



Nutrition, Health & Related Claims

Australian Industry Group

response to the

Proposal P293 – Nutrition, Health and Related Claims

March 2012

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Introduction

The Australian Industry Group (Ai Group) Confectionery Sector represents manufacturers of chocolate, sugar and gum confectionery, suppliers of ingredients, machinery, packaging materials and services to the industry, and wholesaler and distributor firms.

Ai Group has approximately 130 members operating in Australia and New Zealand.

The Australasian confectionery industry employs more than 8,700 Australians and New Zealanders.

The Australian confectionery industry's direct market value is in excess of \$2.9 billion, with New Zealand's being \$494 million.

Major confectionery manufacturing plants are principally located in New South Wales, Tasmania and Victoria, including in a number of regional locations (eg Ballarat and Lithgow) and to a lesser extent South Australia, Queensland and New Zealand where SME business are based.

Summary of Ai Group's Confectionery Position

The Ai Group Confectionery Sector

1. Supports in principle the development of a standard to provide greater confidence and certainty for nutrition, health and related claims for both consumers and food industry, however, the current P293 proposal fails to deliver this. The flawed nutrient profile scoring criteria (NPSC) proposed would clumsily restrict the making of many soundly based, helpful nutrient claims that are currently informing consumers and future health claims;
2. Continues to support sugarfree claims and conditions as set out in the Code of Practice on Nutrient Content Claims (CoPoNC);
3. Proposes a voluntarily phase out of fat free/% fat free claims on high sugar, high energy confectionery; and
4. For confectionery, management of fat free/% fat free is through a code of practice – Option 2.

Part I – Draft Standard 1.2.7 – Nutrition, Health and Related Claims

The Australasian confectionery industry has long advocated:

1. that there is a place for all food products, including confectionery, in a modern diet;
2. that there are no good and bad foods, rather good and bad diets; and
3. that nutrition, health and related claims should be permitted provided they are scientifically substantiated

and this includes confectionery as a legitimate food in a healthy diet.

For these reasons we have not supported adoption of the NPSC that clumsily restricts the use of health claims on products considered to be of lower nutritional quality. The NPSC serves to limit future research and development, stifle product innovation, as without the ability to communicate a nutritional benefit industry will be discouraged to invest in new product development, including healthier options for consumers.

Part II – Fat free and % fat free claims

Section 18 of the FSANZ Act describes the objectives of the agency in developing or reviewing food regulatory measures and variations of food regulatory measures. In descending order of priority, FSANZ's objectives are:

1. the protection of public health and safety; and
2. the provision of adequate information relating to food to enable consumers to make informed choices; and
3. the prevention of misleading or deceptive conduct.

In addressing these objectives, FSANZ must also have regard to a number of issues:

1. the need for standards to be based on risk analysis using the best available scientific evidence;
2. the promotion of consistency between domestic and international food standards;
3. the desirability of an efficient and internationally competitive food industry;
4. the promotion of fair trading in food;
5. any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority.

General comment:

The Ai Group Confectionery Sector believes fat free and % fat free claims are factual and do broadly contribute to the provision of information about foods, enabling consumers to make informed choices.

Additionally, other major trading parties, including the US, Europe, and in Codex, define fat free as being generally less than 0.5g of fat per 100g of food. The Code of Practice on Nutrient Content Claims (CoPoNC) determines fat free to be no more than 0.15g fat per 100g of food, however, the current proposal is silent leaving it to fair trading laws where free is considered absolute.

The existing draft standard will not align with international food standards and therefore fails to meet one of FSANZ's key objectives when developing and varying food regulations.

Sugarfree:

Similarly, inconsistency between domestic and international food laws applies in the case of sugarfree claims where major international trading partners define sugarfree as being generally less than 0.5g of sugars per 100g of food. CoPoNC determines

sugarfree to be no more than 0.2g sugar per 100g of food and as proposed for fat free, sugarfree too will sit outside food law and zero tolerance will apply.

The Australasian confectionery industry has long advocated that sugarfree remain in food law with the meaning as per CoPoNC. This will minimise the impact of a regulatory trade barrier, will assist in the promotion of an internationally competitive food industry and will not negatively impact consumer health.

Confectionery specific comment on fat free and % fat free claims:

Whilst the confectionery industry believes fat free and % fat free claims are not misleading, rather are helpful to consumers, it is also aware of the view that consumers are being misled by these claims with respect to high sugar, high energy confectionery. It is not the intention of the industry to mislead consumers with these claims, or any other claims, or information provided to consumers.

In an effort to show the industry intent, and in particular, not to allow any perception that the information is misleading, it is the industry's recommendation to all companies that they remove the fat free and % fat free claims from their high sugar, high energy confectionery products that do not normally contain significant levels of fat.

This recommendation has already been accepted in principle by in excess of 80% of the confectionery market and it is agreed that this will be implemented within a reasonably short time period.

It should be recognised that this decision was considered at great length by industry representatives, in conjunction with the confectionery industry's front of pack labelling deliberations. In particular, industry's efforts to enhance its *Be treatwise* program to ensure it provides easily attainable information to enable consumers to make informed food purchases and food choices.

At no stage has industry believed it was misleading consumers. However, even more importantly, industry felt that any perception to mislead was inappropriate and left industry uncomfortable and therefore needing to make a change.

The confectionery industry therefore recommends that in conjunction with its *Be treatwise* – responsible consumption program – that this voluntary industry approach be incorporated in and managed through a voluntary industry code of practice and a recommendation will be made by the industry body that all such claims are removed from labelling in an agreed period.

It is Ai Group's view that a very great majority of Australian made products would accept the recommendation to remove these claims as part of the positive marketing undertaken by these companies.

Summary:

For the confectionery industry response to fat free and % fat free claims we support Option 2 for a voluntary response through an industry code of practice for high sugar, high energy confectionery products.

Conclusion

The Ai Group Confectionery Sector continues to support, in principle, the development of a standard for nutrition, health and related claims, however rejects the NPSC.

We continue to support the regulation of sugarfree claims in food law with the meaning as per CoPoNC.

In the case of fat free and % fat free the confectionery industry, as part of its broader front of pack labelling initiative *Be treatwise*, has determined that it is the right thing to voluntarily phase out these claims for the high sugar, high energy confectionery segment.

For confectionery we support Option 2 for a voluntary response through a code of practice.