

2003 GUIDE TO FOOD LABELLING AND ADVERTISING

Chapter 3

Advertising Requirements

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Table of Contents

3.1	General Principles	3 - 1
3.2	Common Names	3 - 1
3.3	Impressions	3 - 1
3.3.1	Failure to Disclose	3 - 2
3.4	Avoiding Misleading Description	3 - 2
3.4.1	Alarmist Advertising	3 - 2
3.4.2	Atmosphere	3 - 2
3.4.3	Accuracy in Illustrations	3 - 3
3.4.4	Illustrations of People	3 - 3
3.4.5	Reference to Laboratories	3 - 3
3.5	Supporting References	3 - 3
3.5.1	Scientific and Technical References and Terms	3 - 3
3.5.2	Statutory References and Terms	3 - 4
3.5.3	Reference to Media Reports and Publications	3 - 4
3.5.4	Reference to Surveys and Questionnaires	3 - 4
3.6	Endorsements, Awards and Seals of Approval	3 - 5
3.7	Using Comparisons Carefully	3 - 5
3.7.1	Dangling Comparisons	3 - 6
3.7.2	“Light” Products	3 - 7
3.8	Appropriated or Inferred Claims	3 - 7
3.9	Language Requirements	3 - 7
3.10	Net Contents	3 - 7
3.11	Labels in Advertisements	3 - 8
3.12	Advertisements for Bulk Beef, Veal, Pork and Lamb	3 - 8
3.13	Educational Advertising	3 - 8
3.14	Broadcast Advertising	3 - 9

Chapter 3

Advertising Requirements

3.1 General Principles

In general, mandatory information or claims that are acceptable on a food label may also be used to advertise that food. Unacceptable label information is generally also not acceptable in advertising. Therefore, manufacturers and advertisers should ensure that their labels comply with federal statutes before developing advertisements for the foods.

Food manufacturers wishing an opinion on a label may request government officials to review the specific label. (See 1.6 of this Guide, Canadian Food Inspection Agency Food Labelling Information Service.) However, a label review does not constitute a review of the advertising script, which will be discussed later in this Chapter.

3.2 Common Names

In advertisements, a food should be described by its common name. For example, orange juice from concentrate [B.11.133] should be described as "orange juice from concentrate" and not "orange juice". After referring to the product by its proper common name at least once in the advertisement, it may be acceptable to use the generic term "juice" or the brand name for subsequent or additional references. Ingredients mentioned in advertising should also be designated by their common names. (See 4.2 of this *Guide* for a comprehensive discussion of Common Names, Coined Names, Trade Names and Brand Names.)

3.3 Impressions

The words and visual depictions used in advertisements as well as the impressions they create are important. Any exaggeration or innuendoes, such as the depiction of incredible performance or feats, associated with the consumption of a food should be avoided, as they may create false, misleading, or deceptive impressions. Similarly, illustrations of scientific equipment and machinery should not be used if they might offend Section 5(1) of the FDA or Section 7(1) of the *CPLA*. Refer to 3.4.5 of this *Guide*, Reference to Laboratories, for more information.

Under Section 7 of the *Consumer Packaging and Labelling Act*, it is considered false or misleading to use any expression, word, figure, depiction, symbol or other device that implies that an ingredient is present when it is not, or that implies an ingredient is not present when it is present.

Ingredients that are not present in a food may not be illustrated on the label of the food or in an advertisement **unless** it is made clear that the ingredient is not a part of the food.

Note that **qualifying statements or disclaimers** cannot be used to correct a false or misleading statement or vignette. Some labels and advertisements use asterisks if they need to direct the consumer's attention to a statement in an obscure location. However, it is **not acceptable** to use this technique to explain that a featured statement or vignette is not exactly what it appears to be. It **is acceptable** to use asterisks to direct the consumer's attention to additional information which is not mandatory.

3.3.1 Failure to Disclose

It is unacceptable to use partial truths to create a false impression concerning a food. This includes the failure to disclose the essential facts concerning the properties or composition of the food being advertised, particularly when emphasis is given to the more desirable characteristics or to expensive ingredients.

- For example, it is technically possible to simulate meats, nuts, chocolate, etc. that have the physical appearance, texture and taste of the food simulated. Advertisements for the products must disclose the presence of the simulated nuts, meat or chocolate, especially when the nuts, meat or chocolate content of the food is emphasized. The advertisement must not create an erroneous impression that more of the real ingredients are present than is the case.

An erroneous impression may be created by illustrations as well as by words, which is why any pictorial representation of the product must accurately portray the product.

3.4 Avoiding Misleading Description

Words that have no explicit meaning when used to describe foods create false, deceptive or misleading impressions about the food or its consumption, and often lead to claims that are misunderstood by consumers.

In general, the meaning of descriptive words should be clear. Words such as "**balanced**" or "**prescribed**" should be avoided as they are often misunderstood and are consequently misleading.

Words or phrases implying that a food is nutritionally perfect should not be used. Superlatives such as "**best**", words of unusual emphasis such as "**sensational**" and comparatives such as "**better**" and "**superior**" are all likely to be regarded as misleading or deceptive.

Special care must be taken when using comparisons to provide sufficient information to enable consumers to evaluate the claim. (See 3.7 of this *Guide*.)

3.4.1 Alarmist Advertising

Advertisers should not create alarm by suggesting that any one food is essential to health or nutritional well-being. Conversely, advertisers should not claim that a competitor's product contains harmful or undesirable ingredients or constituents or that other foods may not be as nutritious as their own. Advertisers should not suggest some foods are good while others are bad nor associate guilt with certain foods (see Chapter 8 of this *Guide*, Health Claims).

3.4.2 Atmosphere

The creation of a vague, mysterious, provocative or otherwise unusual atmosphere that has no relation to the product or its origin should be avoided.

3.4.3 Accuracy in Illustrations

Pictures and charts are common and valuable aids to advertising. These aids should not be used to deceive, mislead or misrepresent the qualities or value of a product.

Where the picture professes to represent the food offered for sale, the actual marketplace product should be shown. If the product must be prepared, then the product prepared according to directions should be shown in the picture.

3.4.4 Illustrations of People

Several principles govern the use of illustrations of people in advertisements.

- Where pictures purport to represent a known person, the actual person should be portrayed in the advertisement.
- Representations of professional people, like illustrations of laboratories or of scientific apparatus (see 3.4.5 below), should not be used to create "atmosphere" if they have no direct connection with the product.
- "Before and after" pictures are to be avoided.

3.4.5 Reference to Laboratories

The term "**laboratory**" suggests scientific personnel, scientific equipment and scientific research. Advertisements should not imply that a company maintains a laboratory unless actual laboratory functions are carried out by, or under, the direct supervision of, qualified scientific personnel.

3.5 Supporting References

References, whether to scientific literature, media reports, general publications or surveys, must be used with care to avoid confusing or misleading the consumer.

3.5.1 Scientific and Technical References and Terms

Statistics and references from technical literature are usually unsuitable for commercial advertising. In cases where the subject is controversial or where there are differences of scientific opinion, it is misleading to choose only favourable opinions with no indication that an equally-competent authority has given an unfavourable opinion. Any scientific and/or technical references are subject to restrictions set out in the *Food and Drugs Act and Regulations*.

Scientific and technical terms may not be properly understood by the public. Therefore, they should be avoided in advertising directed at the general public, unless fully explained.

Coined technical terms should not be invented to impress the potential purchaser. However, there is no objection to registered trade names of ingredients appearing on the label (e.g., NutraSweet), providing:

- their use does not create a misleading impression with respect to the product being sold,

- the trade name does not appear within the list of ingredients, and
- the ingredient(s) associated with the trade name is properly declared within the list of ingredients by using the common name of the ingredient and when required, declaring its components.

3.5.2 Statutory References and Terms [B.01.013]

Any reference, direct or indirect, to the *Food and Drugs Act and Regulations* on any food label or in any food advertisement is prohibited by B.01.013, unless the reference is specifically required or permitted by the Act or Regulations.

Terms which are defined in any statute of the Parliament of Canada and regulations made pursuant thereto, are expected to comply with the specified legal definition when used in advertising. Terms such as "ingredient", "durable life", "packaging date", "age of an alcoholic beverage" and "vitamin" are examples of terms defined in the *Food and Drug Regulations*. For example, if a label of a meat claims "contains no filler", none of the ingredients defined as "filler" in B.14.001 may be present in the product.

Consumer perception of the meanings of the terms must also be considered.

3.5.3 Reference to Media Reports and Publications

In food advertisements, it is not acceptable to quote from press reports, magazines or other publications if the quoted statement would not be permissible under the *Food and Drug Regulations*. Generally, government publications also should not be used as a basis for advertising claims or references unless they comply with the *Food and Drugs Act and Regulations*.

The wording used in excerpts from press reports, magazines and government publications may not be acceptable. Even if the information is factual, the wording in food advertisements must be in compliance with all applicable provisions of the *Food and Drug Regulations*. In some cases, quotations taken out of context can be considered misleading.

3.5.4 Reference to Surveys and Questionnaires

Surveys and questionnaires are used to obtain opinions on foods from selected groups of consumers. Opinions on flavour, texture, taste and appearance of foods are usually not objectionable if the claims can be substantiated and are not derogatory. For example, claims such as "Inuits say that Super brand orange juice is the best tasting," must be supported by an adequate survey.

Advertising Standards Canada has prepared a publication, *Guidelines for the Use of Comparative Advertising in Food Commercials*. It outlines the criteria for the use of research and survey data in support of advertising claims, which includes types of claims, research methods for consumer studies and documentation required to support a claim. See 3.14 of this *Guide* for contact information and to obtain a copy.

Opinions pertaining to nutrition, composition and market share may be objectionable unless expressed in a manner which complies with the Food and Drugs Act and Regulations. Claims

such as, "Our product is the best tasting," could require substantiation or else be open to competitive challenge.

3.6 Endorsements, Awards and Seals of Approval

Chapter 8 of this *Guide* deals with Third-Party Endorsements, Logos and Seals of Approval.

In general, endorsements must be used with care.

- **Professional endorsements** for specific foods and diets may be misleading and generally are considered inappropriate for advertising purposes. The advertiser is responsible for ensuring that the endorsers are, in fact, whom they appear to be and/or are legitimate representatives of the group or organization for whom they speak. As well, their statements must not violate the *Food and Drugs Act and Regulations* or the *Competition Act*.
- When awards, seals and certificates of approval are cited, the consumer should be made fully aware of the reasons for which they were granted.
- **Awards** should be mentioned **only** if the praiseworthy qualities for which the award was won are also outlined and are still valid for the product. The date of the award should also be mentioned. Any suggestion that the food product is nutritionally superior to others, or that the award was won for reasons other than those for which it was actually won, may be misleading, false, and deceptive.
- Descriptive terms implying certification (e.g., "**certified**", "**approved**" or "**certificate of analysis**"), may be misleading unless the facts pertaining to the "certification" or "approval" are known to the consumer, or are shown on the label or in the advertisement. One acceptable use of certification, for example, is the inspection legend under the *Meat Inspection Act*, which indicates that the product containing the meat ingredient comes from an establishment under the jurisdiction of the Canadian Food Inspection Agency (CFIA).
- **Personal opinions**, testimonials, honest convictions or alleged new discoveries are judged in the same manner as other claims. (See 3.5.4, "Surveys and Questionnaires," earlier in this chapter)

Endorsements or testimonials which deal with the sensory qualities of a product, such as flavour, texture, taste, appearance or similar attributes, are usually acceptable when these claims can be readily evaluated by consumers.

3.7 Using Comparisons Carefully

For comparative claims related to the nutrient content of food, see Chapter 7, *Nutrient Content Claims*. For a fuller discussion of comparative food advertising, Advertising Standards Canada has prepared a publication, *Guidelines for the Use of Comparative Advertising in Food Commercials*. It outlines criteria for comparative advertising in food and non-alcoholic beverage commercials, along with practical guidelines for the use of these criteria. While subsection 5(1) of the *Food and Drugs Act* does not make specific reference to comparative advertising, the

Guidelines on Comparative Food Advertising provide some assistance when determining if an advertisement is false or misleading.

Copies of this publication may be obtained from Advertising Standards Canada. See 3.14 of this *Guide* for more information.

Foods (or selected food factors) cannot be compared **unless** the comparison is complete, and the foods are similar in character, composition or other attribute of the food relevant to the comparison being made. The comparison of one food with another should not create doubt about the value of the other food. Considerable care must be taken, especially:

- i) when comparing solid foods with liquid foods either on a mass-for-mass or volume-for-volume basis;
- ii) when comparing a food consumed in small quantities with one consumed in large quantities; and
- iii) when comparing a food eaten occasionally with one that is consumed regularly.

3.7.1 Dangling Comparisons

Words such as "better" and "richer" often imply a comparison without indicating the factor being compared or the product used as a reference point. Without these clarifications, a comparison is incomplete and could be misleading. For example, if a product is an improvement over one previously made by the same firm, this should be clearly indicated along with the nature of the improvement.

Similarly, foods are often described as "**new**" or "**improved**". The term "new" implies that the food has never before been offered for sale by the manufacturer, or that the product has been substantially altered. However, in many cases, the term "new" simply describes the packaging, the labelling or such factors as a new flavour.

"Improved" implies that the food, or some aspect of the food, has been modified to make it better than before. The way in which a food is new or improved should be stated on the label and in advertisements, unless the reason is perfectly clear.

The claim that a product is "new" or "improved" is valid for a period of **one year or less** in the region where it is made. After that period, the claim would be considered misleading: the altered product could no longer be considered "new". However, manufacturers that have distinct marketing areas for their products (e.g., different plants supplying different regions of the country), could choose to phase in the "new" version of the product, using a different schedule in each market area. For example, a company with seven distinct marketing areas could decide to introduce the new version of its product in Winnipeg, and then in a different area of the country every two months. In a year, the product would no longer be "new" in Winnipeg, but it might well be new in another region.

3.7.2 “Light” Products

The use of “light”, “lite” or any other phonetic rendering of the word as a nutrition claim is restricted to products which meet the criteria for “light in energy or fat”, as set out in item 45 of the table following B.01.513. (See 7.10 of this *Guide* for a fuller explanation.)

The term “light” is also permitted when it refers to a product’s **sensory characteristics** (e.g., light in colour, taste, flavour etc.). In this case, the sensory characteristic to which the term refers must accompany the claim.

The sensory characteristic shall be shown adjacent to the most prominent light statement or claim (e.g., “light tasting”, “lite coloured”), without any intervening printed, written or graphic material, in letters of at least the same size and prominence as the most prominent claim. A claim on the principal display panel is considered to be more prominent than any claim elsewhere on the label.

Some exceptions to the use of the term “light”, which are specifically provided for in the *Food and Drug Regulations*, are also set out in 7.10 of this *Guide*, Light Claims, which outlines the use of the term in conjunction with products such as maple syrup and rum (to indicate a paler colour), beer (to indicate a lower alcoholic content), salt fish (to indicate a lower level of salt) and syrup (to indicate a lower sugar content in the packing medium for canned fruit) [B.01.502(2)].

Similar criteria apply when the sensory characteristic “light” is found within an advertisement. In print advertising and in the visual portion of a television ad, the requirements are the same as those for a label, with the additional stipulation that the sensory characteristic must appear concurrently and for the same amount of time as the claim for television ads. For radio and the audio portion of television advertisements, the sensory characteristic must be stated either immediately before or immediately after the “light” claim.

3.8 Appropriated or Inferred Claims

It is misleading to make a claim for a product or its use so that the merits of another article, with which it may be associated or used, are directly or indirectly appropriated to the product being promoted.

3.9 Language Requirements

There are no bilingual requirements under federal statutes concerning food advertising. There are, however, bilingual requirements respecting mandatory statements on the labels of prepackaged products. (See 2.4 of this *Guide*, Bilingual Requirements.)

3.10 Net Contents [7(2)(a), CPLA]

Claims such as “big litre”, “jumbo litre” and “full litre” must not be used, since they contravene the *Consumer Packaging and Labelling Act* which prohibits any qualification of the declared net quantity of a prepackaged product. (See also 2.6 of this *Guide*, Net Quantity)

3.11 Labels in Advertisements

Generally, labels depicted in advertisements should be current labels. Partial reproductions may be used in advertisements if the information shown is meaningful to consumers and is not misleading or deceptive. Mandatory statements that appear near the common name should not be removed in any partial reproduction of a label. For example, these label statements should not be removed: "previously frozen" and "artificial smoke flavouring added" where applicable for meats and "carbonated" for carbonated mineral waters.

3.12 Advertisements for Bulk Beef, Veal, Pork and Lamb [B.14.018, B.14.019]

The *Food and Drug Regulations* apply to the advertising of beef, veal, pork and lamb carcasses. Where a carcass or a portion weighing over seven kilograms is advertised for sale, the advertisement must include an **indication of the grade** assigned to the carcass by a Canadian or foreign grading authority. If no grade has been assigned, the advertisement must indicate that the carcass has not been graded.

Further requirements apply when that same meat advertisement states a **selling price**.

B.14.019. (1) Where a carcass of beef, veal, pork or lamb or a portion thereof that weighs 7 kg or more is advertised for sale and a selling price is stated in the advertisement, the advertisement shall

(a) contain the words "price per kilogram is based on carcass weight before cutting, boning and trimming" or the words "price per kilogram is based on the weight of the meat after cutting, boning and trimming", whichever words are applicable; and

(b) where in addition to the selling price a charge is payable for cutting, boning, trimming, wrapping or freezing the carcass or portion thereof, indicate

(i) the amount of the additional charge, and

(ii) where the additional charge is payable on a price per unit weight basis, whether the additional charge is based on the weight of the carcass or portion thereof before or after the carcass has been cut, boned and trimmed.

(2) Any information required by subsection (1) to appear in an advertisement shall be located therein immediately adjacent to the selling price stated therein, without any intervening written, printed or graphic matter.

3.13 Educational Advertising

All statements designed to promote the consumption or sale of a food are considered to be advertising and therefore are subject to a variety of legislation:

- the *Food and Drugs Act and Regulations*,
- the *Consumer Packaging and Labelling Act* [Section 7],
- other federal or provincial statutes and guidelines, including the *Competition Act* [subsections 52(1), 52.1 and 74.02], and the *Trade-marks Act* [Section 7],

When developing educational material which may be used in an advertisement, one must ensure that it contains no false or misleading claims and that all statements comply with the

above-mentioned Acts and Regulations (see Educational Material Versus Advertising Material, 8.10 of this *Guide*).

3.14 Broadcast Advertising

Advertising Standards Canada (ASC) can review broadcast advertising scripts to promote compliance with the *Food and Drugs Act* and the *Food and Drug Regulations* and the *2003 Guide to Food Labelling and Advertising*. Staff review advertising copy to confirm that food is not advertised in a manner which is false, misleading, deceptive or likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety (Subsection 5(1) *Food and Drugs Act*). Copy is also reviewed with respect to opinions pertaining to nutrition, composition and market share which should be expressed in a manner which complies with the *Food and Drugs Act* and the *Food and Drug Regulations*.

Broadcast advertisements for a food advertiser or for a food product may be cleared by ASC. However, advertisements that do not make a "Food and Beverage Claim" are exempt from clearance.

Advertising Standards Canada has prepared the following publications :

- Script Clearance Procedure for Broadcast Advertisement
- Guidelines for the Use of Research and Survey Data in Support of Advertising Claims
- Guidelines on Comparative Food Advertising
- Alcoholic Beverage Broadcast Advertising Clearance Procedure and Form
- "No Claim" Food and Beverage Broadcast Advertising: Clearance Exemption Policy Document

Copies of the abovementioned publications may be obtained from:

Advertising Standards Canada
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