

30 March 2012

Food Standards Australia New Zealand

PO BOX 7186

CANBERRA, ACT 2610

Via Email: standardsmanagement@foodstandards.gov.au

Dear Sir/Madam

RE: SUBMISSION - PROPOSAL P293 NUTRITION, HEALTH & RELATED CLAIMS CONSULTATION PAPER

Thank you for the opportunity to provide comment on the above Proposal P293.

Please find below our comments on the proposed changes to the revised draft Standard 1.2.7 and our comments on the possible options for fat-free and % fat-free claims.

Part 1 – Changes to Draft Standard 1.2.7

Coles understands that FSANZ is recommending the inclusion of 115 pre-approved food-health relationships for use on gazettal of the new Standard and that additional food-health relationships published in the European Union (EU) will be periodically updated by FSANZ into the new Standard. In our view, the pre-approved list of general and high level claims will help provide certainty that food-health relationships are valid and provide greater clarity for food businesses and enforcement agencies. However, we would like further clarification on how quickly new food-health relationships published in the EU will be updated by FSANZ into Standard 1.2.7.

We are pleased that FSANZ have recognised the importance of having an option for new food-health relationships (which we understand relates to both general and high level claims) to be accessed on a confidential basis through the use of “high level health claims variation” procedure in the *Food Standards Australia New Zealand Act 1991*. In our view, this will help encourage food businesses to strive for innovation in their products and provide an incentive for food businesses to be first to market.

In relation to Schedule 2 of the draft Standard, we note that there are some omissions that we suggest should be included prior to gazettal. These omissions include a range of antioxidants, probiotics, prebiotics, phytochemicals and increase in satiety. If these claims are not included prior to gazettal this may result in unnecessary additional costs imposed on industry to submit an application to FSANZ and significant time delays for food businesses that wish to use them.

We also seek clarification on whether there is any flexibility in terms of the wording. Specifically, can these claims be varied or slightly modified to make more customer friendly on pack?

Dietary Information and Cause Related Marketing

Coles supports the removal of the proposed provisions for dietary information and cause related marketing because we agree that these types of claims are already covered by the Australian and New Zealand Consumer Law.

Part 2 – Fat free and % fat free claims

Coles have undertaken an analysis of our food and beverage products to assess what the impact would be if either of the proposed three options to fat free claims and % fat-free claim conditions came into effect. Coles currently have 1074 products that are eligible to carry a fat free or % fat-free claim (although only 156 products currently use a fat free or % fat free claim). Table 1 below shows how many of these products would be eligible to carry either of these claims with each of the proposed options.

Table 1. the number of Coles brand products that would be eligible to carry a fat free or %fat free claim.

Fat Free and x% Fat-free claim conditions	Number of products eligible for claim
Option 1: Status Quo	1074
Option 2: Voluntary act	1074
Option 3(a): Require foods to meet NPSC	674
Option 3(b): Require sugar disclosure statement	162
Option 3(c): Not permit claims on products per category	74 categories captured
Option 3(d): Not permit claims on foods above a sugar concentration (30%)	912

Option 1: Status Quo

Coles does not believe additional regulatory measures are required because any misleading claims relating to fat-free and % fat-free will already be covered by the Australian and New Zealand Consumer Law. However, we would support further education and awareness initiatives to help improve consumer understanding of fat-free and % fat-free claims.

Option 2: Voluntary industry Code of Practice

Coles would support voluntary action through the development of an industry Code of Practice (the Code) to develop conditions for making fat-free and % fat-free claims. If a voluntary Code is to be introduced we would welcome the opportunity to be involved in its development and implementation.

Option 3(a): Require foods to meet the nutrition profiling scoring criterion

Coles is concerned that this option is complex and costly for industry to administer and to ensure that the foods meet the nutrition profiling scoring criterion (NPSC). In addition, if not all claims meet the NPSC additional costs could be incurred for the re-packaging of many products.

Option 3(b): Require a disclosure statement if above a sugar concentration threshold

Coles is concerned that this option would require additional information to be disclosed on pack. This is not ideal given the finite space available on pack and fact that this would impose additional costs on industry with little additional consumer benefit.

Option 3(c): Not permit claims on certain products by food category

Coles is concerned that this option could stifle innovation and result in products being unfairly captured under certain food categories. This could potentially make product labelling more confusing to customers and harder for larger food companies to regulate. In addition, limiting claims on foods/food groups is soon out-dated as new technology is developed.

Option 3(d): Not permit claims on food above a sugar concentration threshold

Coles supports this option and is of the view that a 30% sugar concentration threshold is reasonable. In our view, this option will help address the real issue that consumers are being misled with some health claims with a common concern that foods with a fat-free and % fat free claim can be high in sugar. Sugar can contribute excess energy to a customer's total daily energy intake (for example through products like confectionary) and they are therefore not always a healthier option as a claim may lead customers to believe.

Coles estimates that we would have to reformulate approximately 30 products if this option were introduced. Examples include fruit filled muffin bars, sauces, baked goods, breakfast cereals. Other foods with more than 30% sugar include dried fruit, fruit spreads, confectionary, meringues, Christmas pudding.

Transitional arrangements

We understand that there will be a two year transition period for Standard 1.2.7 from gazettal with no additional stock in trade period. In our view, this provides industry with reasonable time to review and update any claims on product.

Conclusion

Coles is of the view that the proposed changes to the draft Standard will improve the clarity of the Standard and will provide greater consistency with claims for food businesses and enforcement agencies.

Whilst we do not believe additional regulation is needed on fat-free and % fat-free claims once covered by consumer law, we would like to be involved in any future work on a voluntary code of practice or consumer education and awareness on for fat-free and %fat-free claims if introduced.

We would be pleased to discuss our comments in further detail. Should you wish to arrange a meeting, please contact our Nutritionist Corinne Renshaw on (03) 9829 6226 or Corinne.renshaw@coles.com.au.

Yours faithfully

Jackie Healing

Head of Quality, Policy and Governance