Claims for Food Products

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Recent years have witnessed a proliferation in the number of products available under the "nutritional food" heading. For companies to stand out from their competitors in this growing sector, marketing and advertising is integral for success. The ability to make claims regarding products is a significant aspect of this process. While the number of products has been on the rise, there has also been an augmentation in demand among consumers for healthier, more nutritious products. This, coupled with more aggressive advertising tactics, could lead to exaggerated or egregious claims. In order to balance the consumers' need for accurate information and the companies' commercial interest, regulations have been set forth that delineate the boundaries of permissible health claims. The European Union and the United States have similar regulations which allow for health claims, provided that there is scientific evidence to substantiate the claim. However, when many of these companies attempt to sell their products in Thailand, they find their advertising efforts thwarted by more stringent regulations and stricter approval procedures.

Around the World

In the European Union, the legislation is set out with the purpose of protecting consumers from information which is false or misleading or which condones excessive consumption of a product. The regulation presents a harmonized list of claims. Each claim is defined by specific parameters, thereby associating each claim with precise and quantifiable values. For example, for a cereal to be able to claim it is high in fiber, a certain minimum amount of fiber is required. The list of advertised claims can be used by manufacturers without any hindrance. However, if they are looking to employ a more novel claim not already included in the list, they must submit an application and relevant scientific research to the European Food Safety Authority for approval. Nonetheless, some claims are completely prohibited; claims regarding weight loss or in relation to psychological functions, such as improved memory, are not permissible.

In the United States, admissible claims fall into three categories per U.S. Food and Drug Administration (USFDA) regulations: structure/function claims, nutrient content claims, and health claims. Different rules apply to each category.

Structure/function claims, which describe the role of a nutrient and how it affects the normal structure or function in humans (such as "calcium builds strong bones"), do not need preapproval by the USFDA prior to dissemination. This lends a certain leniency to manufacturers, although a disclaimer must be attached stating that the USFDA has not evaluated the claim.

Nutrient claims are used to characterize the level of a nutrient in a food, such as the use of the words "free," "reduced," or "only." The regulation is similar to that of the European Union, in that the nutrient must fall within certain quantifiable parameters to permit the use of such claims.

There is the most flexibility in the area of health claims, which describe a relationship between a food or ingredient and the reduction of risk of disease or other health-related conditions. The USFDA exercises its oversight of health claims in three ways. The company can petition a claim, which the USFDA will review along with the accompanying scientific literature. Further, if the company can provide an authoritative statement from a scientific body of the U.S. Government or the National Academy of Sciences, claims can be made simply by notification to the USFDA. Lastly, qualified health claims are permissible when there is emerging evidence to support the claim. On the whole, as long as a claim can be substantiated with scientific evidence, health claims will be permitted. Nevertheless, claims which appear to promise too much will be prohibited, such as a recent CHEERIOS ad claiming to lower cholesterol levels by 4 percent in six weeks.

Thai FDA Policy

Any advertising or labeling for food products must be approved by the Committee on Advertising (the Committee) under the Thai Food and Drug Administration (TFDA) prior to circulation. The laws regulating the advertising are set out in the Food Act 1979 and the Consumer Protection Act 1979, but the stringency with which they are applied is at the discretion of the Committee. The pertinent provisions under Sections 40–42 of the Food Act prohibit advertising "which is false or which is a deceptive act leading to misconception." The law is quite broad and can thus be interpreted by the Committee in such a way as to be detrimental to the companies. The Committee has final say on the entire content of all advertising, from the material used (pictures and content) to the format and layout. All advertisements will be scrutinized for excessive use of superlatives. Claims of "uniqueness" or "special design" tend to be rejected. In particular, claims made for food supplement products are especially monitored to ensure that no claims exhibiting pharmaceutical-like qualities are approved. Even though the rules appear rigid, ambiguity still remains. While the regulations set out guidelines for use of words such as "fresh" and "organic," no guidelines are provided in the legislation with regard to health claims, allowing wide discretion for the Committee.

The main concern of the TFDA is the protection of the consumer from false or misleading information. Claims which may seem to the manufacturer to simply be stating the purpose of the product ("this tea is designed to cleanse the body of toxins") can be perceived as an exaggeration by the Committee, and will consequently be rejected. In order to facilitate the approval of such claims, it is essential that companies compile sufficient evidence to support the claims being made. Since the TFDA considers all advertisements on a case-by-case basis, companies with well-developed registration strategies can use this fact to their advantage when seeking approval. Complete, persuasive evidence to support product claims can lead to approval in a manner that is actually quite similar to the processes that prevail in the European Union and the United States. ❖