

Requirements & Guidelines on Advertising, Nutrition & Health Claims

Introduction

In the EU any marketing material shall be compliant with European Union (EU) rules on nutrition and health claims in connection with marketing of functional food, food supplements and food for specific groups. Non-compliant and therefore illegal marketing material has a negative impact on the image of direct selling. In order to increase the awareness of the EU rules and to help promote good practices that ensure compliance with such EU rules, Seldia has issued the following guidelines to the EU laws on Nutrition & Health Claims.

The scope of these guidelines relate to advertisement based on generic claims on food products and nutrition and health claims.

The control of claims made on foods falls within several pieces of EU food law:

- Regulation (EC) No 178/2002 on General Food Law prohibits any practices which may mislead the consumer.
- Misleading claims on products are prohibited by the Food Information to Consumers Regulation (EC) No 1169/2011, which states that food information must not be misleading, particularly in relation to the characteristics of the food; by attributing to the food effects or properties which it does not possess; or by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics.
- The Food Information to Consumers Regulation also prohibits claims attributing to any food the property of preventing, treating or curing a human disease nor referring to such properties.
- The Nutrition and Health Claims Regulation (EC) No 1924/2006 prohibits claims that are false, ambiguous or misleading; claims which give rise to doubt about the safety and/or the nutritional adequacy of other foods; and claims that encourage or condone excess consumption of a food.

It is important that the advertising of any product placed on the EU market does not contravene any of the above legislation, and also that it is compliant with any other relevant but non-food specific EU trading laws.

European Nutrition and Health Claims Regulation (EC) No 1924/2006 (NHCR)

According to the NHCR, a claim is any message or representation, which is not mandatory under EU or national legislation, including pictorial, graphic or symbolic representation, in any form, which states, suggests or implies that a food has particular characteristics.

This means that **all** forms of product promotion are covered by the NHCR, including printed material, electronic communications and verbal statements. Thus, it can apply to verbal statements or presentations made at direct selling meetings where potential consumers may be also permitted to attend. It also means that if, for example, a product name, a piece of marketing text or an image can be interpreted as implying a nutrition or health claim, then it falls within the remit of the NHCR.

The NHCR defines nutrition claims and health claims as follows:

- **Nutrition claim:** Any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to:
 - (a) the energy (calorific value) it
 - (i) provides;
 - (ii) provides at a reduced or increased rate; or

- (iii) does not provide; and/or
- (b) the nutrients or other substances it
 - (i) contains;
 - (ii) contains in reduced or increased proportions; or
 - (iii) does not contain;

Health claim: Any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.

Nutrition and health claims problems often occur from a lack of knowledge or understanding of the EU Regulation on Nutrition and Health Claims (NHCR).

Nutrition and health claims are strongly regulated by the EU, on the basis of an exclusive, positive list of authorised nutrition and health claims that can be used. The use of any authorised nutrition and health claims from the EU list can only occur if the product complies with the relevant conditions of use for the claims.

EU Register of Nutrition and Health Claims

All permitted nutrition claims and all authorised and non-authorised health claims can be accessed via the EU Register of Nutrition and Health claims, a publically available, searchable database (<http://ec.europa.eu/nuhclaims/>). The Register also provides the associated conditions for use of the authorised claims, such as the amount of an ingredient that must be present in a product for a claim to be made.

Specific terms and conditions for use of the claims are stated on first entry to the database, and companies and direct sellers should ensure they comply with these.

Importantly, it is stated that health claims should only be made for the nutrient, substance, food or food category for they have been authorised, and not for the food product that contains them.

In addition, although some flexibility of wording of the claim should be possible, the adapted wording must have the same meaning for the consumer as the authorised health claim, therefore companies and direct sellers should ensure they do not exaggerate a claim in their marketing communications.

Particular Situations

The following situations are of particular concern with respect to nutrition and health claims:

- **Links**

Direct sellers use or distribute links to web pages that contain nutrition and health claims which are not part of the EU positive list of nutrition and health claims that can be used. For example, a direct seller who is part of a non-EU company often refers to the home page of the company. The home page may contain nutrition and health claims that are targeted to customers in the non-EU country and which are legal there. *However, if such claims are not legal in the EU, a direct seller cannot link its own marketing page to this company website or use it otherwise in connection with marketing activities.*

Companies should actively promote and encourage their direct sellers to refer to the EU relevant pages that contain nutrition and health claims which are part of the EU positive list of nutrition and health claims that can be used.

- **Social Media**

Direct sellers use more and more social media for their activities. Over 4.5 million direct sellers in the EU operate through their Facebook, Twitter, YouTube or other social web pages to promote the product they sell. Direct sellers are micro businesses that are less likely to be familiar with EU nutrition and health claims rules than larger companies. Consequently, there is a higher risk of illegal nutrition and health claims being used on these social networks.

- **Marketing**

Web pages, YouTube films or other Internet based communications can contain nutrition and health claims that are compliant with the legislation of the country in which they are hosted or where the companies are based. However, if these communications are targeted at EU Markets, they must comply with EU rules.

To identify whether web pages or other communication are directed to a particular market, the use of languages, the currency at which products are priced, the correspondence address, and other such criteria should be considered.

Requirements

- Companies shall comply with all the EU legislation that is relevant for the products they market and retail in the EU.
- Companies shall respect the EU Regulation on general food law, Regulation No 178/2002, in particular in relation to not misleading the consumer.
- Companies shall develop fair information practices in line with the EU Regulation on the provision of food information to consumers, Regulation No 1169/2011, and the Directive 2006/114/EC concerning misleading and comparative advertising.
- Companies shall also in all cases respect the European laws on nutrition and health claims, EU Regulation No1924/2006, and the terms and conditions of the EU Register of Nutrition and Health Claims.
- Companies should inform their direct sellers to only refer their nutrition and health claims to the relevant national websites that conform to the EU legislation.
- Companies must use their best endeavours to ensure adherence, both by themselves and by their direct sellers, to the EU laws on information, advertising and nutrition and health claims.

Guidelines

Seldia recommends to:

- Make appropriate use of all government and industry guidance relevant to this issue, particularly any national guidance specific to the intended EU member states of market.
- Only make available to local EU markets product information online that is compliant with EU regulations, and make it an obligation for its direct sellers to refer only to the content of such

sources.

- Actively inform all direct sellers of the information, advertising, nutrition and health claims rules.
- Actively monitor the use of nutrition and health claims by its direct sellers, in particular those made via social media.
- Take proportionate measures against any direct seller acting in breach of the EU rules.
- Take positive and proactive actions to resolve potential issues-

Useful Resources

- **Commission Information**

Commission guidance on the implementation of Regulation (EC) N° 1924/2006 on nutrition and health claims made on foods 2007:

http://ec.europa.eu/food/safety/docs/labelling_nutrition_claim_reg-2006-124_guidance_en.pdf

Commission Implementing Decision of 24 January 2013 adopting guidelines for the implementation of specific conditions for health claims laid down in Article 10 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council (2013/63/EU): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013D0063:EN:NOT>

EU Register of nutrition and health claims made on foods: <http://ec.europa.eu/nuhclaims/>

- **National Authority Guidance**

Finland: Nutrition and Health Claim Guide for food supervisors and food business operators (in Swedish): http://www.evira.fi/files/products/1336454639046_evira_guideline_17052_1_en.pdf

Ireland: Information on Nutrition and Health Claims (May 2015): https://www.fsai.ie/publications_nutrition_healthclaims/

General principles on flexibility of wording:

Finland:

[http://www.evira.fi/files/attachments/fi/elintarvikkeet/valmistus_ja_myynti/pakkausmerkinnat/health_claims - flexibility of wording principles 14 dec 2012.pdf](http://www.evira.fi/files/attachments/fi/elintarvikkeet/valmistus_ja_myynti/pakkausmerkinnat/health_claims_-_flexibility_of_wording_principles_14_dec_2012.pdf)

United

Kingdom:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217005/health-claims-flexibility-of-wording-principles-UK-19-Dec-2012.pdf

Note: These General Principles were agreed in 2012 by certain EU Member States (Austria, Belgium, Denmark, Finland, France, Germany, Estonia, Hungary, Ireland, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Sweden and United Kingdom). They may not be considered applicable in all EU Member States.

United Kingdom: Guidance to compliance with Regulation (EC) 1924/2006 on nutrition and health claims made on foods:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204320/Nutrition_and_health_claims_guidance_November_2011.pdf

- **Industry Guidance**

Food Supplements Europe Guidelines for the Substantiation of Beauty Claims for Food Supplements:
<http://www.foodsupplementseurope.org/sites/0023/uploads/content/publications/beautyclaims-forfoodsupsupplements.pdf?1407341347>

Food Supplements Europe The application of the Nutrition and Health Claims Regulation 1924/2006:
<http://www.foodsupplementseurope.org/sites/0023/uploads/content/publications/nutrition-and-health-claims-regulation.pdf?1407341470>
