



The Direct Selling Association of Hong Kong Limited

A member of the World Federation of Direct Selling Associations
www.hkdsa.org.hk

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The Hon. Legislators
Legislative Council
Hong Kong Special Administrative Region

Ref: Comment on the "FOOD AND DRUGS (COMPOSITION AND LABELLING) (AMENDMENT: REQUIREMENTS FOR NUTRITION LABELLING AND NUTRITION CLAIM) REGULATION 2008"

Dear Sirs,

Incorporated in 1979, the Direct Selling Association of Hong Kong Limited (HKDSA) is a trade association of person-to-person marketing companies in Hong Kong. A wide range of products and services are marketed and distributed directly to consumers through these companies' salespeople. One of the main objectives of the HKDSA is to serve the public interest by promoting the highest level of business ethics within the direct selling industry and by maintaining a viable, self-regulating consumer protection program.

Most of our member companies carry food supplements and food items in their product lines for promotion of well-being and health of consumers. We have learned that the HKSAR Government has already gazetted the "FOOD AND DRUGS (COMPOSITION AND LABELLING) (AMENDMENT: REQUIREMENTS FOR NUTRITION LABELLING AND NUTRITION CLAIM) REGULATION 2008" (abb. as HK NL/C Regulation) and is waiting for the legislation procedures of Legislative Council (LEGCO). Our Association would like to express our view and concern on this initiative.



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EXECUTIVE SUMMARY

HKDSA welcomes the Government's initiative to establish Nutrition Labeling/Claim Regulation for the provision of nutritional information of packaged food to consumers.

HKDSA would, however, like to register its disappointment that the list of key nutrients selected by HK Government to print on product Nutrition Label is so unique and complicated, which is different from ALL major food exporting countries and territories, which creates unnecessary barrier on the provision of important and useful nutrition information to consumers.

The uniqueness of the nutrient list will undoubtedly create the need for analytical testing. Small Volume Scheme proposed in the HK NL/C Regulation is supposed to minimize negative impact on small volume items. The Food and Environmental Hygiene Department (FEHD) has already indicated that there are various administrative restrictions on the Small Volume Scheme, such as registration fee, extra label, must have no Nutrition Claim, etc. We are afraid that too much bureaucratic hurdles will nullify the primary purposes and feasibility of such Scheme.

Besides the information of selected nutrient quantity, the health and nutrition benefits of nutrients should also be conveyed to consumers. This is made possible by using Nutrition Claim and Nutrition Function Claim. The HK NL/C Regulation restricts these claims to a positive list of nutrients in the Schedule 7 and neglecting all other nutrients and biological active substances available in food and their documented benefit to health.

HKDSA strongly suggest the principle that any food, any ingredient or any nutrient should be able to carry nutrition claim and nutrition function claim provided that these can be substantiated. We believe that the law should allow true information about all the potential health benefits of foods, ingredients, any nutrients to be communicated to consumers.

SPECIFIC COMMENTS

1. Schedule 5, Part 1, "1. List of Nutrients"

The HK NL/C Regulation demands to print Energy and other 7 nutrients on product label. The list of key nutrients selected by HK Government to print on product Nutrition Label is so unique and complicated, which is different from ALL major food exporting countries and territories including Mainland China, USA, Australia and Europe. The criteria set for Nutrition Claim is one of the most stringent amongst the world, which create unnecessary barrier on the provision of important and useful nutrition information to consumers.



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Estimation of nutrient quantity by adding theoretical nutrient content is not feasible. As nutrients will lose during processing and FEHD has already indicated that prosecution of incorrect label is based on laboratory analytical data. Harmonizing the regulation with highest food source territory is the best choice to a small market like HK. This will minimize the public burden on spending HK\$4000 to HK\$7000 per item for additional testing. Assume there are 50,000 food items selling in HK and new seasonal items is 5,000 per month, the estimated financial burden on testing is enormous. Such financial burden on testing will also hinders the operation of SMEs as well and will substantially cut down the number of food product varieties and choices available in the HK.

Small Volume Scheme proposed in the HK NL/C Regulation is suppose to help to minimize negative impact on small volume items. The Food and Environmental Hygiene Department (FEHD) has already indicated that they are adding various administrative restrictions on the Small Volume Scheme, such as registration fee, extra label, must have no Nutrition Claim, etc. If a food item from an overseas country has label with Nutrition Claim which is true and accurate to the regulation of their own country, what is the reason and rationale to prohibit the import of this item via Small Volume Scheme because of information already present in the original packaging? We are afraid that too much bureaucratic hurdles will nullify the primary purposes and feasibility of such Scheme.

2. The Nutrition Claim of "zero", "contain", "a source of "low", "high", etc. set by the HK NL/C The definition of Nutrition Claim and is very different from most overseas supply countries/territories. For example, in US and Canada the term "Low Fat Milk" is applicable to milk with 3 g or less of fat per reference amount and serving of stated size (typical 50g or less of serving size). The HK NL/C Regulation demands less than 3g fat /100g, which is much stringent than those of US/Canada. In US and Canada, the Trans-fat content could be described as zero when the amount of Trans-fat per serving is less than 0.2g. The each serving size is typically 30g or less, much less than 100g. The HK NL/C Regulation demands a very strict limit of less than 0.3g/100g Trans-fat for qualifying the label/statement "zero Trans-fat". Recognizing the huge difference on qualifying Nutrition Claim amongst packaged food source countries, enough long Grace Period must be provided to the trade so that new products label could be made and re-formulation of products, if necessary, could be conducted. Therefore HKDSA suggest a Grace Period of 3 years.
3. Schedule 5, Part 2, "6. Nutrient Content Claim" and "8. Nutrient Function Claim"

The HK NL/C Regulation restricts only nutrients listed in "Schedule 7" for both Nutrient Content Claim and Nutrient Function Claim. Schedule 7 contains energy, 7 key macro-nutrients, selected vitamins and minerals. Essential fatty acids,



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essential amino acids and other biologically active substance, although their health benefits are well established, are excluded from Schedule 7. The HK NL/C Regulation is therefore one of the most restrictive on Nutrition Claim and Nutrition Function Claim amongst the world.

For example, FEHD has pointed out that "Salmon Fish is a good source of Omega-3 Fatty Acid. Omega-3 fatty acid is good to heart health." The HK NL/C Regulation prohibits such statement on product and product brochures. Such statement is acceptable to US, Australia, Canada, and other food exporting countries. Such prohibition of important nutrition information is not to the benefit of consumers.

Taking Australia as an example, the term nutrient covers a much broader scope. In Australia the term "nutrient" means a representation that states, suggests or implies that a food has a nutritional property whether general or specific and whether expressed affirmatively or negatively, and includes a reference to -

- (a) energy; or
- (b) salt, sodium or potassium; or
- (c) ***amino acids***, carbohydrate, cholesterol, fat, fatty acids, fiber, protein, starch or sugars; or
- (d) vitamins or minerals; or
- (e) ***any other nutrient; or***
- (f) ***a biologically active substance;***

There are increased number of other substances with a beneficial influence on human health do not have direct nutritional effect but rather a physiological effect. It is highly important that substances like probiotics (lactic bacteria 乳酸菌) and antioxidants like lutein and lycopene be included in the scope of Nutrition Claim and Nutrition Function Claim.

HKDSA strongly suggest the principle that any food, any ingredient or any nutrient should be able to carry nutrition and health function claims provided that these can be substantiated. Valuable nutrition information of various nutrients and biological actives substances should not be barred from passing to consumers. For the benefit of consumers and their right to know useful nutrition information, all foods, including those containing ingredients likely to have a beneficial effect on physiological, psychological or biological functions, should be allowed to list and to describe on product label and associated product brochure or advertisement. HKDSA recommend a review of the reasoning for prohibition of Nutrition Claim and Nutrition Function Claim for nutrients and other biological actives substances not listed in Schedule 7.



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Yours sincerely

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cc Angela Keung, President
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