

# Making a case for accurate claims

When brand owners communicate health benefits on product packaging, they should be mindful of keeping written and visual claims accurate and truthful, writes **Sharon Givoni**.



**IN RESPONSE TO** demand from health-conscious consumers, food advertisers are using terms such as lite, all natural, organic, reduced-fat, and real fruit to increase market share. However, legal concerns arise when advertising rhetoric, particularly with regard to health attributes, is taken as an indication of nutritional quality and product composition, which could be false or inaccurate. For every product label, it all boils down to one question – does it represent the truth, the whole truth and nothing but the truth?

This might seem like a basic question at first glance. However, issues arise when a statement might be the actual truth, but the overall impression it gives is misleading.

Take for example the words 'baked not fried'. In circumstances where a savoury snack product was once known to be fried and the company produces a new type that is baked, this might be okay. But what if the saturated fat content is still the same or higher than the fried version? Consumers could buy them on the impression that baked is healthier, which it may not be.

Take the claim 'made with real fruit' – a common expression, and it may be true. However, if the real fruit is only present in minuscule amounts, consumers could get the wrong impression.

Given that people buying food products often make fast moving, low involvement purchasing decisions, courts tend to take the view that extra care on labelling is warranted.

This article presents a number of real life case studies that demonstrate how easy it is for companies to get caught out and how strict the laws are. Before I explore these, bear in mind one more thing – ignorance is no defence, even if you did not intend to mislead or made a mistake. Also, even if only some consumers are 'likely' to be misled or deceived, this will be enough to be found guilty.

## WHEN OIL AIN'T OIL

Last year, the Australian Competition and Consumer Commission (ACCC) challenged Basfoods (Aust) Pty Ltd for using the description 'Aigeon Oil - 100% Extra Virgin Olive Oil'. Extra virgin olive oil is generally of superior quality, obtained from the first press, and a healthier option for consumers.

After investigating the matter, the consumer watchdog alleged that the product was not extra virgin olive oil. The company admitted to false, misleading and deceptive conduct and agreed to provide certificates of analysis demonstrating compliance with a trade standard for its olive oils for three years. It also sent a letter to each of its small food retailer and restaurant customers admitting its conduct.

**Tip: Manufacturers cannot dress up food with false statements on the label. State what it is – not what you would like it to be.**

## ACCC WENT BANANAS ABOUT COTTEE'S CORDIAL

In 1999, Cadbury Schweppes used an image of real bananas and mangos on the label of its Cottee's banana and mango-flavoured cordial. The ACCC took the view that consumers would get the impression it contained real fruit extracts when it actually only contained flavouring.

The matter went to court and the judge took the view that although the label stated the cordial was flavoured, people might reasonably think because of the real-fruit image that it contained real fruit extracts.

Apart from having to pay a large part of the ACCC's legal costs, Cadbury Schweppes suffered all the negative publicity that came with losing the case. Needless to say, it stopped selling the cordial.

**Tip: If the picture shouts a thousand words, don't whisper the fine print in the ingredients listing.**

## ARNOTT'S SNACK RIGHT CONSIDERED WRONG

In 2008, the ACCC found images on the Arnott's Snack Right fruit bar packaging to be misleading.

The Apricot Fruit Slice pack, for example, showed images of apricots with no other fruit. However, the slice apparently only contained 1.7 per cent of apricot pieces. Compare this with over 60 per cent sultanas and 10.5 per cent apple juice! Arnott's Biscuits redesigned the packaging as a result of the case and said it would refrain from similar conduct in the future. It also published a corrective notice on its website.

**Tip: Ensure promotional images are always accurate.**

### UNCLE TOBY'S 'FLATTENED OUT'

In January 2006, the ACCC launched an inquiry into Uncle Toby's Roll-Ups after it received complaints from a number of health-related organisations, including the Australian Society for the Study of Obesity.

The concern was that their packaging gave the misleading impression the product was made by the simple process of flattening out real fruit, when in fact other ingredients and processes were used.

As a result, Uncle Tobys promised not to run advertisements again that showed images of an apple being flattened into a Roll-Up and published an article for the food industry on the importance of accurate advertising.

**Tip: Take extra care with composition claims.**

### COCA-COLA: MYTH-BUSTING CAMPAIGN

Last year, the ACCC took on Coca-Cola in relation to its Motherhood & Myth-busting campaign, which featured in full-page newspaper advertisements. The ads sought to correct apparent myths associated with Coca-Cola and were written in an educational manner, giving the impression they were factual.

They stated the soft drink does not make you fat or make your teeth rot and only has the same amount of caffeine as a cup of tea. "We felt it was time to state the facts and to help you understand the truth behind Coca-Cola," stated one ad.

The ACCC considered the ads misleading as Coca-Cola is generally high in calories and simple carbohydrates, which can contribute to weight gain, and high amounts of sugar and acid, which can contribute to tooth decay.



A detail of Coca-Cola's corrective notice.

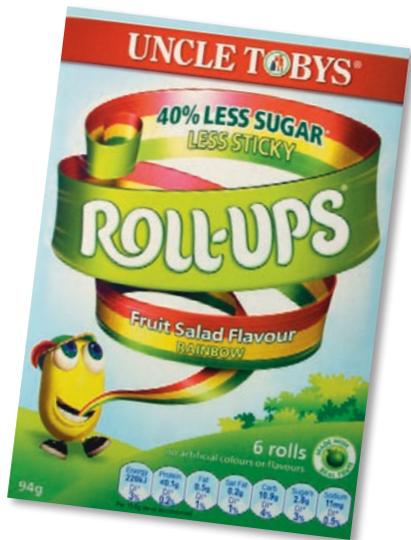
The ACCC provided Coca-Cola with various court enforceable undertakings, stopped the ads and ran a trade practices law compliance program. Many of you will remember the prominent corrective notices it published in leading Australian newspapers.

Food companies need to consider their selling words and images very carefully. They become persuasive indicators when considering the impression made on consumers. Sometimes, whether a label is considered misleading might be a borderline issue, but don't take the risk – seek legal advice. **F&D**

*Disclaimer: This article is of a general nature only and does not constitute legal advice. Readers are strongly recommended to seek tailored legal advice.*

### ABOUT THE AUTHOR

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## Woolies to trial packaged coconut water

Woolworths is at the head of the line to stock the first packaged pure coconut water to be sold in Australia.

Zico, which its producers describe as 'nature's sports drink', will be trialled in 150 Woolworths stores from September. Unpackaged coconut water contained within coconut flesh is currently available unpackaged in a number of supermarkets, but is cumbersome and difficult to transport and store.



California-based Zico Beverages claims the coconut water addresses a number of health issues, including muscle performance, weight loss, heart health, kidney cleansing and mental acuity.

It contains five essential electrolytes to keep muscles moving and 15 times more potassium than most sports drinks, which helps prevent cramping and promotes recovery. Unlike coconut milk, the coconut water is fat-free because it's created from young fruits before they develop white meat, which contains fat and cholesterol.

The coconut water category has seen major growth globally in the last year, with wholesale figures expected to reach US\$35 million this year.

Zico is already available in America and the UK, and last year was named one of America's hottest brands by US marketing bible AdAge. **F&D**



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