Latest developments in regulation of sports foods in the EU: obligations and implications

Craig Simpson, Senior European Legal Advisor

Food Ingredients Europe
2 December 2015, Paris
Overview of main themes

- Current and future regulation of sports food as a product class
- Update on regulation of specific products and ingredients:
  - caffeine and energy drinks: implications of latest EFSA Opinion
  - botanicals – how to regulate going forward (REFIT)?
  - proposed new novel foods regime
- Food Information: what has changed under the FIR?
- Health and nutrition claims
  - ‘natural’ claims
  - latest case-law on scope of ‘claim’
- New requirements on distance (including on-line) sales of food
- Liability for food safety or food information non-compliance
- The new enforcement environment
CHANGING REGULATORY FRAMEWORK FOR SPORTS FOODS AS A PRODUCT CLASS
Regulation of sports food today

- Directive 2009/39 on foods for particular nutritional uses (‘dietetic foods’) until 2016
  
  ‘foodstuffs which, owing to their special composition or manufacturing process, are clearly distinguishable from foodstuffs for normal consumption, which are suitable for their claimed nutritional purposes and which are marketed in such a way as to indicate such suitability’
  
  - foods for infants and young children
  - food for energy-restricted diets for weight reduction
  - foods for special medical purposes
  - foods for people with gluten intolerance (gluten-free foods)
  - foods for persons suffering from carbohydrate metabolism disorders (diabetes)
  - foods intended to meet the expenditure of intense muscular effort, especially for sportsmen

- Distinct from ‘food supplements’ under EU regulation
Problems with regulation of sports foods today

- **Mandatory** suitability statement (for example, ‘food for sports people’):
  - exempt from NHCR pre-market authorisation requirement for **voluntary** health claims
  - still requirement that scientifically substantiated
  - moot point whether suitability statement can include a health claim

- **Product overlap**: distinction between dietetic foods for particular nutritional uses v. other functional foods for individual requirements (for example, ‘vitamins for active people’)?
  - Borderline problem arrives with NHCR
  - Claim with same meaning subject to different regimes according to (arbitrary) wording difference:
    - ‘dietetic food containing vitamin D suitable for sportsmen’ (dietetic ‘suitability statement’) v. ‘vitamin D contributes to athletic performance’ (voluntary/NHCR)
  - Legislative shopping: mandatory suitability statement to avoid health claim pre-authorisation requirement
  - Member States differ as to whether product dietetic or normal food: trade barrier
New regime: sports foods as a ‘specific group’?

- New Regulation 609/2013 from July 2016
  - Scope limited to following ‘special groups’
    - food intended for infants and young children
    - food for special medical purposes
    - total diet for replacement for weight control
    - ... others in the future?
  - By 2015, delegated legislation on:
    - specific labelling (including nutrition and health claims) and composition restrictions
    - mandatory pre-market notification requirement in Member States where marketed (currently only in certain Member States for most dietetic foods)
  - Open ‘dietetic foods’ category abolished
    - lose special status
    - ‘normal foods’ subject to general labelling and NHCR obligations
The Future: Sports Foods

- Specific group or normal food?
  - no consensus between Member States and industry before adoption of Regulation 609/2013
  - Answer in pending Commission report:
    • ‘By 20 June 2015, the Commission shall, after consulting the Authority, present to the European Parliament and to the Council a report on the necessity, if any, of provisions for food intended for sports people. Such a report may, if necessary, be accompanied by an appropriate legislative proposal.’ (Article 13)
  - report still awaited!

- Few health claims on EU Register for sports foods:
  - scope for product positioning currently difficult
  - endurance, physical performance and muscle growth claims linked to creatine, carbohydrate-electrolyte solutions, vitamin C and proteins
  - key caffeine or (branched-chain) amino acids claims not permitted
    • ‘concerns in relation to the safety of caffeine intake within different target groups of the population’ (Commission Regulation 536/2013)
  - Commission to now authorise post EFSA Caffeine Opinion?
DEVELOPMENTS REGARDING SPECIFIC PRODUCTS AND INGREDIENTS: ENERGY DRINKS
Energy Drinks: Current regulation in the EU

- Sports food/drink?
- EU harmonised restrictions on energy drinks or specific ingredients?
  - Existing EU law:
    - no product specific legislation or definition
    - general requirement that foods must not be unsafe (Regulation 178/2002)
    - ‘High caffeine content. Not recommended for children or pregnant or breast feeding women ([ ] mg/100 ml)’ (Regulation 1169/2011)
    - no claims on amino acids or caffeine on EU Register of health claims

- Non-harmonised Member State national restrictions:
  - prohibition of pre-market approval of amino acids
  - potential for claim that product is a drug (by presentation or composition)

- European Court caselaw:
  - public health grounds for trade barriers must have some scientific basis (Cases C-420/01, C-24/00)
  - assessment of whether drug on case by case basis (ingredients, dosage levels, etc.), not pre-determined for specific ingredients
Energy Drinks: EFSA Opinion on caffeine

- Recent EFSA Scientific Opinion on the safety of caffeine (27 May 2015):
  - first time risks of caffeine from all dietary sources assessed at EU level
  - no concern re:
    - single dose of 200 mg for healthy adults, including where consumed less than 2 hours prior to physical exercise (except pregnant women, no data)
    - interaction between caffeine and other energy drink constituents (taurine, d-glucurono-y-lactone) at typical concentrations
    - up to 400 mg per day, for non-pregnant adults and up to 200 mg per day for pregnant or breast-feeding women
    - children and adolescents at same limits as applied to adults (‘since caffeine clearance in children and adolescents is at least that of adults’)

www.steptoe.com
Energy Drinks: Regulatory implications of EFSA Opinion

- Implications:
  - ‘safe harbour’ for industry (sports foods, energy drinks, supplements) if products below identified safe levels?
  - enable Commission to authorise first (‘on hold’) caffeine health claims already cleared by EFSA
    - improve concentration, alertness
    - endurance (210 mg per serving?), reduction in rate of perceived exertion during exercise (280 mg per serving?)
  - consequent adjustment of threshold level (currently in excess of 150 mg/l) for triggering high caffeine content labelling (Regulation 1169/2011)?
  - scope to question existing non-harmonised restrictions on energy drinks or caffeine below ‘safe harbour’ levels? trade barriers?
  - likely focus on products exceeding ‘safe harbour’ levels and ‘excessive’ consumption (German BfR, French ANSES, media)?
Development regarding specific products and ingredients: Botanicals
Plants/plant preparations (‘botanicals’) in foods: REFIT

- Regulatory Fitness and Performance Programme (‘REFIT’)
  - effectiveness (objectives met?)
  - efficiency (regulatory burden cost v. benefit analysis; proportionale?)
  - coherence (complement or contradict related regulations? Overlaps or gaps?)

- Legislative amendment a potential outcome (alternatively guidance, codification...)

- Review of Botanicals under ‘Fitness Check of Nutrition and Health Claims Regulation 1924/2006’ (January 2016-June 2017):
  - botanicals products regulated as dietetic food/food supplement (rigorous and costly (human studies) substantiation under NHCR) or as traditional herbal medicinal product (indications approved on 30 years traditional use)
  - many botanical claims ‘on hold’ whilst Commission discussion paper on botanicals (Summer 2012):
Plants/plant preparations (‘botanicals’) in foods: REFIT

- ‘Option 1’: subject to NHCR like any other claim: most botanicals non-authorised due to lack of appropriate studies/industry resources
- ‘Option 2’: specific legislation on botanicals in food (not only claims), permitting ‘traditional use’ substantiation

- **MS favour Option 2:**
  - NHCR does not consider safety, only claim substantiation
  - currently no positive list of botanicals, only individual prohibition or restriction (Regulation 1925/2006)

- Meanwhile, continuation of uneven playing field (‘on hold’) v. already non-authorised botanicals claims…

  - ‘considering the significant safety concern…[from] exposure to ephedra alkaloids present in food supplements [typically used for athletic performance]…and that no daily intake…that does not give rise to concerns for human health could be set’
Plants/plant preparations (‘botanicals’) in foods: REFIT

  - ‘as there is a possibility of harmful effects on health…but scientific uncertainty persists’ [precautionary principle]
    - risk of ingestion of excessive amounts
    - up to industry to scientifically demonstrate safety to EFSA through data
    - EFSA decides within 4 years of listing whether to prohibit, restrict (maximum levels?) or do nothing
DEVELOPMENTS REGARDING SPECIFIC PRODUCTS AND INGREDIENTS: NOVEL FOODS
Novel Foods – implications of proposed overhaul

- New foods or existing foods produced using new technologies or processes, not consumed in EU to a significant degree pre May 1997
  - Regulation 258/1997: authorisation procedure to ensure safety and consumers not being misled

- October 28: EP plenary adopted amended Commission proposal

- Provisional agreement with Council, subject to formal approval

- New Commission 2013 proposal to replace current regime (previous 2008 proposal abortive)
  - EU centralised and streamlined authorisation procedure (risk assessment (EFSA) and authorisation (Commission))
    - applications submitted to Commission, not Member State CA
    - less lengthy (18 months, not 3 years) and less costly
    - Union listing with conditions (use, labelling etc.)
    - generic authorisation (except where 5 years protection of new proprietary data), replacing individual authorisations + ‘substantial equivalence’ application
  - fast track ‘history of safe use’ procedure for third country traditional foods
Novel Foods – implications of proposed overhaul

– wider scope of products caught:
  • non-exhaustive list of categories
  • engineered nanomaterials (as defined under Regulation 1169/2011) specifically covered
  • new formalised procedure for FBO to consult with MS CA to determine if ‘not consumed in EU to significant degree pre 15 May 1997’
  • foods used exclusively in food supplements pre 1997 need to be authorised if other use
– novel foods already legally on market automatically on Union list
NEW FOOD INFORMATION REQUIREMENTS
New food information requirements

- Food Information Regulation 1169/2011
  - ‘foods intended for the final consumer’
  - any form of communication (label, online etc.)

- New nutrition declaration presentation rules bite:
  - since 13 December 2014:
    - for foods already subject to nutrition labelling: health or nutrition claims (Regulation 1924/2006) or to which vitamins and minerals added (Regulation 1925/2006); or
    - where nutrition declaration provided on a voluntary basis

- Mandatory nutrition declaration from 13 December 2016 for all other foods (not only where claim), except where:
  - specifically exempted in Annex V (very small packaging, certain teas, etc.)
  - under own separate declaration rules (food supplements, some dietetic foods)
New Food Information requirements

- Distance Selling (online) of foods
  - all mandatory information (except durability date) available pre-purchase

- Engineered nanomaterial ingredients
  - ‘[ingredient name] (nano)’

- Allergens
  - applies to: ingredients or processing aids which are allergens, or derived from allergens, and still present, even in altered form
  - importance means no exceptions, despite consequent practical difficulties
    - includes small packs and non-pre packaged foods exempted from ingredient labelling
New Food Information requirements

- Meeting the new requirements:
  - obvious from name of product; or else
  - name of allergen emphasized in ingredients list using typeset (font, bold, different colour); or else
  - where no ingredient listing, state ‘Contains [allergens]’
  - significant liability implications if omitted
  - UK: 5,000 maximum fine limit changed to unlimited maximum (section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012)
  - Commission to legislate on ‘may contain’ labelling
    - voluntary precautionary allergen statements only where real risk assessed/identified?
PRODUCT POSITIONING: UPDATE ON HEALTH AND NUTRITION CLAIMS
Natural claims (I)

- ‘Natural’ not defined in EU food law

- General ‘Misleading to Consumer’ Test
  - labelling/advertising not to ‘mislead purchaser to a material degree…’ as to characteristics: nature, properties, origin or provenance, method of manufacture or production’ (Article 7(1)(a) of Regulation 1169/2011, Article 16 of 178/2002)
  - general concept: room for interpretation (and abuse?)
  - open space for enforcement, competitor cease and desist action

- National differences:
  - French: cannot say ‘natural’ if ingredient always natural (Article 7(1)(c) of Regulation 1169/2011)
    - spirit contradicted by the Nutrition and Health Claims: ‘Where a food naturally meets the condition(s) laid down in this Annex for the use of a nutritional claim, the term ‘naturally/natural’ may be used as a prefix to the claim.’
Natural claims (II)

  • ‘means essentially…not the work of man or interfered with by man’
  • ‘non-traditional fermentation processes should not be referred to as natural’

▪ EU level
  – EU caselaw (C-465/98 Darbo, paras 25 - 29): average consumer will not interpret ‘natural’ literally (presence of residues, impurities in jam)

▪ Flavourings Regulation 1334/2008: only FIA Regulation dealing specifically:
  – provides for use of term ‘natural flavouring substance’ if (Article 3(2)(c), Article16(3):
    • correspond to substances naturally present and have been identified in nature
  – suggests ‘natural’ may legally have more subtle meaning than not created by man

▪ Ingredients made with GMO enzymes?
  – academic comment/not law – natural if:
    • amino acid sequence of GMO enzyme similar to natural variant
    • effect on ingredient comparable with that of a natural variant
CLAIMS REGULATION GEOGRAPHY AND GREY ZONES

HEALTH CLAIMS

- "ANY MESSAGE OR REPRESENTATION, WHICH STATES, SUGGESTS OR IMPLIES THAT A FOOD HAS PARTICULAR CHARACTERISTICS" (ARTICLE 2(2)(1)): GENERAL OBLIGATIONS ONLY

FUNCTION CLAIMS

- "... STATES, SUGGESTS OR IMPLIES THAT A RELATIONSHIP EXISTS BETWEEN A FOOD CATEGORY, A FOOD OR ONE OF ITS CONSTITUENTS AND HEALTH" (ARTICLE 2(2)(5)

HEALTH CLAIMS

- "ANTIOXIDANTS, PROBIOTICS ("INDICATION OF FUNCTIONALITY OR IMPLIED EFFECT ON HEALTH"), 2007 SCFAH"
- "CHILDREN’S GROWTH AND PREGNANT WOMEN (NOT SOLE REFERENCE TO CHILDREN OR ON PRODUCTS SOLELY AIMED AT CHILDREN"
- "CALCIUM IS GOOD FOR..."
- "CHILDREN’S GROWTH"

CLAIMS REGULATION GEOGRAPHY AND GREY ZONES

CLAIMS

- "... ANY CLAIM WHICH STATES, SUGGESTS OR IMPLIES THAT A FOOD HAS PARTICULAR BENEFICIAL NUTRITIONAL PROPERTIES (ARTICLE 2(4)(6))

NUTRITION CLAIMS

- "OBJECTIVE INFORMATION ONLY" CLAIMS RE NUTRIENTS SUBSTANCES
- "OBJECTIVE INFORMATION ONLY" CLAIMS RE NUTRIENTS SUBSTANCES
- "DISTINCTION BETWEEN OBJECTIVE AND 'PARTICULAR BENEFICIAL' NUTRITIONAL PROPERTIES"

CLAIMS REGULATION GEOGRAPHY AND GREY ZONES

CLAIMS

- "GENERAL NON-SPECIFIC BENEFITS FOR OVERALL GOOD HEALTH OR HEALTH-RELATED WELL-BEING (ARTICLE 10(3))
- "E.G. HELPS KEEP YOUR BODY FEELING GOOD"

CLAIMS REGULATION GEOGRAPHY AND GREY ZONES

CLAIMS

- "NOT:
  - REFERRING TO NUTRIENT/OR OTHER SUBSTANCE
  - RELATIONSHIP WITH HEALTH
  - RELATED TO OVERALL, GOOD HEALTH OR HEALTH-RELATED WELL-BEING
- "E.G. EASY ON STOMACH"

CLAIMS REGULATION GEOGRAPHY AND GREY ZONES

CLAIMS

- "GENERALLY ACCEPTED FUNCTION (ARTICLE 13(1))"
- "NEW FUNCTION BASED ON NEW SCIENTIFIC EVIDENCE AND/OR PROPRIETARY DATA (ARTICLE 13(5))"

CLAIMS REGULATION GEOGRAPHY AND GREY ZONES

CLAIMS

- "CONTAINS [NAME OF THE NUTRIENT OR OTHER SUBSTANCE]
- "LYCOPENE, LUTEIN (FACTUAL INFORMATION), 2007 SCFAH"

CLAIMS REGULATION GEOGRAPHY AND GREY ZONES

CLAIMS

- "E.G. "WITH MILK", "EQUIVALENT TO EATING AN ORANGE"

CLAIMS REGULATION GEOGRAPHY AND GREY ZONES

CLAIMS

- "OBJECTIVE INFORMATION ONLY CLAIMS NOT REFERRING TO NUTRIENT/SUBSTANCE"
- "DIGESTIVES", "COUGH DROPS": EXEMPTED FROM HCR ON FBO APPLICATION

CLAIMS REGULATION GEOGRAPHY AND GREY ZONES

CLAIMS

- "GENERIC DESCRIPTORS"
Scope of ‘Health Claim’: specification of health benefit

- Health claim or statement of fact?
  - ‘lutein is one of the carotenoids found in the macula of the human eye’
  - indication that ‘relationship exists between food [constituent] and health’? (Article 2(5) NHCR) (no ‘increasing, helping, maintaining…’)

- ENRA guidance (section 1.2.3):
  - ‘However, even though such statements are factually true, their use may misleading consumers to think that intake has a benefit and therefore result in such statements becoming unauthorized health claims.’

- German ‘Praebiotik + Probiotik’ trademark case (26.2.14, I ZR 178/12)
  - competitor obtains Court ban as unauthorised health claim
    - consistent with Commission Guidance (2007) that substance/substance category name ‘probiotics/prebiotics’ indicates/implies ‘specific functional effect’
    - contrast ‘contains lutein’ = ‘only factual information’ therefore accepted nutrition claim
Scope of ‘Health Claim’: specification of health benefit

- second instance: objective quality description of food, *not* health claim
  - mere description of ingredients, without mention of particular health effect ≠ health claim
  - prebiotic + probiotic = ingredient category descriptors
  - manufacturers should not be banned from mentioning ingredients/composition

- Federal Court of Appeal: health claim
  - broad interpretation of health claim on basis of Case C-544/10, *Deustches Weintor*

- red line between factual information and implied health benefit?
- even permitted nutrition claims (‘source of omega-3 fatty acids’, ‘contains calcium’) communicate an implied health effect, or else why make them?
Scope of ‘Health Claim’: specification of health benefit

- German ‘Energy and vodka’ case (9.10.14, I ZR 178/12)
  - Was claim ‘Energy and vodka’ on alcoholic drink a nutrition or implied health claim = infringes NCHR ban of claims on alcoholic drinks?
  - Second instance: illegal (non-Annex listed) nutrition claim
    - more than objective description of product quality/ingredient or lawful/mandatory name (‘vodka and energy drink cocktail’)?
  - Federal Court of Appeal:
    - move away from very wide interpretation
    - claim ‘that a food has particular characteristics (Article 2(1) NHCR)’ v. category descriptor (objective reference to quality of all foods in category [energy drinks])
    - except case by case decision if reference to specific substance with nutritive effect (claim – ‘prebiotic’?)
Scope of ‘Health Claim’: specification of health benefit

- **German ‘Monsterbacke II’** (12.2.15, I ZR 36/11)
  - claim ‘as recommended as the daily glass of milk’ no dairy fruit drink
  - Federal Court Monsterbacke II (12.2.15, I ZR 36/11): a health claims which is a ‘reference to general non-specific benefits of the food’
  - follows Vitalpilze re no accompanying claim compulsory…

- **German ‘Vitalpilze’ case** (17.12.13, I ZR5/12)
  - Article 10(3) NHCR: ‘Reference to general, non-specific benefits … for overall good health … only if accompanied by [authorised claim].’
  - accompanying health claim not required whilst EU Register/ list of authorised health claims incomplete, otherwise non-specific claims prevented pending
  - general claim substantiated?
NEW REQUIREMENTS REGARDING ONLINE SALES OF FOOD
New Distance (online) selling requirements – implications for sports foods

- Directive 2011/83 on Consumer Rights
  - from last June (2014), covers foods sold on web
    - online supermarket sales
    - food supplements/sports food websites
    - non-EU hosted websites covered if target EU market
  - achieving compliance:
    - review web ordering processes, terms and conditions, distribution arrangements?
    - train relevant staff and revise internal policies?

- New Requirements of Consumer Rights Directive at a glance
  - obligation to permit 14 day withdrawal period (extended by 12 months if consumer not specifically informed)
    - no specific food exemption
    - exemptions potentially applicable for certain foods, but grey area:
      - meaning of ‘liable to deteriorate or expire rapidly’? only take-away food, or broader?
      - where exempted, failure to inform consumer of absence of withdrawal right means not bound by contract
    - clarification on deadlines for return of goods and reimbursement
New Distance (online) selling requirements – implications for sports foods

- transparency of costs and payment obligations:
  - maximum costs clearly specified
  - default ‘pre-ticked’ boxes for additional payments illegal
  - excessive charges for payment methods (debit/credit cards) and consumer hotlines illegal

- delivery of goods and risk:
  - delivery within 30 days of contract conclusion
  - risk borne by traders until consumer takes possession (unless transport arranged by consumer)
LIABILITY FOR NON-COMPLIANCE
Strict liability for food law compliance: food information

- Strict liability for those in supply chain (distributors/retailers) not responsible for food safety or food information?

- Food information
  - Case-315/05 (*Lidl Italia*) suggests:
    - MS national laws can impose liability on distributors for non-compliant product labelling (of manufacturer)
      - Court did not appear to address Lidl’s defence argument that: ‘The distributor cannot know whether or not the label affixed to the packaging by the producer…’
      - Advocate-General (but not court): only if distributor ‘in a position to verify that the particulars on the label of the product are substantively accurate’ (defence in enforcement action?)
  - Contrast Food Information Regulation 1169/2011 (Article 8): designates responsibility for food information:
    - EU-based operator under whose name product marketed; or
    - if no such operator, importer (Article 8(1))
    - online trading: website owner (Commission Q&A 31.1.13) (Article 8(3))
Strict liability for food law compliance: food information

- obligations of FBOs ‘which do not affect food information shall not supply food which they know or presume, on the basis of the information in their possession as professionals, to be non-compliant’ (Article 8(3))
  - obligation on distributor/retailer limited to where has knowledge? But...
  - all FBOs still required to ensure compliance with food information requirements ‘relevant to their activities’ (Article 8(5))
    - only checking FIR ‘mandatory particulars’ in B2B sales (as specified in Article 8(7) and (8))?
Strict liability for food law compliance: food safety

- **Food safety:**
  - strict liability approach to food safety compliance confirmed in November 2014 judgment in Case C-443/13 *(Ute Reindl v. Bezirkshauptmannschaft Innsbruck)*
    - national law may impose sanctions on ‘a food business operators active only at the distribution stage for placing on the market foodstuffs which fail to comply with microbiological criteria’ (paragraph 36)
    - relied on GFLR Article 18: FBOs ‘at all stages of production, processing and distribution within the businesses under their control shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities (Article 17)
    - ‘Even if the system of penalties in the case in the main proceedings is a system of strict liability, it must be recalled that, according to the case-law of the Court, such a system is not, in itself, disproportionate to the objectives pursued, if that system is such as to encourage the persons concerned to comply with the provisions of a regulation and where the objective pursued is a matter of public interest which may justify the introduction of such a system’ (paragraph 42)

- Importance of contractual indemnities from upstream supplier
THE NEW ENFORCEMENT ENVIRONMENT
Enforcement trends

- Food information (as well as safety) increasingly an enforcement priority
  - recent European ‘food fraud’ scandals (horsemeat, methanol-laced vodka) suggest offence and enforcement gaps
  - sanctions to deter organised crime (fines based on double criminal profits)

- New Commission proposed regulation on official controls/enforcement:
  - improved cross border enforcement through online inspection cooperation
  - mandatory ‘naming and shaming’ provisions
  - increased unannounced inspections
  - national initiatives:
    - UK: new FSA Food Crime Unit to coordinate investigations, revised sentencing guidelines, legal basis for unlimited fines and longer prison sentences

- ‘Private enforcement’: competitors and consumer associations ‘cease and desist’ letters and potential injunctions; supply chain requirements
Enforcement trends

- Pressure from self-regulatory organisations like UK ASA (jurisdiction now extended to websites) (cases/decisions published)

- Enforcement focus:
  - unauthorised health claims
  - products positioned as foods (supplements, for specific groups (sports foods)) deemed unlicensed medicines due to ingredients or presentation

- Threat of business interruption and reputational damage
Take Home Messages

- Sports foods in regulatory limbo: awaiting Commission report 2015 – protected status or under general rules?
- EFSA Opinion on caffeine: favourable regulatory future for energy drinks and related caffeine claims?
- Dedicated regime for botanicals with less demanding claims substantiation rules?
- An easier path for innovation: more user friendly novel food authorisation procedure?
- New food information regime and related liability implications:
  - for example, re allergens
- Claims:
  - considerable variation of ‘natural’ claims rules in different Member States
    - inconsistent law and guidance in different EU countries
    - EU position helpful
Take Home Messages

– health claims:
  • increasingly wide scope?
  • difference between objective factual statement re ingredient and implied health claim?

▪ Distance sales:
  – are T&Cs and presentation of website compliant?

▪ Strict liability for non-compliance with food law
  – distributor liability for supplier’s non-compliance over which no control
  – importance of contractual indemnities

▪ New food enforcement focus
Questions
For additional information about our food law services, please contact csimpson@steptoe.com or visit our website:

- A UK qualified solicitor and Senior European Legal Advisor in Steptoe’s Brussels office
- He has more than 14 years of experience advising multinational companies and trade associations on EU regulatory compliance and related commercial issues in the food, chemical regulation, and life sciences areas
- Core food areas include the regulatory status of ingredients, food contact materials, labelling and packaging and nutrition and health claims, particularly in the context of functional foods and food supplements

http://www.steptoe.com/practices-328.html
http://www.steptoe.com/professionals-Craig_Simpson.html