

ACCC concern over potentially misleading labelling of food products

Introduction

Natur-all Pty Ltd ('Natur-all'), trading as Go Natural, is a manufacturer of fruit bars, snack bars and related products. One particular style of Natur-all product was yoghurt covered berry and apricot pieces. It was in relation to this product that the Australian Competition and Consumer Commission ('ACCC') expressed concerns that the overall impression of the packaging may be misleading to consumers.

Background

In late 2007, the ACCC considered the labelling and packaging of two of Natur-all's products:

- "Go Natural Berry Pieces in Yoghurt", marketed since 1997; and
- "Go Natural Apricot Pieces in Yoghurt", marketed since 2002.

('Yoghurt Products')

The ACCC focused on the 'overall impression' created by the Yoghurt Products, namely:

1. the reference to 'berry pieces' and/or 'apricot pieces' in yoghurt in conjunction with pictorial representations of fruit on the product package;
2. the pictorial representations on the packaging showing strawberries, blackcurrants and/or apricots used in conjunction with the words 'berry pieces' or 'apricot pieces' on the product package,

as well as information displayed on Natur-all's Go Natural website representing the Yoghurt Products as 'berry and/or apricot and/or fruit pieces' coated in yoghurt.

Misleading?

The ACCC was concerned that the overall impression created by labelling and packaging of the Yoghurt Products may be misleading. Central to their concern was that packaging representations may have implied the products were 'unprocessed' berry and/or apricot pieces. Whereas, the product contained within the yoghurt coating was a ball made up of a fruit-based mixture consisting predominately of fruit concentrate (approximately 35%), sugar (approximately 30%), and semolina (approximately 30%).

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While there was no finding of misleading conduct against Natur-all, relevant provisions of the *Trade Practices Act 1974* (Cth) ('TPA') which could apply to such a scenario include - s52 (misleading and deceptive conduct), s53(a) (false or misleading representation) and s55 (conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods).

Undertakings by Natur-all

As a result of the ACCC raising its concerns, Natur-all reached a settlement agreement with the ACCC pursuant to s87B Undertakings that it would:

1. Amend the packaging of the Yoghurt Products to remove the potential for a misleading overall impression that the product is comprised of unprocessed whole pieces of fruit within the yoghurt coating;
2. Amend representations on its website to remove the potential for representations to be misleading by implying that the product is comprised of unprocessed whole pieces of fruit dipped in yoghurt coating; and
3. Review all labels in its entire product range to ensure compliance with the consumer protection provisions of the TPA.

Natur-all also agreed to:

- Publish a public article for the food industry about its experience; and
- Review and implement changes to Natur-all's Trade Practices compliance program.

What are the lessons to be learnt?

- The ACCC takes compliance and product safety matters very seriously and will not allow products to be misrepresented or to mislead consumers in anyway.
- The key issue to consider is the overall impression that a representation may leave in the mind of the consumer. A label that is technically correct and seems clear and well structured to its designers, may still mislead consumers.
- It is important to consider the potential audience of a product and how that audience may interpret the packaging, labelling or advertising. That is, the message needs to be considered from the viewpoint of the potential audience to determine what the impression might be.

If you have any questions or if you would like to obtain further information in relation to this article, please contact Marcus Brookes mbrookes@kellyhazell.com.au or Liang Tang ltang@kellyhazell.com.au.

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