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Health Claims - New EU Regulation on Generic Descriptors

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Report Highlights:
New European Commission Regulation 907/2013 sets out rules for the use of "generic descriptors" which could be interpreted by consumers as health claims. Generic descriptors such as "digestive biscuit" and "cough drop" would normally be banned under the EU's Nutrition and Health Claims Regulation because they have not been evaluated by the European Food Safety Authority. Under the new regulation, companies using generic descriptors may apply for an exemption from this ban. This report describes the application procedure and possible sticking points.

HEALTH CLAIMS: EUROPEAN COMMISSION ADOPTS REGULATION ON "GENERIC DESCRIPTORS"

New Regulation

Article 1.4 of the EU's Nutrition and Health Claims Regulation 1924/2006 required the European Commission to adopt rules on generic descriptors which have traditionally been used to describe the particularity of a class of foods or beverages and which could imply an effect on human health. Commission Regulation 907/2013 published on September 21, 2013 in Official Journal L 251, sets out rules for the use of generic descriptors which could be interpreted by consumers as health claims and applies to all commercial communications including labeling, presentation, advertizing. Generic descriptors such as "digestive biscuit" and "cough drop" would normally be banned under the Nutrition and Health Claims Regulation because they suggest a beneficial effect on health but the implied health benefit has not been evaluated scientifically by the European Food Safety Authority (EFSA).

There is no list of existing descriptors affected. Under Regulation 907/2013, companies using generic descriptors may apply for an exemption from this ban. The new regulation also covers food products imported from third countries but does not set a deadline by which food business operators should apply for an exemption. The European Commission will only allow generic descriptors with a proven usage of at least 20 years prior to the date of entry into force of the new regulation (October 11, 2013).

Application Procedure

Part A of the Annex to Regulation 907/2013 sets out the application procedure that companies must use in order to gain approval for traditionally-used generic descriptors. Applications may cover more than one Member State but should be submitted to the national competent authority of only one. Companies must submit their application to one of the Member States where the generic descriptor is used.

The so-called recipient Member State then checks whether the applicant provided all the mandatory information listed in Part B of the Annex and forwards valid applications to the Commission and all the other Member States. From the date the valid application was transmitted to the Commission, the recipient and other Member States concerned have six weeks to provide an opinion stating whether the generic descriptor fulfils the conditions for an exemption from the Nutrition and Health Claims Regulation. Other Member States can also provide an opinion to the Commission by the same deadline. The regulation says that, after receiving the valid application and the Member States' opinions, the Commission **MAY** "within a reasonable time" initiate the approval procedure to grant an exemption.

Publication

Applications will be assessed on a case-by-case basis. Decisions for a generic descriptor to be exempted will be adopted in accordance with the "regulatory procedure with scrutiny" (comitology) and published

in the Official Journal. Once exempted from the scope of the Nutrition and Health Claims Regulation, a generic descriptor may be used by all food business operators

Sticking Points

- Proving that a generic descriptor has been used for at least 20 years in one or more Member States seems relatively easy. However, Part B-point 2 of the Annex has every potential of discouraging companies from using the application procedure.
- Applicants may be asked by the recipient Member State and other Member States concerned to demonstrate consumer understanding and perception of the effects that could be implied by the generic descriptor, as well as proof that the consumer links the generic descriptor to the particular class of food or beverage.
- Certain elements of the application procedure would require major market research unaffordable for SMEs.
- Not all applications will be "clear cases" and may to a certain extent depend on the legislator's interpretation.

Links

- More information of the EU's Nutrition and Health Claims Regulation can be found on http://www.usda-eu.org/trade-with-the-eu/eu-import-rules/nutrition-health-claims/
- An overview of the EU's food regulations can be found on http://www.usda-eu.org/trade-with-the-eu/eu-import-rules/fairs-reports/