

Do we know what we eat?

By [Karen Kitchen](#)

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South Africa, to date, has been behind when it comes to correct and transparent food labelling. What you may see on a food label is not always what you get. A conscious movement by the government to try to catch up with international trends to ensure that what you see is what you get, and so that consumers can make healthier and more informed choices, is underway.



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The current R146 Regulations on this topic are soon to be replaced with more stringent regulations (R429) that may change how, for example, FMCG marketers conceptualise and adopt or alter literary and pictorial content, and trade marks, to be placed on their brand labels. How actively adherence to the proposed new food labelling regulations will be policed/enforced is uncertain (particularly where no major cases have transpired under the current regulations).

However, for FMCG marketers, one thing is for sure - your competitors will no doubt pounce on any opportunity to object to your non-adherence. Certain law firms, including Kisch IP Inc, handle competitor disputes that arise on the basis of labelling issues, and are of the view that such complaints will be on the rise when the new regulations come into force. These complaints are an alternative means, for example, (or may even be an additional cause of action in some instances) to potential competitor complaints based on the ASA (Advertising Standards Authority) Code and/or the CPA (Consumer Protection Act).

Potential health claims



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FMCG marketers need to take stock now, and evaluate whether their brands comply with the current regulations, and the proposed new regulations by re-thinking brand names or trade marks including slogans and catch phrases (that, for example, include potential health claims such as "BE-WELL" or "NUTRI-SHAKE"¹ in relation to, perhaps, processed and sugar-loaded products), as well as pictorial and literary content including ingredients listings and food origin references, for example.

The realistic difficulties they face are that often certain goodwill inheres in big brand names that have gained reputability over time and have a loyal and established customer base, so big changes may not be welcome or easy to implement. However, an attempt to maintain brand equity whilst being compliant with new food labelling regulations is key. Like the introduction of plain packaging of tobacco products, brand owners are/will not be pleased, but, realistically, steps need to be taken to start

converting (or at least start thinking about converting) well-known brand names to ones that are likely to be compliant, and particularly where public health interests are at stake.

It is worth noting that the draft R429 Regulations have been unveiled with a large set of guidelines to assist with interpretation of the Regulations. The legal nature and potential for enforceability of content in those guidelines has been questioned, and is currently under scrutiny. However, clarity on the major areas of concern (such as the regulations and guidelines that relate to marketing of foods to children, religious certifications, changing well-known trade marks, etc.) are expected to be round the corner, so that clear steps for compliance can be taken by key role players.

Some movements have been seen in the FMCG industry in recent years in the food-labelling arena. Legislative issues around brine treatment of poultry, for example, have been vigorously addressed at national level and producers have been taking proactive steps to comply with regulatory controls. Retailers have to ensure that their suppliers comply with such controls to avoid recalls of product off their shelves by DOH (Department of Health) Inspectorates. Meat products need to include vital information on their labels such as country of origin and expiry dates. Mislabelling of meat products can also be problematic in situations where a product contains mixed meat, such as pork, and is not correctly labelled. This may have health and religious consequences especially where Muslim consumers are forbidden to eat pork.

Large retailers may be guilty of still being too relaxed when it comes to correct food labelling. Recently, Pick 'n Pay made a blunder and placed a 'halaal' certification stamp on a packaged Russian and Chips that stated on the label that it contained 49% pork (which, in fact, it transpired that it did not).

There has also been some litigation recently where an application was made by The National Coalition of Christian Groups and Individuals for Practical Equality and Protection of Constitutional Rights who objected to the use of 'halaal' certifications on foods which they alleged was contrary to the constitutional right of freedom of choice. The draft R429 Regulations currently makes provision for religious certifications, but states that if products that carry these certifications are for sale, suppliers must also ensure that the same/similar products that are not so certified are available for sale, so customers can make informed choices on the products they can opt for. Whether adherence to this regulation is viable or not for suppliers/retailers operating in this space, remains to be seen.

Woolworths tries to implement a practical and transparent approach in relation to its food-labelling initiatives. For example, it often states that it strives to reduce the number of products it sells that contain ingredients from GM crop sources. It alleges that it checks all ingredients back to source, but in some instances where it cannot guarantee that the ingredient was not derived from a GM source it will label the products as 'May be Genetically Modified'. It also encourages its customers to read food labels to ensure they are making the right and informed choice. This modus operandi applies to the kilojoule, carbohydrate, fat, protein and fibre counts it includes on its labels, which it trusts and encourages its customers to take cognisance of.

GMO identifier

Many of the large South African retailers have been alleged to be guilty of not labelling genetically modified food. Due to consumer pressure, many large retailers have started labelling products with a GMO identifier where the main ingredients are genetically modified. We still have a long way to go, however, in relation to correct labelling of GMO foods. Many of the large retailers are simply waiting for clarity from the government on effectively putting more food safety measures and clear controls in place.

Big organisations, such as Woolworths, cannot always get it right, as is highlighted by the controversy surrounding its former use of the claim 'rBST free'² on its milk products. The Department of Agriculture states that this claim is not to be used as there is no way of verifying if the claim is factually correct. Woolworths did not initially adhere to the department's warning and continued to use the claim despite steps being taken by the likes of Pick n' Pay and other large retailers to remove such controversial claims. After the hue and cry it agreed to amend its labels despite asserting that it audited its suppliers to ensure that no rBST hormones were being administered to their dairy herds.

The food-labelling landscape is a minefield. FMCG marketers need to keep abreast of the impending regulatory changes, and start ensuring that the information and brand specific material included on their labels are likely to be compliant with the regulations that are relevant to them. This will also be aligned with the trend in growing consumer pro-activeness when it comes to making informed food related choices.

1. Hypothetical examples.

2. BST is a naturally occurring protein hormone produced by dairy cows to regulate their milk production whereas rBST is when BST is artificially manufactured and administered to dairy cows to increase such milk production.

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