



Australian Consumers' Association
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3 June 2003

Mr Ross O'Donoghue
Chair
Nutrition, Health & Related Claims
Policy Advisory Group
Population Health Division
Department of Health and Ageing
GPO Box 9848
CANBERRA ACT 2601

Dear Mr O'Donoghue,

**Re: ACA's withdrawal from the
Nutrition, Health & Related Claims Policy Advisory Group**

It is with regret that I write to inform you that the Australian Consumers' Association is withdrawing from the Nutrition, Health and Related Claims Policy Advisory Group, and retracting support for the Draft Claims Classification Framework that is due to be presented to the Food Regulation Standing Committee this month.

The ACA has long been opposed to use of health claims in the food industry for a variety of reasons. Nonetheless, the ACA agreed to participate in the Policy Advisory Group to ensure that the interests of consumers are addressed in the policy making process. The ACA was unable to attend the PAG meetings late last year and earlier this year and we feel that this provided industry representatives with an opportunity to lobby their own interests and succeed in developing a claims classification framework that approves a wide range of health claims with minimal regulation. Despite claims by industry representatives to the contrary, promoting public health and improving food choices have not been the focus of the current approach to health claims. The current approach appears to be driven by the demands of industry to use health claims to differentiate their products, and provide an advantage over competing products thereby increasing sales and profits.

At the most recent, and possibly final meeting on 14 May 2003, the PAG endorsed the draft claims classification framework that had been developed by the group. While the ACA raised a number of concerns during this meeting, as other PAG members would have noted, we did not oppose endorsement of the draft claims classification framework. However, since this meeting, some PAG representatives have expressed concerns that a particular section of the document was overly restrictive to industry, resulting in a proposed rewording of the framework despite the fact that the group had already endorsed it. It is unacceptable that this sort of lobbying should be occurring out of session let alone after endorsement. Throughout the entire process there appears to have been a preoccupation with getting a health claims policy approved as quickly as possible with minimal regulation. It is the industry that stands to benefit most, as they will gain approval to make a wide range of health claims that will not require pre-approval by FSANZ. Compared to the food industry,

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the consumer stands to benefit little, and as a result consumers will be bombarded with health claims for a huge range of foods claiming improve or manage their health.

There is the potential that opening the floodgates in this way will undermine genuine attempts to improve public health by government health departments and other health professionals. Health claims will give consumers unrealistic impressions of the ability of individual foods to improve, manage or treat a disease or condition or their risk of a condition. In reality, disease risk is affected by the lifestyle factors and a total diet that incorporates balance, variety and moderation in food selection. There is not sufficient evidence to suggest that health claims will serve to inform or educate consumers or improve public health.

The Ministerial Council expressed a preference for 'pre-market approval rather than post-market reaction'. However, under the proposed framework, the requirements for the substantiation of most health claims are weak and in the majority of cases government agencies would only be involved in substantiating health claims once a complaint was made about particular product. The industry will not be required to produce any evidence to support their claims unless a complaint is made. While a category of high-level claims requires pre-approval by FSANZ, one can only assume that industry will avoid making these types of claims in favour of claims that require less substantiation.

We have seen recently how the complementary medicines industry has tried and failed in a self-regulatory approach. The Pan Pharmaceuticals investigation only highlights the risks associated with allowing industry to manage itself. The Therapeutics Good Administration is now undertaking a review of the complementary medicine industry in an attempt to tighten this regulatory system and to distance the TGA from industry interests. Because of the strong links between health claims and complementary medicines it would be wise to wait and consider the outcomes of the TGA review before making any decisions about health claims.

The proposed claims classification framework is at times inconsistent with the approach taken by the TGA in relation to claims. Therapeutic claims to 'treat, manage or cure' require pre-market evaluation by TGA. Within the draft classification framework therapeutic claims are not permitted however claims may refer to the improvement or management of biomarkers can be made. According to the TGA, high cholesterol is a serious disease that requires diagnosis, supervision and treatment by a health professional, and products claiming cholesterol-lowering properties are classified as high-level claims. While the claims classification framework adopts a similar definition of serious disease, cholesterol-lowering claims are considered medium-level claims and do not require pre-market approval.

Therefore, it is for the above reasons that the ACA has chosen to withdraw from the PAG and no longer supports the Claim Classification Framework as it represents primarily the interests of the food industry representative and not the interests of consumers. If documentation has not already been forwarded to the FRSC I ask that ACA's withdrawal is officially noted in these documents.

Yours sincerely,



Clare Hughes
Food Policy Officer

CC: Food Regulation Standing Committee
Food Regulation Ministerial Council