

Misbranding and Misleading: Issues and Implementation

Presentation by

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And the headlines scream...

Every 5th food sample is adulterated and misbranded!

Source : <http://www.rediff.com/news/report/every-5th-food-sample-is-adulterated-and-misbranded/20151206.htm>

The ABC of Misbranding :

A, B and C

(with reference to the Food Safety and Standards Act, 2006)

A

Sec 3(1) (zf) “misbranded food” means an article of food –

(A) if it is purported, or is represented to be, or is being –

(i) offered or promoted for sale with false, *misleading* or deceptive *claims*

either;

(a) upon the *label* of the package, or

(b) through *advertisement*

, or

(ii) sold by a name which belongs to another article of food; or

(iii) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne on the package or containing the article or the label on such package; or

B

(B) if the article is sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer bearing his name and address but -

(i) the **article** is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character; or

(ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is **false or misleading** in any material particular, or if the package is otherwise deceptive with respect to its contents; or

(iii) the article is offered for sale as the product of any place or country which is false; or

C

(C) if the article contained in the package –

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labelled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or

- (ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use; or
- (iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act.

Type	Specifics	What exactly	In a nutshell
A	Claims , names, mfr	<ol style="list-style-type: none"> 1) False, misleading or deceptive claims on <u>package</u> or <u>advertising</u> 2) Other-name sales 3) Fake individual or company mentioned as manufacturer 	Methods of Sale and Advertising
B	Imitation, false ingredients, false place	<ol style="list-style-type: none"> 1) Imitative, substitute, resemblance with some other product 2) Misleading mention of ingredients 3) Product of a wrong place or country 	Name and address of manufacturer are correct, but little else. The food is not what it is <u>said to be</u>
C	Deficient label, SDU, limits	<ol style="list-style-type: none"> 1) Flavour, colour, chemical preservative not mentioned correctly on label 2) Special Dietary Use food, without information on vitamins, minerals or other dietary properties 3) Breaching limits of permitted variability 	Labelling deficiency as to Inside v. Outside (Conflict between what <u>is inside</u> and what <u>is stated outside</u>).

Advertisements under the Act

24. Restrictions of advertisement and prohibition as to unfair trade practices.

(1) No advertisement shall be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made thereunder.

(2) No person shall engage himself in any unfair trade practice for purpose of promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation which –

(a) falsely represents that the foods are of a particular standard, quality, quantity or grade-composition;

(b) makes a false or *misleading* representation concerning the need for, or the usefulness;

(c) gives to the public any guarantee of the efficacy that is not based on an adequate or scientific justification thereof:

Provided that where a defence is raised to the effect that such guarantee is based on adequate or scientific justification, the burden of proof of such defence shall lie on the person raising such defence.

Regulations

Regulation 4 of the Food Safety and Standards (Labelling and Display) Regulations, 2020

LABELLING OF PREPACKAGED FOODS

4. General Requirements. - (1) Every pre-packaged food shall be labeled with information as required under these regulations unless otherwise provided;

(2) When a food product is sold through e-commerce or any other direct selling means, the mandatory requirements of the label as given in these regulations shall be provided to the consumer through appropriate means before sale except 'batch number/ lot number, best before, use by date, expiry date, date of manufacturing/ packing;

(3) Pre-packaged food shall not be described or presented on any label or in any labelling in a manner that is false, **misleading** or deceptive or is likely to create an erroneous impression regarding its character in any respect;

The Food Safety and Standards (Advertising and Claims) Regulations, 2018

4. General principles.-

- (1) Claims must be truthful, unambiguous, meaningful, **not misleading** and help consumers to comprehend the information provided.
- (2) Claims shall not encourage or condone excess consumption of a particular food.
- (3) Claims shall not state, suggest or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients as required by the body.

...

Action against misleading claim

13. Redressal of non-compliance.- (1) Any person who advertises or is a party to the publication of any advertisement or claims **not complying with this regulation** shall be penalised as per section 53 of Food Safety and Standards Act, 2006 (34 of 2006).

14. Procedure for redressal of non-compliance.- (1) The **misleading claims shall be referred** to the food authority or the Food Authority may on its own motion take on file any misleading claim and the Food Authority may itself analyse or may appoint an agency or panel to analyse such misleading claims.

(2) In case the agency or Food Authority requires information from the food business operator or marketer, the food authority will seek clarification failing which action shall be initiated as per sub-regulation (1) of regulation 13.

(3) the food business operator or the marketer shall submit the information sought for within thirty days from the issue of the letter.

(4) After scrutiny of the submitted information, the officer nominated by the Authority shall pass a speaking order within ninety days either for acceptance or rejection of submitted clarification on misleading claims.

(5) The Food Authority may also suggest an improvement for the concerned claim and the improved claim shall be intimated to the Food Authority within forty- five days after issuance of letter.

The downside

Penalties

Misbranding : penalty

52. Penalty for misbranded food.

- (1) Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is **misbranded**, shall be liable to a penalty which may extend **to three lakh rupees**.
- (2) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed.

Misleading : penalty

53. Penalty for misleading advertisement.

(1) Any person who publishes, or is a party to the publication of an advertisement,

which—

(a) falsely describes any food; or

(b) is **likely to mislead** as to the nature or substance or quality of any food or gives false guarantee, shall be liable to a penalty which may extend **to ten lakh rupees.**

(2) In any proceeding the fact that a label or advertisement relating to any article of food in respect of which the contravention is alleged to have been committed contained an accurate statement of the composition of the food shall **not** preclude the court from finding that the contravention was committed.

Similarities between Misbranding and Misleading

- Misbranding INCLUDES Misleading
- (Misbranding is the genus of which Misleading is a species)
- All Misleading communication is Misbranding, but not vice-versa

Differences between Misbranding and Misleading

1. Misbranding is much wider in scope
2. Misbranding is defined, Misleading is not
3. Misbranding needs to be proved, Misleading only needs to be likely
4. Misbranding attracts Rs. 3 lacs fine, while Misleading attracts Rs. 10 lacs fine

Misleading Not Defined

The Bombay Police Act, 1951, Sec 110

110. Behaving indecently in public :

No person shall wilfully and indecently expose his person in any street or public place or within sight of and in such manner as to be seen from, any street or public place, whether from within any house or building or not, or use indecent language or behave indecently or riotously, or in a disorderly manner in a street or place of public resort or in any office, station or station house.

What ASCI says in relation to F&B ads

Advertising can have a positive influence by encouraging a healthy, well balanced diet, sound eating habits and appropriate physical activity. Caution and care therefore should be observed in advertising of Foods & Beverages especially ones containing relatively high Fat, Sugar and Salt.

Source:

<http://www.ascionline.org/index.php/principles-guidelines.html>

Q & A

THANK YOU !