods where the source is important include: ‘duck eggs’, ‘soy milk’, ‘tuna steak’, ‘crocodile meat’, and ‘vegie burger’. It is relevant to note the difference between source and style (for example ‘Mediterranean Style Tomato Soup’, would indicate it is a Mediterranean style while ‘Mediterranean Tomato Soup’ may imply the tomatoes are sourced from the Mediterranean.). This is discussed further under the “Imitation and ‘style’ products” heading later in the user guide.

When manufacturers state the source, they must be sure that the food is from that source and that it is only from that source. For example, a ‘beef sausage’ must be a sausage containing only beef as the meat component. If the sausage contains other meats then this must be clear to the consumer and it may be better to represent the sausage as a ‘beef and lamb sausage’, ‘beef and mutton sausage’ or ‘mutton and beef sausage’.

When referring to foods from multiple sources, it is important for manufacturers to make sure that proper emphasis is placed on these different sources. For example, a ‘beef and mutton sausage’ containing mostly mutton is likely to be misleading. A better representation may be ‘mutton sausage with added beef’.

The name to identify the physical form of the food

Foods may be prepared and sold in a variety of forms and the physical form of a food should be clear and obvious where the omission of this declaration could mislead the consumer.

For example, a package of concentrated orange juice would need to be represented as ‘concentrated orange juice’ because the omission of the word ‘concentrated’ would mislead the consumer about the true nature of the food.

It is also appropriate for other significant information to be clearly represented, e.g. ‘whole peaches in sugar syrup’, ‘halved apricots in pear juice’, ‘tuna chunks in brine’ and ‘cod fillets in canola oil’. The representations for ‘whole peaches in sugar syrup’ and ‘halved apricots in pear juice’ may be aided by pictorial representations provided they are accurate and not deceptive.

Occasionally, food that has been frozen is sold as a thawed product (e.g. seafood, bread). Sometimes there may be potential for the consumer to believe that the thawed food is a ‘fresh’ product when in fact the food has been frozen and then thawed. To avoid misleading consumers, food that has been frozen and then thawed must not be represented as fresh. Where it is not possible for the name to indicate this because of practical difficulties (e.g.

unpackaged food) then notices near the food should indicate that the food has been previously frozen and then thawed.

Manufacturers need to take into account the types of reasonable assumptions that consumers may make. If these assumptions are not correct then manufacturers must provide the information to ensure correct assumptions are made.

Other examples of the physical form of food which may need to be part of the name and/or representation of a food include, 'powdered', 'unpeeled', 'whole', 'carbonated', 'sparkling', 'diced', 'grated', 'shredded', 'formed' and 'minced'.

Occasionally, certain ingredients may have been in a particular form when added to a food and this may need to be made obvious in the representation of the food itself (e.g. 'orange juice with sparkling mineral water', 'peas with diced carrots'). However, manufacturers need to be careful to ensure that they do not mislead or deceive consumers by providing this information. For example, 'diced carrots and baby potatoes' may send the message to consumers that the product is a mixture of diced carrots and diced baby potatoes when the product is a mixture of diced carrots and whole baby potatoes. While the implications of this example may not be serious, it does demonstrate how words can be misinterpreted.

Manufacturers need to consider how consumers might interpret/misinterpret a representation.

There are some situations where the declaration of the physical state of the food would be superfluous. For example, frozen vegetables in the freezer cabinet at the supermarket. It would be evident that the vegetables are frozen as they are in the freezer cabinet and therefore declaring the fact that they are frozen would not be necessary. A further example of a situation of where the indication of the physical form is likely to be unnecessary would be freeze dried milk powder in a clear package. It is likely to be evident that the product is dried and it is questionable whether there would be a need to declare the physical form of the food. However, if the freeze dried milk powder were in a steel can then the state of the food would not be obvious and the representation of the food may need to declare the state of the food (for example 'dried milk powder' or 'milk powder'). **Manufacturers need to consider the overall impression created and take into account the obvious assumptions that consumers might or would make.**

The name to identify special treatments the food has received

Food that has undergone a specific treatment should have this treatment declared where its omission could mislead or deceive the consumer. For example, food treated with smoke, as distinct from food with smoke flavouring, would need to have the word 'smoked' declared (for example 'smoked trout' compared to 'smoke flavoured trout'). Other examples of specific treatments which may need to be part of the name or representation of a food include 'pasteurised', 'sterilised', 'homogenised', 'waxed', 'carbonated', 'heat-treated', 'fermented', 'marinated' and 'treated with enzymes'.

If the name of a food includes the name of an ingredient which has received a special treatment then the name of the food should indicate this treatment if consumers could be misled by its omission for example 'cheese dip with smoked salmon'. In declaring this information, **manufacturers must ensure that they do not accidentally mislead or deceive consumers.** For example, 'smoked cheese and salmon dip' is unclear as to whether only the cheese is smoked or whether both the cheese and salmon are smoked. **Manufacturers should**

avoid representations that are unclear. Some foods, which usually receive particular treatments, are sometimes sold without this treatment. For example, most milk is homogenised. If a large proportion of consumers in a particular region understood that milk was an homogenised product then there would be an argument for not specifically declaring that milk has been ‘homogenised’. However, there is potential for consumers to be misled or deceived by the omission of this information where the use of this treatment is not always known. In this situation, and to ensure that consumers are not misled, a manufacturer may choose to take account of both situations and state when a food has received a specified treatment and when it has not (for example ‘homogenised milk’ and ‘non-homogenised milk’). **In other words, manufacturers need to take account of all the potential purchasers of their products and think of all the possible interpretations and misinterpretations that consumers may make.**

Naming principles to apply to the advertising of a food

For consistency, the same labelling requirements for naming food should apply to advertisements for the food. However, this will not always be practical because of the limitations of the respective types of advertising media. Despite these limitations, **manufacturers must still ensure that each fact in their advertisements and the overall impression of the advertisement are not false, misleading or deceptive to consumers.**

Naming and representations about ingredients in the ingredient list

Subject to certain exemptions, ingredients must be declared in a statement of ingredients with a common name or a name that describes the true nature of the ingredient. Generic or class names may be used if applicable (see Table to clause 4, Standard 1.2.4). The names of ingredients should be sufficiently detailed and accurate to ensure they are not false, misleading or deceptive, or likely to mislead or deceive.

Endorsements

Manufacturers should note that provisions contained in section 53 of the *Trade Practices Act 1974*, and section 13 of the *New Zealand Fair Trading Act 1986* specifically prohibit false or misleading claims that particular food has certain benefits or approval it does not have, and that a food manufacturer has the approval, endorsement or sponsorship it does not have.

Comparative claims

Manufacturers should not make comparisons between foods that cannot be substantiated. When comparing their foods to other equivalent foods manufacturers should ensure that there is a reasonable basis for the comparison. The overall impression created by a comparison and the particular facts referred to in a comparison must not be false, misleading or deceptive.

Comparative claims are representations (including advertising) that try to promote directly the superiority of one company’s products over those of others. If done well and accurately, comparative advertising can result in real and deserved commercial advantage.

However, this kind of advertising and selling is a direct challenge to competitors and they are naturally motivated to consider retaliation. It will often turn out that these competitors know their products better than the opposition did when it started running the comparative advertisements. Competitors often readily see, and willingly tell the Australian Competition and Consumer Commission and New Zealand Commerce Commission or the courts about, the places where the advertisements fall down and become misleading.

Businesses considering a comparative advertising campaign should consider not only the need for accuracy, but also the duration and extent of the advertisements planned and the likely reaction of competitors.

Advertisements may mislead consumers and may breach the trademark of competitors if there is not a reasonable basis for the comparison. **There must be some basis for comparing the food in question with the other food.** This means that the foods being compared should be similar in character, composition etc. Manufacturers should avoid comparing liquid foods with solid foods, or foods used in small quantities with foods used in large quantities, or foods consumed occasionally with foods consumed regularly.

The comparison should be complete and not rely on only providing half the facts.

Manufacturers should ensure that consumers have all the necessary facts to judge the comparison. If manufacturers are not sure of all the facts or if these facts are too complex to convey to consumers then it may be better to avoid the comparison and use a different marketing strategy.

Manufacturers must look to ensure that the overall impression of the comparison is not false, misleading or deceptive.

Imitation and 'style' products

Manufacturers should represent their products in such a way that consumers can distinguish between recognised foods and those foods that are not recognised foods but have been made in a similar manner or have similar characteristics to a recognised food.

The word 'style' may be used to describe a food that is made in a similar manner or has similar characteristics to an existing or recognised food. However, it should be printed clearly and noticeably and its use may need to be accompanied by additional information to ensure that consumers are not misled or deceived and are not likely to be misled or deceived.

It is possible to simulate meats, nuts, chocolate, poultry, etc., that have the physical appearance, texture, taste, etc., of a conventional or usual food, e.g. ham and manufactured ham. **The presence of simulated foods must be made obvious to consumers so the overall impression is not likely to mislead or deceive consumers.** Foods should be promoted on their own merits and should not highlight the qualities of the foods they replace, unless they also have these qualities.

Manufacturers should know that consumers use many cues in buying food (e.g. pictures, words) and sometimes consumers make assumptions about a food from its overall appearance (e.g. food looks like ham therefore it must be ham). The manufacturer must ensure that the consumer does not get the wrong overall impression of a food from what is said about the food or from what is implied.

For example, a manufacturer may produce a 'cream' product from water, emulsifiers and vegetable oils. In representing this product to consumers, the manufacturer must ensure that the overall impression is such that consumers can distinguish the imitation cream product from cream. The manufacturer may do this in a number of ways, but the goal is to ensure consumers can differentiate between the imitation cream product and cream.

Terms such as ‘imitation’, ‘style’ and ‘substitute’ are often used to represent the simulated foods to consumers in both labels and advertising (e.g. imitation vanilla, traditional style and salt substitute). However, manufacturers need to be sure that consumers notice these terms and can interpret them in the context of the food being represented. There is no point in using expressions to describe products if consumers do not know the meaning of these expressions or cannot determine their significance to the food in question.

For example, salami made in Australia or New Zealand to a traditional recipe may be represented as ‘traditional style salami’. However, the word ‘style’ should be clear and noticeable. The aim of the manufacturer is to ensure that consumers are aware of the differences between the ‘traditional salami’ and the ‘traditional style salami’, and that consumers can differentiate between the two types of products.

Manufacturers must also be aware that unpackaged food must also comply with the requirements not to mislead or deceive consumers. This means that a simulated food cannot be represented as a typical food. If a manufacturer is selling a manufactured meat product that looks like cured ham then the manufacturer must clearly and simply advise consumers that the manufactured ham is not ham. Simply saying nothing is misleading and deceptive because consumers likely to assume (reasonably) that because the product looks like ham then it must be ham.

Many foods that are simulated versions of another food are described by common names, i.e. recognised or existing food names such as ham, sausage or cheese for example, turkey ham, vegetarian sausage or soy cheese. **However, simulated foods should not be named or represented in a way that might lead the consumer to conclude that the simulated food is the recognised food.**

Negative claims

Negative claims are representations that highlight the absence or non-addition of particular substances to food. Some examples include, ‘No MSG’, ‘no added sugar’, ‘no preservatives’, ‘dairy-free’ and ‘nothing artificial’. Negative claims are subject to the same restrictions as all other representations about food. That is, the claim and the overall impression created by the claim must not be false, misleading or deceptive to consumers.

Negative claims also apply to the ingredients of a food. For example, if a soup were to be represented as having ‘no added salt’ then consumers would expect that it contained no added salt irrespective of whether the salt was added directly to the soup or as part of another ingredient of the soup. The claim would also mean that the soup should not contain any ingredients that contain salt, such as flavouring premixes. This can become complicated when considering juice products where a ‘no added sugar’ representation is *likely* to be viewed as meaning there is no added sucrose in the food but that fruit sugars in the juices may be acceptable. In short, **manufacturers need to consider the type of food and how each negative claim will be interpreted in the context of the particular food.**

When making negative claims, manufacturers should note that:

- additional information should be provided which explains the negative claim, where the omission of this information would mislead or deceive the consumer;
- the claim should not depend for validity on technical distinctions about which the prospective consumer may have little or no knowledge and could therefore mislead or deceive the consumer;

- the claim should not include statements or implications which suggest that regulatory authorities allow unsafe food or food additives to be sold;
- the claim about their product does not give consumers the wrong impression about other products
- the claim should reflect the current advice that a claim that a food is ‘free’ of an ingredient or constituent should only be used when there is no detectable quantity of the ingredient or constituent in the food (see under ‘Free’ Claims further in this section).

When providing additional information, manufacturers need to ensure that the information is clear, noticeable and understood by consumers. If consumers cannot understand the additional information then it does not help them and does not assist in the interpretation of the original negative claim. Manufacturers need to ask themselves whether consumers would understand the additional information.

For example, nitrites are not defined as ‘preservatives’ for the purposes of food law and they function as colour retention agents in meat products. A manufacturer may choose to make a ‘no preservatives’ claim on the label of their meat product and take advantage of the technical difference between a ‘preservative’ and a colour retention agent. However, a prospective consumer does not have access to the technical definition of a preservative and will not be aware of scientific definitions that may appear in food law. A consumer is very likely to interpret a ‘no preservatives’ claim more broadly to mean that meat product does not contain preserving additives. This would mean that the ‘no preservative’ claim is likely to result in the manufacturer misleading the consumer about the meat product. Conversely, and depending upon the representation, the consumer may not consider the salt in the meat product as being a ‘preservative’ even though the salt has a preserving function in the meat. In short, **manufacturers need to consider how consumers would interpret a representation in the context of the representation.**

Some additives have multiple functions in a food, e.g. ascorbic acid may be an antioxidant or a vitamin or a colour retention agent. In these situations, manufacturers need to be aware of all the possible interpretations that a consumer may make. If a ‘no additives’ claim is made then it may not be a defence to simply state ‘but I added the ascorbic acid as a vitamin not as an antioxidant’. **Put simply, manufacturers must be aware that the only relevant interpretation is the consumer’s interpretation and that the manufacturer’s interpretation is not relevant when assessing when a representation is likely to mislead or deceive consumers.**

Some additives may occur naturally in some foods eg MSG. When making negative claims about naturally occurring additives, manufacturers must make sure that consumers are aware that the additive in question is naturally occurring. For example, a ‘NO MSG’ representation on a tomato-based pasta sauce is false because tomatoes contain MSG. ‘No added MSG’ may be technically accurate but manufacturers must ensure that consumers will not interpret this claim as being the same as ‘NO MSG’. That is, that consumers are aware that tomatoes already contain MSG. Manufacturers must not make representations that could mislead or deceive consumers.

Some foods and food additives may cause problems for some consumers. Others may simply prefer to avoid particular foods or food additives. On this basis, there is nothing to prevent manufacturers from marketing their products to these consumers with claims about their foods

not containing additives or not containing particular substances e.g. 'dairy-free'. However, regulatory authorities do not permit the sale or use of unsafe food additives and nor do they permit unsafe food to be sold and manufacturers should not imply that regulatory agencies do. **Manufacturers should market the attributes of their products and not make statements that might misrepresent the functions of regulatory authorities.**

'FREE' CLAIMS

Standard 1.2.8 – Nutrition Information Requirements - detail that lactose and gluten free claims can only be made if there are no detectable lactose or gluten, respectively.

At present, in Australia, the *Code of Practice on Nutrient Claims in Food Labels and in Advertisements* (Code of Practice) provides criteria for the use of 'free' claims in relation to sugar, fat and sodium. The Code of Practice is not legally binding. The Code of Practice can be found on the Food Standards Australia New Zealand website at www.foodstandards.gov.au. These claims are inconsistent with trade practices/fair trading legislation as both the Australian Competition and Consumer Commission (ACCC) and the New Zealand Commerce Commission have advised that their policy in relation to the use of the term 'free' is zero tolerance, irrespective of food regulations or codes of practice. Hence the existing 'free' claims, which presently include small tolerance levels would be considered in breach of trade practices/fair trading legislation. The Code of Practice also states (incorrectly) that industry is unlikely to be prosecuted if they comply with the Code of Practice. Food Standards Australia New Zealand is currently undertaking a review of nutrition content and related claims (Proposal P234) which will include the term 'free'.

In New Zealand there are no specific criteria in the New Zealand *Food Regulations 1984* (due to be rescinded in December 2002) for 'free' claims *per se*. Similar claims would be permitted but regulated under fair trading laws, where there is no presence of the claimed nutrient in a food.

Characteristic claims

Characteristic claims are claims or terms used to describe certain foods that are also foods in their own right. Some examples of these are peanut butter, tuna steak, soy milk, root beer, bread sticks. The intention is that a common name is used to describe a food for the benefit of consumers and yet the common name has the potential to mislead the consumer about what the food is. In reality, this confusion is usually possible only when considering such terms in isolation from the food in question. However, **the use of recognised food names must not give consumers the impression that a food is something that it is not.**

Confusion sometimes occurs when manufacturers include other information on the label, e.g. name and address of the manufacturer, company logos. For example, the 'Weekly Juice Company' may produce a soft drink product and include their company name on the front of the label with their company logo, e.g. a big picture of an orange. While the company may call the product 'orange-pop', the overall impression may be that the product is an orange juice product and not soft drink. This may be further complicated by the fact that the company also produces orange juice products and that the product is in an opaque package.

The name of a standardised or recognised food should appear only on the label of another food where the use of that name is not likely to mislead or deceive consumers. For example,

consumers should not be misled or deceived about the standard, quality, value, grade, composition, style, or place of origin of the food.

Some examples of legitimate uses of standardised or recognised food names on labels include:

- in the ingredient list (e.g. pork in manufactured meat);
- to indicate the presence of the standardised or recognised food as an ingredient in the description of the true nature of the different food (e.g. butter in blended butter and margarine);
- to describe a characteristic quality of the different food (e.g. creamed corn); and
- when the standardised or recognised food may be used as an alternative to the different food (e.g. 'rice may be used in the place of potatoes' on a sauce pack, in the instructions or explanations of use);
- in a recipe or serving suggestion;
- in an advertisement or promotion for other foods; or
- in the name or address of the manufacturer (e.g. 'Dairy Rd').

While characteristic terms may be used for products which compete with the recognised foods, the products using the characteristic terms should be marketed as foods in their own right and not be marketed to be inadvertently purchased instead of the recognised foods.

For example, a soy beverage package may include an illustration relating to use of the product as a replacement for cow's milk in a cake. The manufacturer would need to ensure that the illustrations or other presentations on the label relating to use of a product would not confuse consumers about the true nature of the product. While a soy beverage may include the word 'milk' in the label, the context of the whole label would be expected to convey that the product is not cow's milk or does not contain cow's milk, but has a milk-like texture or consistency.

Again, manufacturers should be aware of the dangers of remaining silent. **If to say nothing about a food could mislead or deceive a prospective consumer then the manufacturer must provide additional information to ensure that the consumer is not misled or deceived.** For example, if a yellow spread is sold unpackaged then it is possible that consumers may assume that it is 'butter' and purchase it on that basis. If the product is not 'butter' then the manufacturer has misled the prospective consumer.

Emphasis of ingredients or components

Manufacturers need to be aware that where ingredients or components are emphasised, the new Code requires that these emphasised ingredients or components be declared as a percentage unless an exemption applies (see clause 1 of Standard 1.2.10).

Representations about the content or presence of a particular ingredient should not be made when the representations may mislead or deceive the consumer, or may be likely to mislead or deceive the consumer, into believing that the presence of a particular ingredient is significant when it is not.

When making representations about particular ingredients, manufacturers should provide sufficient and appropriate context to ensure that consumers are not misled or deceived or

likely to be misled or deceived. Appropriate context may need to include additional information to qualify the emphasis of an ingredient where this emphasis is potentially false, misleading or deceptive.

Emphasis of an ingredient or component is where a manufacturer states or implies the presence or absence of an ingredient or component in a food. Some examples include ‘extra peanuts’, ‘dairy-free’, ‘made with butter’, ‘decaffeinated’. Emphasis can also be created with pictures, advertising or verbally (for example across the counter at a bakery).

Any additional information should be:

- appropriate and adequate for the food, the emphasised ingredient and the particular representation;
- meaningful, comprehensible and readily noticeable to consumers and consistent with a reasonable interpretation of any claims; and
- clear to consumers and capable of substantiation.

It is considered to be misleading to over-emphasise the importance, presence or absence of an ingredient or substance in a food. For example, it may be misleading to over-emphasise the presence of wheat germ in a breakfast cereal when the amount present is the amount normally present in the cereal or in comparable breakfast cereals.

Manufacturers should not emphasise particular ingredients without also emphasising equally significant ingredients. For example, it is misleading to over-emphasise the presence of butter in a cake when butter is actually the minor shortening ingredient.

Manufacturers should consider how a consumer would interpret a representation. This may be different from a manufacturer’s interpretation but ultimately it is the consumer’s interpretation that counts.

In addition to the requirements in Standard 1.2.10 manufacturers may choose to provide additional information to consumers. Two benefits of providing additional information are:

- there is less risk of misleading consumers
- customer relationships may be improved by increasing consumer’s knowledge of a manufacturer’s products.

For example, a manufacturer may make a ‘berry muffin’ product, and in addition to the percentage of berry being declared in accordance with Standard 1.2.10, seasonal variations may result in blackberries and blueberries being used in differing amounts at certain times of the year. To ensure that consumers are aware of this the manufacturer may state the following in the label: ‘From December to June this product contains more blackberries than blueberries. This is because blueberries are not in season at this time’.

Some ingredients are emphasised because of their mere presence. For example, a confectionery product may include ‘made with Queensland peanuts’ on the label. The key point is that the peanuts are from Queensland. This claim means that the product can only contain peanuts from Queensland. The representation must not be false, misleading or deceptive. If peanuts from elsewhere were in the product then **the manufacturer is likely to be misleading consumers by emphasising particular ingredients and not telling consumers about the other equally significant ingredients.**

Sometimes the emphasis of ingredients is a comparison with other products. For example, a chocolate product may state that it ‘contains 25% more cocoa than other chocolate’. The key point here is the extra cocoa in the product and not the amount itself. The claim should be relevant to comparable products in the market place, regardless of what a food standard may require. That is if the food standard requires 20% cocoa but comparable products contain 25% cocoa, then manufacturers should use the 25% figure as standard for comparisons. **Where making a representation about the modified composition of a food, manufacturers must make sure the modification is significant to consumers. Manufacturers should not assume that consumers have any special knowledge about foods or their standards.**

Additionally, the manufacturer should consider whether the basis for the representation is the ingoing weight of the ingredient or the weight in the final food and how consumers might interpret the representation. Clause 3 of Standard 1.2.10 states that the ingoing weights of ingredients need to be declared, however there are exceptions relating to foods where moisture loss occurs.

It is not up to consumers to search for the facts about a food or representation. It is the manufacturers’ responsibility to provide the necessary information, and provide it in such a way as to ensure that consumers do not get the wrong impression. The list of ingredients provides consumers with information about the ingredients in a food and because this list is in descending order of proportion, consumers are able to use the list to gauge the approximate proportion of a particular ingredient in a food. However, this information may not always be sufficient to ensure that consumers are not misled or deceived, or likely to be misled or deceived, by statements about particular ingredients. Where manufacturers choose to provide additional information then this must be true and not false, misleading or deceptive. The additional information must be able to be understood by consumers. If the information cannot be understood then the information does not assist in the interpretation of the original representation.

Quality Descriptors

FRESH

As for all claims, the use of the term ‘fresh’ is subject to the provisions relating to false, misleading or deceptive representations. The context in which the term ‘fresh’ is used should generally dictate its meaning. Accordingly, ‘fresh’ may be used to describe the nature, the age, and the taste qualities of a food or it may be used as part of a trade name or brand name. Manufacturers should ensure that prospective purchasers can correctly determine how the term ‘fresh’ is being used e.g. to describe the taste of the food.

To describe the nature or to indicate a lack of processing

The term ‘fresh’ may result in consumers thinking that the food has not been processed or preserved in any way. The claim ‘fresh (name of the food)’ should generally be used to describe a food that is not canned, cured, dehydrated, frozen or otherwise processed or preserved.

Although refrigeration is a means of preserving foods, consumers generally consider refrigerated fruits, vegetables, meats and milk as ‘fresh’. The process of pasteurisation is not

regarded as altering the freshness of milk because it is likely that consumers realise that milk is pasteurised. Additionally, meat, including poultry and fish products that have not been treated by any means other than by refrigeration, is likely to be regarded as ‘fresh’ by consumers. **Manufacturers should consider what consumers would think when describing their products as ‘fresh’.**

To indicate age or recent preparation

Representations such as, ‘fresh (naming the food)’ or ‘freshly (naming the process and food)’ are often used to indicate that the food has been recently produced, obtained or grown. Such representations are potentially misleading unless the use of such representations are consistent with the views of typical consumers and can be substantiated.

While fruit and vegetables are often considered ‘fresh’, terms such as ‘orchard fresh’, ‘valley fresh’, ‘garden fresh’ and ‘fresh from the field’ or similar claims should be used only to describe fruit and vegetables that have been harvested and brought to the market at the earliest possible moment with minimal storage and within days of harvesting. For example, it is considered misleading to advertise or label a package of fruit or vegetables as ‘orchard fresh’ if this produce has been subject to months of controlled-atmosphere storage. Similarly, it would be considered misleading to describe apples as ‘orchard fresh’ if they were imported apples which had spent five weeks on a ship before reaching their destination.

The term ‘freshly squeezed juice’ or ‘fresh daily’ may be used to describe juice that has been recently pressed provided this can be substantiated. Additionally, the term ‘freshly ground’ is considered to mean that ground beef/poultry/fish or ground coffee has been recently ground.

To indicate taste qualities

In addition to describing the nature and age of a food, the term ‘fresh’ can be used to describe other product characteristics such as flavour, texture, appearance and smell. Consumers are best able to judge the merits of ‘fresh’ when used as a sensory modifier in claims such as ‘fresh tasting’, ‘fresh from the sea flavour’, ‘fresh frozen’ etc.

Manufacturers should ensure that if the term ‘fresh’ is used to describe taste then this should be clear to prospective purchasers.

HOME-MADE

‘Home-made’ implies that a food is prepared in a home. Therefore the use of the term ‘home-made’ to refer to a food prepared in a commercial establishment is likely to be misleading. When a food is prepared in the style of a ‘home-made’ food, the term must be qualified, for example ‘home-style vegetable soup’.

The use of a brand name or trademark symbol in conjunction with the term ‘home-made’ is also likely to be considered misleading if the food is prepared commercially.

NATURE, NATURAL

‘Nature’, ‘natural’, ‘Mother Nature’, ‘nature’s way’ are terms misused on labels and in advertisements.

Advertisements should not convey the impression that ‘nature’ has, by some miraculous process, made some foods nutritionally superior to others or has engineered some foods specially to take care of human needs. Some consumers consider foods described as ‘natural’ of greater worth than foods not so described. Manufacturers should therefore ensure that they use such terms appropriately.

Foods, or ingredients of foods, submitted to processes that have significantly altered their original physical, chemical or biological state should not be described as ‘natural’. A ‘natural’ food, or ingredient of a food, is not expected to contain, or to ever have contained, an added vitamin, mineral nutrient, artificial flavouring agent or synthetic food additive. A natural food, or ingredient of a food, is also one that does not have any constituent or fraction thereof removed or significantly changed. It should be noted, however, that some food additives, vitamins, and mineral nutrients may be derived from natural sources and may, in some cases where these are added to another food, be regarded as natural ingredients. The acceptable claim in such a situation may be ‘This food contains natural ingredients’.

In most cases, the claim ‘natural’ is similar to the claim of ‘contains no *added* food additives, nutrients, flavouring agents, incidental additives or contaminants’.

With flavourings, manufacturers should recognise that consumers will not apply, or even know about, technical distinctions that food technologists would apply.

It may well be that a flavour could be technically described as a ‘natural flavouring’ but would not be regarded as ‘natural’ by prospective purchasers. If the flavouring is described as ‘natural’ on the label, then consideration should be given to what the consumer would think in determining if the claim was appropriate. **Manufacturers should not rely upon technical definitions or distinctions to mislead or deceive consumers.**

‘PURE’, ‘100% PURE’, ‘100%’, ‘ALL’

The term ‘pure’ should not be used on the labels of, or in connection with, an article of food that is a compound, mixture, imitation or substitute. Consumers still expect a food described as ‘pure’ or ‘100% pure’ to be uncontaminated, unadulterated and to contain only substances or ingredients that consumers would expect to be in the food. Products that are not single-ingredient foods should not be described as ‘100%’, ‘pure’ or ‘100% pure’.

If the terms ‘100%’, ‘pure’ or ‘100% pure’ describe a food that carries the name of what would seem to be a single-ingredient food, then it would be misleading to use this term to describe that food when the food also contains other ingredients. For example, consumers do not expect a product described as ‘100% pure sunflower oil’ to contain any substance other than sunflower oil. It should not contain any preservatives, antifoaming agents or

colour even though food standards may permit them. In some cases, this claim is considered to be similar to the claim ‘contains no food additives’.

The term ‘pure’ or ‘100% pure’ can be used to modify an ingredient name appearing in the common name of a food such as ‘pure vegetable oil’ or ‘margarine made from pure vegetable oil’, or the claim can be worded so as to refer specifically to a named ingredient in the food. In such cases, it is the named ingredient that should meet the guidelines mentioned above and there must be no implication that the term also applies to the food.

‘Pure’ or ‘100% pure’ should not be used in the label of a reconstituted product as it is potentially misleading. ‘Pure’ or ‘100% pure’ should not be used in the label of a juice product if any other ingredient such as sodium benzoate, sugar, colour, or vitamin C, is in the product.

In all cases, the terms ‘all’, ‘pure’ or ‘100% pure’ should be used with care. If these terms are used in such a way as to imply that other similar products are adulterated or not up to standard, then the use of these terms is likely to be misleading.

‘TRUE’, ‘REAL’, ‘GENUINE’

Terms such as ‘true’, ‘real’, ‘genuine’ should be used with care. Such terms should not be used to describe foods or ingredients that are imitations or substitutes, nor should they be used in a manner that suggests that any product is an exclusively true, real or genuine article.

Where can I get more information?

For more information on the new standards call the:

Standards Information Unit

1300 652 166 (Australia)

0800 441 571 (New Zealand), or

Email: advice@foodstandards.gov.au

See also:

The Food Standards Australia New Zealand user guides on:

- Percentage Labelling
- Overview of Food Labelling
- Ingredient Labelling

Food Standards Australia New Zealand’s Code of Practice on Nutrient Claims in Food Labels and in Advertisements, January 1995

Organisations that may be of further assistance:

- Australian Competition and Consumer Commission
- New Zealand Commerce Commission
- State & Territory health departments
- State & Territory fair trading departments
- New Zealand Ministry of Health
- New Zealand Ministry of Consumer Affairs