

Misbranding and Misleading: Issues and Implementation

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18th April, 2016 at the PFNDAI SGM

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And the headlines scream...

Every 5th food sample is adulterated and misbranded!

Source : <http://www.rediff.com/news/report/every-5th-food-sample-is-adulterated-and-misbranded/20151206.htm>

In 2015 :

- 2,795 cases
- 14,599 samples out of 74,010 tested “found” to be “adulterated and misbranded” (~20%)
- Convictions in 1,402 cases
- Rs. 10.93 crores in penalties

The ABC of Misbranding :

A, B and C

A

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*

, or

(ii) sold by a name which belongs to another article of food; or

(iii) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne on the package or containing the article or the label on such package; or

B

(B) if the article is sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer bearing his name and address but -

(i) the **article** is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character; or

(ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is **false or misleading** in any material particular, or if the package is otherwise deceptive with respect to its contents; or

(iii) the article is offered for sale as the product of any place or country which is false; or

C

(C) if the article contained in the package –

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labelled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or

- (ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use; or
- (iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act.

Type	Specifics	What exactly	In a nutshell
A	Claims , names, mfr	<ol style="list-style-type: none"> 1) False, misleading or deceptive claims on <u>package</u> or <u>advertising</u> 2) Other-name sales 3) Fake individual or company mentioned as manufacturer 	Methods of Sale and Advertising
B	Imitation, false ingredients, false place	<ol style="list-style-type: none"> 1) Imitative, substitute, resemblance with some other product 2) Misleading mention of ingredients 3) Product of a wrong place or country 	Name and address of manufacturer are correct, but little else. The food is not what it is <u>said to be</u>
C	Deficient label, SDU, limits	<ol style="list-style-type: none"> 1) Flavour, colour, chemical preservative not mentioned correctly on label 2) Special Dietary Use food, without information on vitamins, minerals or other dietary properties 3) Breaching limits of permitted variability 	Labelling deficiency as to Inside v. Outside (Conflict between what <u>is inside</u> and what <u>is stated outside</u>).

Live examples of enforcement ...

Kellogg's Special K (Kellogg's)



The allegation :

“Research shows that people, who eat low fat breakfast like Kellogg’s Special K, tend to be slimmer than those who don’t.”

Considering this as misleading and deceptive in nature the matter was referred to state authority for further action

Let's read it again :

“Research shows that people, who eat low fat breakfast like Kellogg's Special K, tend to be slimmer than those who don't.”

Junior Horlicks (GSK)



The allegations :

“Horlicks Nutrition Academy” shown in the form of a logo and declarations/claims like :

- “The Horlicks assurance”,
- “A to Z” nutrition,
- “100% RDA of nutrients” and
- “DHA for brain development.”

NutriChoice 5 Grain biscuits (Britannia)



The allegation :

The words

Cholesterol free and trans fat free

are misleading, and therefore the product is misbranded

Some other products targeted

1. Emami Soyabean Oil
2. Saffola
3. Nutri Charge Men
4. Engine mustard oil
5. Britannia NutriChoice biscuits
6. Today Premium Tea
7. PediaSure drinks
8. Real Active Fibre +
9. Nutralite
10. Kissan Cream Spread
11. Rajdhani Besan
12. Britannia Vita Marie

Advertisements under the Act

24. Restrictions of advertisement and prohibition as to unfair trade practices.

(1) No advertisement shall be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made thereunder.

- (2) No person shall engage himself in any unfair trade practice for purpose of promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation which –
- (a) falsely represents that the foods are of a particular standard, quality, quantity or grade-composition;
 - (b) makes a false or *misleading* representation concerning the need for, or the usefulness;

(c) gives to the public any guarantee of the efficacy that is not based on an adequate or scientific justification thereof:

Provided that where a defence is raised to the effect that such guarantee is based on *adequate or scientific justification*, the burden of proof of such defence shall lie on the person raising such defence.

Regulations

Regulation 2.2.1 of the Food Safety and Standards (Packaging and labelling) Regulations, 2011

- 3. Pre-packaged food shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect*

Regulation 2.3.1

5. Labels not to contain false or misleading statements: A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food:

Provided that this regulation shall not apply in respect of established trade or fancy names of confectionery, biscuits and sweets, such as, barley, sugar, bull's eye, cream cracker or in respect of aerated waters, such as, Ginger Beer or Gold-Spot or any other name in existence in international trade practice.

Regulation 2.5:

Restriction on advertisement

There shall be no advertisement of any food which is *misleading* or contravening the provisions of Food Safety and Standards Act, 2006 (34 of 2006) or the rules/regulations made thereunder.

The downside

Penalties

Misbranding : penalty

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.

Misleading : penalty

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.**

(2) In any proceeding the fact that a label or advertisement relating to any article of food in respect of which the contravention is alleged to have been committed contained an accurate statement of the composition of the food shall **not** preclude the court from finding that the contravention was committed.

Similarities between Misbranding and Misleading

- Misbranding INCLUDES Misleading
- (Misbranding is the genus of which Misleading is a species)
- All Misleading communication is Misbranding, but not vice-versa

Differences between Misbranding and Misleading

1. Misbranding is much wider in scope
2. Misbranding is defined, Misleading is not
3. Misbranding needs to be proved, Misleading only needs to be likely
4. Misbranding attracts Rs. 3 lacs fine, while Misleading attracts Rs. 10 lacs fine

Misleading Not Defined

The Bombay Police Act, 1951, Sec 110

110. Behaving indecently in public :

No person shall wilfully and indecently expose his person in any street or public place or within sight of and in such manner as to be seen from, any street or public place, whether from within any house or building or not, or use indecent language or behave indecently or riotously, or in a disorderly manner in a street or place of public resort or in any office, station or station house.

Draft FSSAI Code (Concept Note, 2009) for Self Regulation in Food Advertising

(From

http://www.fssai.gov.in/portals/0/draft_code_for_selfregulation_october2009.pdf)



Adobe Acrobat
Document

What ASCI says in relation to F&B ads

Advertising can have a positive influence by encouraging a healthy, well balanced diet, sound eating habits and appropriate physical activity. Caution and care therefore should be observed in advertising of Foods & Beverages especially ones containing relatively high Fat, Sugar and Salt.

Source:

<http://www.ascionline.org/index.php/principles-guidelines.html>

Nutralite case



Surendra & Company Vs.
Rajesh Kumar Rai and others
(MP High Court decision on 1st May, 2015)

Rule 49(23) of the Prevention of Food Adulteration Act, 1955,

[(23) The **fat spread** shall not be sold in loose form. It shall be sold in sealed packages weighing not more than 500 gms. **The word "butter" shall not be associated while labelling the product.** The sealed package shall be sold or offered for sale only under AGMARK certification mark bearing the label declaration as provided under rule 42 besides other labelling requirements under these rules.

Held by the MP High Court :

Food packet purchased by the Food Inspector contains the words "Nutralite (Healthier than Butter)". **As per the complaint of the Food Inspector, using the word 'butter' in the labeling of the product is prohibited.** Therefore, it is violation of Section 2(ix)(x) of the Food Adulteration Act and Rule 49(23) of Food Adulteration Rules. Therefore, the word butter used in the label constitute "misbranding".

Despite the fact that term will not be associated while labeling product, as has been stated above, the word "butter" has been **used to promote the sale** by labeling it as "healthier than butter"

Cases ignored by the Court :

Supreme Court judgment in *Commissioner Madras Hindu Religious and Charitable Endowment Vs. Narayan Iyengar*

(AIR 1965 SC 1916)

Delhi High Court judgment in *Municipal Corporation, Delhi Vs. Thouram* (ICR 1974 Delhi)

Surrender by the FBO



Q & A

THANK YOU !