

In focus

Navigating
the maze of
nutrition and
health claims



With the production of nutritious and healthy products a key priority for food and beverage manufacturers, the use of nutrition and health claims, or even generic descriptors that imply a health effect, are increasingly being used as a means of promoting their brands.

In order to protect brand reputation and retain loyalty, manufacturers need to be abreast of the latest regulatory developments with respect to using claims and generic descriptors as commercial communication tools. This white paper covers the three critical topics: the significance of 19th January 2022; the use of generic descriptors that could imply an effect on health, and the status for nutrient profiles. All these are highly relevant to food and beverage manufacturers seeking to communicate the benefits of their products.

Nutrition and health claims alone have the power to motivate consumers to buy products that they perceive will help them with their fitness and wellbeing. Such claims are therefore being used by food and beverage manufacturers as part of their commercial communication strategy to enhance the health halo of their products and increasing brand awareness and loyalty among consumers.

However, it is equally important that these consumers are protected from false, inaccurate or exaggerated claims, and this is why the European Commission (EC) has created a Regulation (Regulation (EC) 1924/2006) that puts forward specific conditions or provisions for the use of nutrition and health claims in marketing communications.

In addition, this Regulation has been designed to provide food and beverage manufacturers with clear, harmonised rules that will allow for fair competition in product innovation.

Food and beverage companies use a variety of communication tools to promote their products among their consumers and users, such as:

Branded images

Marketing materials

Press releases

Branded websites

Labels

Trademarks

Catering establishments

Menus

It is a lawful requirement that the information used in the communication materials is accurate and compliant with the regulatory requirements.





Example: can I continue to use “light/lite” in my product’s brand name?

If your brand name uses the word, ‘light’, in a way that suggests reduced calories or sugar or fat then after 19th January 2022, it can only do so if it complies with the conditions laid out in Regulation (EC) 1924/2006. This means that the reduction in the nutrient content, such as fat or energy, should be at least 30% compared to a similar product (except for micronutrients where a 10% difference in the reference values as set in Regulation 1169/2011 shall be acceptable and for sodium (or an equivalent of salt) where a 25% difference shall be acceptable). The “similar product” mentioned above is often taken as the market average of the products, including those from other brands, as long as these products do not have the composition that allows them to bear a claim.

1.0 Why is 19th January 2022 so important?

Whilst the Regulation came into force on 1st of July 2007, the EC acknowledged that the manufacturers would require a transitional period to comply with the conditions behind the use of trademarks, brand names and fancy names that are construed as nutrition or health claims. These manufacturers therefore have until 19th January 2022 to scrutinise their products’ trademarks, brand names and fancy names, and adapt if needed. They also need to ensure that their trademarks or brand names are accompanied by an authorised nutrition or health claim.

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The key differences between nutrition claims and health claims

Nutrition claims and health claims are fundamentally different. Nutrition claims refer to any claim which states, suggests or implies that a food has particular nutrition properties due to energy (calorific value) and / or due to the nutrients or other substances. Nutrients are defined as proteins, carbohydrates, fats, fibres, sodium, vitamins and minerals as well as other substances that have a nutritional or physiological effect. Below is a full set of the permitted nutrition claims that can be used as long as these are substantiated.

Low energy	Source of protein	
Energy-reduced	High protein	
Energy-free	Source of fibre	
	High fibre	
	Source of vitamin(s)/mineral(s) X	
	High vitamin(s)/mineral(s) X	
		Contains (name of nutrient)/other substance
		Increased (name of nutrient)
		Reduced (name of nutrient)
		Light/Lite
	Low sugars	Naturally/Natural
Sugars-free		
With no added sugars		
		
	Low sodium/salt	
	Very low sodium/salt	
	Sodium-free/salt-free	
No added sodium/salt		

A health claim states, suggests or implies that a relationship exists between a food category, a food or one of its constituents, and health, where health means a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity. Some examples, from 266 authorised claims, are shown below:

Nutrient/substance	Claim
Activated charcoal	Activated charcoal contributed to reducing excessive flatulence after eating
Docosahexaenoic acid (DHA) Eicosapentaenoic acid (EPA)	DHA and EPA contributes to the maintenance of normal blood pressure
Meat or fish	Meat or fish contributes to the improvement for iron absorption when eaten with other foods containing iron
Oat beta-glucan	Oat beta-glucan has been shown to lower/reduce blood cholesterol

Example – can I add barley grain fibre and use ‘source of fibre’ or ‘high fibre’ claims?

The addition of barley grain fibre to a baked good or breakfast cereal or pasta or meat or a smoothie will allow the use of ‘source of fibre’ or ‘high fibre’ claim, providing that the product contains 3g per 100g/1.5g per 100 kcal and 6g of fibre per 100g/ 3g per 100 kcal respectively. The challenge is not only the incorporation of the fibre within the recipe, but to also be aware of the effect on sensory, textural and shelf life attributes. It is useful to look at emerging processing technologies that will enable the incorporation of fibre, such as extrusion-cooking, grinding and high pressure processing, all

of which can potentially improve the incorporation and the functional properties of fibres. Furthermore, a look at alternative fibres such as oat grain fibre, wheat bran fibre and sugar beet fibre, all of which carry the same claim, should be an option. Different fibres would have different physico-chemical and sensory properties, some of which could be more complementary to the recipe than barley grain fibre.

Whilst the date of 19th January 2022 applies to existing products, product developers may view the development of new products or brands with specific claims as a way of replacing existing products. The approach may be simpler, since a product developer would start with a blank piece of paper. However, in order to meet the conditions put forward by the selected claim, one should formulate the recipe at the conceptual stage and check on the forms, concentrations and bio-availabilities of the nutrients/substances, as well as check on the compatibility with other ingredients and processing conditions, before moving to create a kitchen-scaled prototypes.

Food and beverage manufacturers, if they need to adapt to be compliant, must look at their renovation and innovation strategies, as well as from technical, nutritional and sensory angles, as to how and whether a product could be capable of carrying a claim. A product developer may look at an existing product recipe and consider replacing or fortifying some of the nutrients/substances with approved equivalents. However, the product developer needs to consider the impact of using approved nutrients on the physical, chemical, sensory, microbiological and shelf life stability of the product.

Example – can I use ‘high in iron’ claims on my baked beans containing bio-fortified crops?

Starting with a newly available bio-fortified crop, such as iron-fortified common beans, one can explore creating a baked bean product. However, in order for the baked bean product to be able to carry a ‘source of iron’ or even ‘high in iron’ claim, one would need to back-calculate to the crop and take into consideration the potential losses of iron from the ingredient as part of supply and processing conditions (including washing, blanching and cooking). It is essential that the final product contains a minimum of 2.1mg iron per 100g product

or 4.2mg iron per 100g product to carry a ‘source of iron’ or a ‘high in iron’ claim respectively. This desk-based ‘regulatory review of concept’ step is critical and essential to minimise the risks of failure and non-compliance with the regulatory requirements down the line.



2.0 Using generic descriptors that imply an effect on health

Approval of nutrition and health claims is a challenging and long process, and food and beverage manufacturers have been exploring alternatives to promote their products. The use of generic descriptors, defined as those that have traditionally been used to describe the particularity of a class of foods or beverages which could imply an effect on human health (but consumers recognise that these may not be factual), has been debated for a long time. On 20th March 2019, a list of approved generic descriptors came into force through Regulation (EU) 2019/343, being exempted from Regulation (EC) 1924/2006.

In the UK, the most popular generic descriptor is the use of 'cough drops' for hard and soft sweets as well as sugar-free and calorie-reduced variants containing herb extracts or fruit substances or honey or malt, all of which have an implied benefit of soothing the inflamed and sore throats that occur as a result of a common cold or influenza.

Another well-known example is the use of 'tonic' for non-alcoholic, carbonated drinks containing a bittering agent, called quinine, in the form of a flavouring. Quinine, which comes from the bark of cinchona tree, is an alkaloid that is used as an antimalarial drug, as well as a medication for muscular disorders, especially nocturnal leg cramps and myotonia congenita. It would be natural for consumers to assume that the tonic-based beverages, which contains quinine, could have some health benefits. Very importantly, and in compliance with the Regulation (EC) 907/2013's requirement, which is that an approved generic descriptor must correspond to a period of at least 20 years proven usage within the Member State(s)

prior to the date of entry into force of the regulation, quinine "...remains an important anti-malarial drug almost 400 years after its effectiveness was first documented..." as stated by Achan².

With the recent 'acknowledgment' of 'functional' ingredients/products, which are primarily focused on exploiting the inherent nutritional and health benefits of ingredients/products, there have been on-going debates with respect to the development and use of new generic descriptors (i.e. those not approved as per Regulation (EU) 2019/343 and which came into force on 20th March 2019) on their products' labels. For those seeking to use new generic descriptors, the food and beverage companies need to submit applications through trade associations representing specific food sectors'. The associations submit applications on behalf of their members, in order to avoid multiple applications in respect of the same generic descriptor (denomination).

Example – the use of 'probiotics' as a generic descriptor

A recent example is the use of 'probiotic' as a generic descriptor in the labelling, presentation and advertisement of products containing probiotic. According to the Yoghurt & Live Fermented Milks Association (YLFA)³, which on the behalf of a group of probiotic-based product manufacturers, was seeking a derogation from Regulation (EC) 1924/2006 on the use of 'probiotic' as a generic description, it argued that the 'probiotic' terminology:

- refers to a generic denomination: a common name designating a class of foods and beverages in the EU;
- has traditionally been used in the EU since the 1960s (and in Japan since 1935);

- indicates a particularity of a class of foods or beverages, i.e. the presence of probiotic bacteria; and
- particularity could imply an effect on human health, as acknowledged by the European Commission itself in 2007 and by the FAO/WHO definition.

The European Food Safety Authority (EFSA) has rejected the use of the 'probiotic' as a generic descriptor, mainly because it is a health claim, in accordance with the Commission Guidance on the use of the term 'probiotic', even though at this moment, all the submitted health claims relating to probiotics have been rejected mainly due to insufficient evidence of them having any effect.

3.0 Where are we now with the nutrient profiles?

The nutrient profiles⁴, which should have been developed by 2009, are still under discussion/assessment. These nutrient profiles continue to be of considerable political interest and generating intense debate. Nutrient profiles, as mentioned in the Regulation (EC) 1924/2006, are raised to avoid certain situations where a nutrition or health claim would mask the overall nutritional status of a food/beverage product, therefore misleading a consumer who is seeking to make healthy choices in the context of balanced diets. According to REFIT⁵, "...if at least two of these three nutrients (salt/sodium, saturated fatty acids and sugar, for which tolerance

limits are to be applied for different product categories) exceed their set limit, nutrition or health claims will be banned. If only one of the nutrients exceeds its respective limit, a nutrition claim will only be possible by adding a notice regarding the nutrient whose limit has been exceeded...". The food and beverage industry will just have to watch this space for now.



¹ Regulation (EC) 907/2013 setting the rules for applications concerning the use of generic descriptors (denominations)

² Achan, J., Talisuna, A.O., Erhart, A., Yeka, A., Tibenderana, J. K., Baliraine, F. N., Rosenthal, P. J. and D'Alessandro, U. (2011) Quinine, an old antimalarial drug in a modern world: role in the treatment of malaria Malar J 10:14

³ <http://www.ylfa.org/images/file/Probiotics%20generic%20descriptors-2012.pdf>

⁴ http://www.europarl.europa.eu/doceo/document/E-8-2019-000738-ASW_EN.html

⁵ Regulation (EU) 1169/2011 (provision of food information to consumers)

4.0 What else? The marketing hype

Interestingly, there is a plethora of products on the market that have been hyped up through marketing language/pitching. Some products are being promoted to 'energise', 'recharge', or even 'uplift'. Another example is the terminology 'superfoods', which contain a variety of nutrients that can ward off or prevent health issues, such as antioxidants to ward off cancer, healthy fats to prevent heart diseases and fibres to prevent digestive problems. The terminology 'superfoods' is regarded as a marketing claim and is used to describe foods and food ingredients that are 'nutrient-rich', 'nutrient-dense' or those that are believed to have health benefits.

The term 'superfood' should not be used on the label of food products and food supplements in Europe, because there is no official definition of 'superfood', unless it is supported with scientific evidence and accompanied by an authorised health claim. To get around this ban, European companies instead make the term part of their brand name, e.g. the company could be called 'Your Superfoods', or a company's sub-brand could be called '[Company name] - Superfoods & Antioxidants'. This ban has not stopped the food and beverage industry, as well as the media, from extolling the benefits of 'superfoods'; several articles can be found in the media, including those referencing garlic, baobab, chia and spirulina. What is important is the amount of the nutrient that needs to be consumed to have a health benefit. For example, garlic is claimed to

have contain a nutrient that can reduce cholesterol and blood pressure – what is not realised is that the amount of this nutrient in a single clove may not be sufficient to induce the beneficial effect in the human body, and one may need to consume many cloves to obtain the amount that has been shown to induce the benefit in the human body.

With such marketing terminologies being used in the product labels or brand names, they can imply to consumers that their products can have an effect on their health and wellbeing. It is crucial any marketing claims are compliant with the regulation and must not be misleading, must not be ambiguous nor confusing, and must be based on relevant scientific data. Therefore it is the responsibility of food and beverage manufacturers to be compliant in order to protect the brand reputation, especially now that consumers are much savvier and more astute.



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How can Leatherhead help?

Leatherhead recognises the importance of getting the brand labelling and promotions right. We have a team of regulatory experts that has many years' of experience in tackling and identifying the correct routes towards the use of commercial communication tools in the right way when using nutrition and health claims as well as generic descriptors.

The regulatory team can provide an independent assessment therefore validating any communication materials prior to market launch. Furthermore, in conjunction with Leatherhead's science and innovation team, the regulatory team can offer strategic advice on reformulations, if required, to enable compliance with the nutrition and health claims the product developers wish to use.



About Leatherhead Food Research ▾

Leatherhead Food Research provides expertise and support to the global food and drink sector with practical solutions that cover all stages of a product's life cycle from consumer insight, ingredient innovation and sensory testing to food safety consultancy and global regulatory advice. Leatherhead operates a membership program which represents a who's who of the global food and drinks industry. Supporting all members and clients, large or small, Leatherhead provides consultancy and advice, as well as training, market news, published reports and bespoke projects. Alongside the member support and project work, our world-renowned experts deliver cutting-edge research in areas that drive long term commercial benefit for the food and drink industry. Leatherhead Food Research is a trading name of Leatherhead Research Ltd, a Science Group Company.

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Founded in 1986, Science Group was one of the founding companies to form the globally recognised Cambridge (UK) high technology and engineering cluster. Today the Group has 12 European and North American offices.

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