

29/10.2010 INITIAL COMPLAINT TO AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)

Complainant details

Dr Howard Dengate
Food Intolerance Network
PO Box 718
Woolgoolga NSW 2456 Australia

Date received: 29th October 2010

Complaints

Product provider: Zed Snack Food Company's Dip Stix Sweet Chili and Lime (a soy snack)

Product description: Misleading food labelling

On behalf of the Food Intolerance Network, with 7,600 members I attach an example of recent food industry practice to hide functional additives simply as ingredients while making misleading claims in other advertising.

Ingredients: Wheat Starch, Sunola Sunflower Oil, Soyabean Solids 18%, Sugar, Chili and lime flavour (Sugar, Salt, Paprika, Chili, Vegetable powder, Hydrolysed vegetable protein (from soy), Rice flour, Lime juice powder, Natural flavour, Food acid (262, 330), Yeast extract, Free flow agent (551), Flavour enhancer (635)), Onion, Malt extract (from barley), Soy sauce powder (from soya bean, wheat flour), Garlic, Chives.

This product advertises "No Added MSG" when there are several sources of glutamate: vegetable powder (sometimes a term used to hide glutamates), hydrolysed vegetable protein (a major source of glutamates), yeast extract (a major source of glutamates), and soy sauce powder (also a major source of glutamates). The product also contains flavour enhancer 635, which is a mixture of 627 and 631 added to boost the effects of MSG 10-15 times (Sommer R. Yeast extracts: Production, properties and components, paper presented at the 9th International Symposium on Yeasts, Sydney, 1996). There is no point in using this flavour enhancer unless there is a source of glutamates and, to add insult to injury, there is the technically correct but egregious claim at the end of the Ingredients Panel that "Flavour enhancer 635 is not MSG".

Product provider: Bazaar Lavash flatbread

Product description: Misleading food labelling

On behalf of the Food Intolerance Network with 7,600 members, I attach an example of recent food industry practice to hide functional additives simply as ingredients while making misleading claims in other advertising.

Ingredients: Wheat Flour , Wholemeal Wholegrain Wheat Flour(45%), Canola Oil, Vinegar, Iodised Salt, Cultured Wheat Flour, Barley Malt Flour, Vitamins (Thiamine, Folate).

Despite advertising No artificial preservatives among the ingredients is an innocuous "cultured wheat flour" which has been cultured with propionibacterium and so functions as a major source of the propionate bread preservative (282).

ACCC RESPONSE 1/11/2010

Dear Dr Dengate,

Thank you for your email of 29 October 2010 to the Australian Competition and Consumer Commission (ACCC) regarding your identification of potentially misleading ingredients labelling on both 'Bazaar' (George Weston Foods) flat bread and 'Zed' (Tixana Pty Ltd) snack food products.

The role of the ACCC is to ensure compliance with the *Trade Practices Act 1974* (TPA), which is designed to encourage fair trading and discourage anti-competitive conduct through a specific set of competition and consumer protection rules.

Section 52 of the TPA is a broad provision which prohibits a corporation, in trade or commerce, engaging in conduct which is misleading or deceptive, or which is likely to mislead or deceive. Whether particular conduct is misleading or deceptive is a question of fact to be determined in the context of the evidence as to the alleged conduct and to the relevant surrounding facts and circumstances.

In assessing any complaint, staff of the ACCC would generally determine whether or not the matter falls within the jurisdiction of the TPA, whether or not there appears to have been a breach of the TPA, and if so, whether the impact of the conduct is so serious and widespread that it is appropriate that the ACCC should take some action. The ACCC generally takes enforcement action in circumstances where there are broad flow on benefits for industry and consumers alike.

In addition, the Australian New Zealand [Food Standards Code](#) is the official document that is given legal force via State, Territory, Commonwealth and New Zealand food legislation. The Food Standards Code applies to all food offered for sale in Australia, whether produced domestically or imported. Copies of the code can be obtained from [FSANZ](#).

The Food Standards Code contains a variety of standards including mandatory requirements for:

- **ingredient labeling,**
- nutrition information panels,
- date markings,
- percentage labeling,
- food additives,

- name and business address of supplier, and
- country of origin labeling.

Although FSANZ develops food standards, **responsibility for enforcing, interpreting and policing food standards rests with the states and territories in Australia**. Within each jurisdiction there are one or more agencies responsible for food surveillance charged with the task of ensuring the requirements of the code are met. State and territory food enforcement contacts are available on the FSANZ website:

<http://www.foodstandards.gov.au/thecode/foodenforcementconta3556.cfm>

Your matter is important to the ACCC as it assists us in determining issues with national or wider public interest implications. We closely study the patterns of complaints that we receive to ensure that our enforcement and education actions are focused on the areas of greatest concern to Australian consumers. Consequently, the details of your matter have been recorded and will be used to determine whether there is a pattern of behaviour by these particular traders or in this particular industry that raise broader concerns.

Thank you for contacting the ACCC with your concerns. I trust this information is of assistance.

Yours sincerely

Russell

ACCC Infocentre

1300 302 502

0/11/2010 FIN RESPONSE

Dear Russell

I was disappointed to receive a cut-and-paste response from ACCC on this food labelling issue, particularly since the Network understands exactly what FSANZ can and can't do, the role of the (under-resourced) States/Territories, and also understands what ACCC can do in this area.

Perhaps we have taken the wrong approach in sending you two selected test cases of mislabelling? Perhaps we need to send you multiple cases of each so that you can see that it is a widespread problem that FSANZ is unable to address, or maybe you would be more persuaded of the need for action if our nearly 8,000 member families also separately contacted you? We chose not to bombard you but to provide test cases that might attract your attention, but maybe that is the wrong approach?

The Food Intolerance Network made a comprehensive submission to the current Food Labelling Review <http://www.fedupwithfoodadditives.info/support/FINlabelissues.pdf> where

our third major request was for listing of functional ingredients such as flavour enhancers with their number, thus hydrolysed vegetable protein would require the number 621 (monosodium glutamate or MSG) on the Ingredients Panel. It is the lack of identification of the function of the additive that causes our members, and all other Australians, so many problems. FSANZ's response is that the ingredient is on the label so you can choose to avoid it, but of course if the function is not identified and you are not a food chemist, you would have no idea that there is hidden MSG in the food. Here's another example:

Fantastic Original Rice Crackers

Ingredients: rice flour, seasoning powder: [sugar, salt, soy sauce powder [contains soy, hydrolysed wheat (gluten free)], flavour enhancers E627, E631, vegetable oil (antioxidant 306).

It would take chemistry training to recognise that this product is predominantly flavoured by monosodium glutamate (MSG 621) from the hydrolysed wheat, with the effects of that additive boosted 10-15 times by the addition of the inadequately tested ribonucleotide family of flavour enhancers. Since both MSG and additive 635 have received a well-justified bad press, food manufacturers have swung to hidden sources of MSG and to showing the component ingredients of 635, which are 627 and 631.

The Food Labelling Review is likely to emerge over Xmas, to ensure no media interest, and rumours are that it will not address our concerns, which is why we are asking for ACCC interest in this area.

I would appreciate your advice as to which approach would be likely to attract the interest of ACCC to this patently misleading and deceptive conduct.

regards

Howard Dengate BSc PhD

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The Food Intolerance Network is a not-for-profit organisation with over 7,500 families mostly in Australia and New Zealand and provides independent information about the effects of food on behaviour, health and learning ability in both children and adults, and support for families using a low-chemical elimination diet free of additives, low in salicylates, amines and flavour enhancers (FAILSAFE) for health, behaviour and learning problems.

If you would like to be counted as a supporter, you can subscribe to our free email newsletter (4 issues per year) by sending an email with "subscribe" in the subject line to address: failsafe_newsletter-subscribe@yahoogroups.com

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