



Food Claims

A Legal Perspective

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Topics in this presentation

- Law specific to food claims
- Risk analysis and management in relation to claims
- Law on claims generally (not food law, but impacting food claims)
- What's missing in the law



Law specific to food claims

Sec 3(1)(d) of the Food Safety and Standards Act, 2006 :

“**claim**” means any ***representation*** which ***states, suggests, or implies*** that a food

has particular ***qualities*** relating to its :

- origin,
- nutritional properties,
- nature,
- processing,
- composition
- or otherwise



The linkage between Claims and Misbranding

Sec 3(1) (zf): “misbranded food” means an article of food –

(A) if it is purported, or is represented to be, or is being –

(i) offered or promoted for sale with *false, misleading or deceptive claims*

either;

(a) upon the label of the package, or

(b) through advertisement,



FSSAI and the regulation of claims

16. Duties and functions of Food Authority.

(1) It shall be the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food.

(2) Without prejudice to the provisions of sub-section (1), the Food Authority may by regulations specify –

...

(h) **food labelling** standards including **claims** on health, nutrition, special dietary uses and food category systems for foods;

...



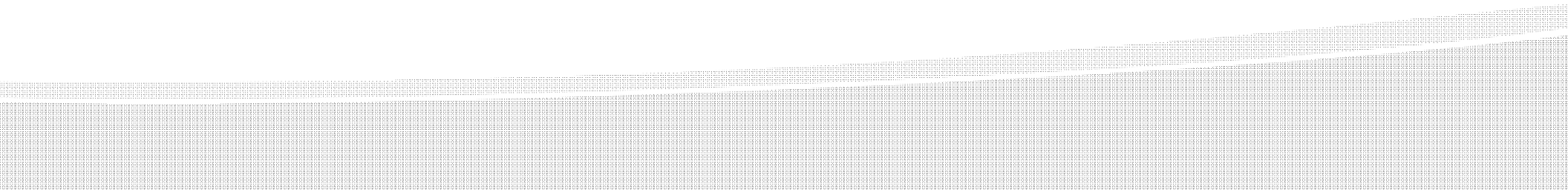
Law specific to food claims

(In draft stage only)

- **The Food Safety and Standards (Advertisements and Claims) Regulations, 2017**



Some key definitions





Claim means :

- Any representation which is printed, oral, audio or visual
- and states, suggests or implies that a food has
- particular qualities
- relating to its (six things)
 - Origin
 - Nutritional properties
 - Nature
 - Processing
 - Composition
 - Or otherwise



Health Claim means

- Any **representation**
- that **states, suggests or implies**
- that a **relationship** exists between :
 - A **food** or a **constituent of that food**
 - And **health**



Nutrition Claim means

- Any **representation**
- That **states, suggests or implies**
- That a food has particular **nutritional properties**
- Including but not limited to
 - **Energy value**
 - Content of **protein, fat and carbohydrates**
 - Content of **vitamins, minerals and other permitted listed nutrients**



Nutrition content claim

- Is a *nutrition claim*
- that *directly or indirectly*
- *describes* the *level* of a *nutrient* contained in a food

- E.g.
 - contains ...
 - source of ...
 - high in ...
 - low in...
 - rich in ...



Nutrient comparative claim

- A claim that compares
- the *nutrient levels* and / or *energy value*
- of two or more foods

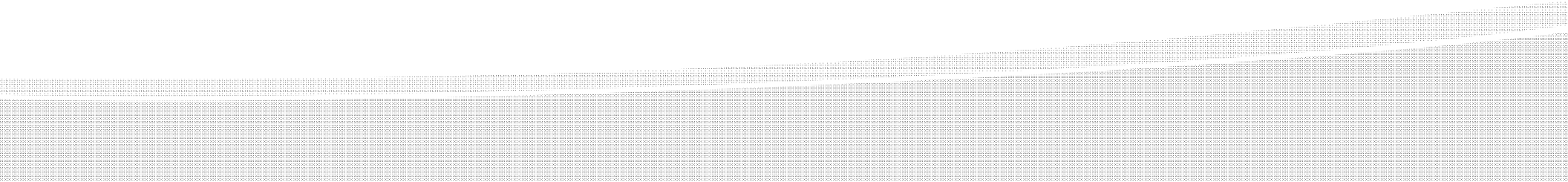
- E.g.
 - reduced
 - less than
 - fewer
 - increased
 - more than



Non-addition claim

- Any claim that an ingredient has **not** been added to a food directly or indirectly

ALSO,

- The ingredient is one whose presence or addition is *permitted* in the food AND
 - which consumers would *normally expect* to find in the food
- 



Nutrient Function Claim

- Is that which describes the physiological role of the nutrient
- in growth, development and normal functions of the body

- E.g. *Food 'A' is a rich source of nutrient 'B'*,
(where nutrient B promotes growth)
is a Nutrient Function Claim



Other Function Claim

- Describes the *specific beneficial effects* of consumption of food or its constituents
- In the context of the *total diet* or *normal functions* or *biological activities* of the body
- E.g. Substance A improves physiological function.
- Then “*Food Y contains X grams of Substance A*” is an Other Function Claim



Summary of Claim and Claim types

- Claim
- Health Claim
- Nutrition Claim
 - Nutrition Content Claim
 - Nutrient Comparative Claim
- Non-Addition Claim
- Nutrient Function Claim
- Other Function Claim



Further important definitions

Advertisement : any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website and includes through any notice, circular, label, wrapper or other documents (similar to Sec 3(1) (b) of the FSS Act)

Digital Interactive Media (Internet, e-commerce, etc.)

Marketing Communications





Risk Analysis and Management in relation to Claims

- *Know Your Claim* (KYC ?)
- Dos and Don'ts in relation to claims



9 General Principles for FBOs making claims

Principle 1

Claims must :

1. be *truthful*,
2. be *unambiguous*
3. be *not misleading*
4. *help consumers comprehend* the information provided



2. That a food has certain *nutritional* or *health attributes* shall be :

scientifically substantiated by *validated methods* of *quantifying* the *ingredient or substance* that is the *basis* of the claim



3. If the *meaning* of a trade mark, brand name or fancy name implies a nutrition or health claim, all the conditions, prohibitions and restrictions in these Regulations will apply



4. All disclaimers related to a claim shall appear in the *same field of vision*



5. No claim shall make use of the FSSAI logo or license number



6. Advertisements shall also not undermine the importance of healthy lifestyles



7. Advertisements for food and beverages shall not be promoted or portrayed as a meal replacement



8. Claims in *advertisements* shall not be inconsistent with information on the *label* or the *packaging*



9. Every declaration required in advertisements under these regulations shall be *conspicuous, legible and prominent*



Specific requirements listed for :

- Nutrition Claims
- Non-Addition Claims
- Non-Addition of Sodium Salts
- Additional Conditions (including disclaimers)
- Health Claims
- Claims related to Dietary Guidelines or Healthy Diets
 - Food shall not be described as healthy or itself impart health
- Conditional Claims
- Prohibited Claims



Prohibited Claims

- No claim for prevention, alleviation, treatment or cure of a *disease, disorder or particular physiological condition*
- *Labels* not to use words implying that the food is recommended, prescribed or approved *by medical practitioners* or approved for *medical purposes*
- Claims which could give rise to doubt or suspicion about the safety of *similar food* or *which could arouse fear* shall not be made



Check Table I for conditions for Nutrition Claims

- E.g. what is “low fat” : not more than 3 g of fat per 100 g of solids
- What is “sugar free” : not more than 0.5 g of sugars per 100 g



Check Table II for synonyms

E.g.

Free = Zero, No, Without, Negligible

Low = Little, few, low source of

Increased / More = Higher





Consequences of non-compliance (false claims)

Under the draft Regulations : Corrective advertisement :
can be ordered by FSSAI for violative advertisement for
neutralization



Consequences under the FSS Act

Under Sec 50 of the FSS Act :

50. Penalty for selling food not of the nature or substance or quality demanded.

Any person who sells *to the purchaser's prejudice* any food which is *not in compliance with* the provisions of this Act or the *regulations made thereunder*, or of the nature or substance or quality demanded by the purchaser, shall be liable to a penalty not exceeding *five lakh rupees*.



52. Penalty for misbranded food.

(1) Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is *misbranded*, shall be liable to a penalty which may extend to *three lakh rupees*.

(2) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking *corrective action* to rectify the mistake or *such article of food shall be destroyed*.



53. Penalty for misleading advertisement.

(1) Any person who **publishes**, or is a **party to the publication** of an advertisement,

which–


(a) **falsely describes** any food; or

(b) is **likely** to **mislead** as to the nature or substance or quality of any food or gives false guarantee, shall be liable to a penalty which may extend to **ten lakh rupees**.



Non-food laws that affect food claims

- **The Indian Contract Act, 1872**
 - Misrepresentation, repudiation of contract, suit for damages
- **The Consumer Protection Act, 1986**
 - Unfair Trade Practices (UTP) Also see ASCI
- **The Legal Metrology Act, 2009**
 - Label declarations
- **The Competition Act, 2002**
 - Impact on competition



What's missing in the regulatory space

- Comparative advertising (Brand X versus Brand Y)
- Natural better than processed ?????
- Misleading advertising that is not written or spoken
 - Imagery (bearded men, deer, other animals, forest groves, etc)
 - Sounds (birds chirping, devotional music, etc.)

Questions and Answers



Thank you!

