

THE FAIR TRADING ACT

HEALTH AND NUTRITION CLAIMS

Health and nutrition claims are big business in today's market, but they are an area of considerable vulnerability for consumers who rely so heavily on what they are told, with little opportunity to verify the claims being made.

Under the Fair Trading Act, it is illegal to mislead consumers about the nature, manufacturing process, characteristics, suitability for purpose, or quantity of goods, or to make a false or misleading representation that goods are of a particular kind, standard, quality, grade, quantity, composition, style or model.

In other words, claims made about the health or nutritional benefits of a product must not mislead consumers and should be able to be substantiated.

Consumers must be able to rely on the information provided to them in promotional material or packaging to make an informed decision.

HEALTH CLAIMS

Health claims describe a relationship between the use or consumption of a product and a health benefit.

Food Standards Australia New Zealand (FSANZ) www.foodstandards.govt.nz and Medsafe www.medsafe.govt.nz have key roles to play in regulating the use of health claims on food products and medicines respectively.

The Commerce Commission's role is complementary to both these organisations, with the Fair Trading Act having a broader application in relation to misleading or inaccurate health claims. Any representations made to a consumer about the health benefits of a product must be able to be supported with credible, scientifically rigorous evidence.

EXAMPLE

A company made claims on its website and in a newspaper advertorial that it had homeopathic cures for, or could protect against, diseases with no known cures, such as avian influenza, SARS and herpes. It also claimed that its directors had medical qualifications they did not hold. The company was convicted and fined.

NUTRITIONAL CLAIMS

Nutritional claims are claims that suggest or imply that a foodstuff has particular beneficial nutritional properties – such as being 'low fat', 'high fibre', 'rich in vitamin C'.

Nutritional claims can easily fall foul of the Fair Trading Act unless care is taken to ensure consumers are not misled by claims which are literally true, but still misleading – such as promoting something as having no added sugar, when the product has fructose or lactose added, or giving the impression a deli ham is low fat by promoting it as '90% fat free'.

As with health claims, consumers should be able to take nutritional claims at face value.

EXAMPLE

A multinational pharmaceuticals and health products company made claims that its fruit drink contained 7mg of vitamin C per 100ml and that the blackcurrants in its products had four times the vitamin C of oranges. Testing found no vitamin C in the ready-to-drink product and the company admitted the general vitamin C claims were misleading. The company was convicted, ordered to undertake a nationwide campaign of corrective advertising and fined.

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ALTERNATIVE HEALTH PRACTICES

It is not the Commission's role to decide on the efficacy of alternative or natural health practices. However, alternative medicine providers have the same obligations under the Fair Trading Act as traditional medical practitioners. Any claims made must be accurate and not mislead consumers. False or misleading claims about the ability to cure or prevent diseases can not only damage the reputation of the alternative health industry, but also put consumers' health at risk when they put their trust in products with false or exaggerated claims.

EXAMPLE

A company claimed in a brochure and on its website that a pill was a natural alternative to breast implants and could make women's breasts larger and firmer. The Commission's investigation found that taking the tablets at the recommended dose would have no significant effect on breast shape or size and that the company's marketing material failed to substantiate its claims. The company was convicted and fined.

PLAIN LANGUAGE

The use of scientific language or technical jargon when making health or nutritional claims about a product can confuse average consumers who are not familiar with it. Keep claims clear and simple – consumers who are unfamiliar with technical terms will often make assumptions and may be misled.

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This fact sheet is part of a series looking at the Fair Trading Act. Other fact sheets can be downloaded from
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CONTACT

Contact the Commerce Commission with information about false or misleading trading practices.

TELEPHONE

Our Contact Centre during office hours on 0800 943 600

WRITE

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This fact sheet is a guideline only, and reflects the Commission's view. The publication is not intended to be definitive, and should not be used instead of legal advice. It is traders' responsibility to remain up to date with legislation.

The Commerce Commission enforces legislation that promotes competition in New Zealand markets and prohibits misleading and deceptive conduct by traders.

Only the courts can make an authoritative ruling on breaches of the Fair Trading Act. Courts may fine companies found guilty of breaching provisions of the Fair Trading Act up to \$600,000 and individuals up to \$200,000.