

June 2012

Interested Parties

Room 601
Wellington House
135-155 Waterloo Road
London SE1 8UG

Tel: 0207 972 3250

Dear Colleagues,

Update from the European Commission's Working Group meeting on nutrition and health claims, 18 June and informal meeting about flexibility of wording of health claims, 19 June

1. EUROPEAN COMMISSION'S WORKING GROUP MEETING ON NUTRITION AND HEALTH CLAIMS, 18 JUNE

Discussion of new European Food Safety Authority (EFSA) opinions on health claims

There was a very brief discussion of EFSA's opinions on glucosamine and maintenance of normal joint cartilage (Q-2011-01113); 3g/day plant stanol esters and lowering blood LDL cholesterol (Q-2011-00851); and 3g/day plant sterols/stanols and lowering blood LDL cholesterol (Q-2011-01241).

Claims falling under Articles 13.5 and 14.1.b of Regulation 1924/2006: market situation in relation to the application of Regulation 432/2012 authorising a list of Article 13.1 health claims

According to the nutrition and health claims legislation there should be no health claims on the market from 14 December other than those that have are authorised or which are still under consideration by the European Commission. However, there are a number of individual health claim applications under Articles 13.5 and 14.1.b for which decisions have still to be made. In order to consider potential transition periods for claims if they are eventually rejected, the Commission asked member states to provide information about whether claims are on the market. I attach a list of claims relevant to the UK and I would be grateful if you would let me (vivien.lund@dh.gsi.gov.uk) know if they are on the market, by Thursday 12 July.

Discussion on the notion of generic descriptors

According to Regulation 1924/2006 on nutrition and health claims (the NHCR), a generic descriptor is a term that has traditionally been used to indicate a particularity of a class of foods or beverages and which could imply an effect on human health. Article 1.4 of the NHCR foresees a process by which certain generic descriptors may be the subject of derogations from the requirement (in Article 1.3) to be accompanied by an authorised health or nutrition claim. The

Commission is obliged to draft rules for applying for such derogations and it explained that the aim of today's discussion was to help define these rules. The discussion was structured around a draft Commission document from 2007 which is attached to this letter.

The following points and questions arose during discussion:

- A generic descriptor indicates the particularity of a class of foods or beverages (not of an individual product).
- A generic descriptor is a term that may have originally implied a health benefit to consumers but no longer does.
- Should applications for derogations only be allowed from 'the food business operators (FBO) concerned' as set out in Article 1.4?
- A generic descriptor is a statement traditionally used in commercial communications rather than (only) in scientific studies.
- Would the term FBO cover a trade association acting on behalf of its members?
- Would a derogation apply to use of a generic descriptor across the whole EU or could it be limited to certain countries?
- How should 'traditional use' be defined? There was mention of the 30-year rule in the Traditional Medicinal Herbal Products Directive and the 25-year rule in Regulation 509/2006 on agricultural products and foodstuffs as traditional specialities guaranteed.

If you have any comments about generic descriptors or the rules that should apply to derogations, please send them to me (vivien.lund@dh.gsi.gov.uk) by 12 July.

Guidance on specific conditions of use for health claims (Article 10)

Articles 10(1) – 10(3) of the NHCR set out specific conditions that must be adhered to when a health claim is made and Article 10(4) provides for the adoption of guidelines on the implementation of those conditions. If you have any comments on the early draft guidelines attached to this letter please send them to me (vivien.lund@dh.gsi.gov.uk) by 12 July.

Claims 'on hold' and claims undergoing further assessment

It's hoped that the Commission will draft a single Regulation authorising more Article 13.1 claims before the end of the year. The Regulation should cover those claims that have undergone further assessment and all the others currently 'on hold' apart from those on botanicals.

Infant formula trademark that could be construed as a health claim

One delegate asked whether it was permissible for an infant formula to bear a trademark that could be construed as a health claim. MS were reminded that this was discussed at Standing Committee in June 2009 when the conclusion was that, in the case of infant formula, a trademark constituting a nutrition or health claim may only be used where it is accompanied by a specific claim listed in annex IV to Directive 2006/141/EC.

Next Commission working group meeting

The date is provisionally set for 16 July.

2. INFORMAL MEETING ABOUT FLEXIBILITY OF WORDING OF HEALTH CLAIMS, 19 JUNE

On Tuesday 19 June, representatives of some member states met informally to discuss a common approach to advising food businesses about flexibility of wording for health claims. This was an interesting preliminary meeting to consider the issues. We did not draw any firm conclusions however we may, in due course, be able to set out general principles rather than detailed rules.

Yours faithfully,

Dr Vivien Lund

**Food Supplements, Fortification, Claims & Dietetic Foods Team
Nutrition Branch
Health & Wellbeing Division**