There is a war being waged between industry and consumer interest over the push by food manufacturers to badge their products with claims that their foods will maintain your health or even improve particular health conditions. It is a dicey area filled with potential for hyper marketing and erroneous interpretation in the supermarket aisles. CLARE HUGHES reports on disturbing moves in this direction.



The biomarker battle

eople have been heatedly debating the use of health claims on food labels for well over a decade — ACA's own involvement dates back to the early 1990s. On one hand we have a food industry eager to tell consumers of the wonderful health benefits they can achieve by consuming their products. On the other hand we have numbers of health and nutrition experts questioning whether it is the role of manufacturers to provide consumers with nutrition and health advice, and just how successful health claims have and will be in changing behaviour and improving health.

In late 2003 ACA joined together with The Public Health Association of Australia, Nutrition Australia, the Australasian Society for the Study of Obesity, the Australian Faculty of Public Health Medicine and eminent nutritionist Dr Rosemary Stanton to form the Coalition for a Healthy Australian Food Supply (CHAFS). CHAFS aims to counter strong food industry lobbying for a liberal approach to the use of health

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claims on food and the fortification of food with vitamins and minerals.

To claim or not to claim

The apparent goal in permitting nutrient and health claims on foods is to produce health benefits, thereby improving public health. However, there is little evidence to suggest that in countries where health claims have been permitted for a number of years they have been successful in changing behaviour and, in turn, improving public health. If anything, conditions such as obesity appear to be on the increase.

We should not overestimate the capacity of health claims to improve public health, in which case it is the food industry that stands to benefit most from the use of health claims on food as it will create new product development and marketing opportunities. Consumer interests must be placed above the interests of the industry at all times. While the potential for a health benefit may be a sufficient incentive for consumers to purchase products carrying health claims this does not mean that the products will result in the claimed health benefit. There are many factors that

influence a person's health status. Food consumption is just one of these factors, though an extremely important one.

For these reasons ACA does not support the use of health claims on foods. However, we accept that Ministers have advised that health claims will be permitted and have agreed on policy guidelines within which Food Standards Australia New Zealand (FSANZ) is to develop a standard on nutrient, health and related claims.

Currently only one health claim is permitted for use on food labels — the role of folate in the prevention of neural tube defects in unborn babies — yet there are many other claims on foods that ACA believes should be classified as health claims. Last year CHOICE magazine looked at this issue and, on a visit to one Sydney supermarket, we found 30 products which carry claims about omega-3 fats and heart health, dietary fibre, and calcium for strong bones. Ironically, very few products carried the permitted folate claim.

ACA believes the current transitional health claims standard has not served consumers well, primarily due to the difficulty of enforcing it and the inability of enforcement agencies to take action against manufacturers making claims that may not be in the spirit of the regulation but are within the letter of the law. Therefore strict health claims standards must be in place to ensure that all health claims are truthful, can be substantiated and are only made on appropriate food products. These regulations must provide enforcement agencies with clear guidelines on enforcing these claims.

In December 2003, the Australia and New Zealand Food Regulation Ministerial Council agreed on policy guidelines for the use of nutrition and health claims on food labels. However, one particular area remained a point of contention: biomarker claims. As a result, Ministers asked the food regulator, FSANZ, to report to them on streamlining the process for assessing and verifying biomarker maintenance claims before products enter the market.

Getting ahead by biomarker claims

A biomarker is an indicator for a serious disease or condition. For example, blood cholesterol is a biomarker for heart disease, and blood glucose level may be an indicator of diabetes. For the purpose of regulation, biomarker claims have been separated further into two categories — biomarker maintenance claims and biomarker improvement claims.

WHAT ACA WANTS

ACA is lobbying to see that:

- health Ministers remain as lead Ministers on the Australia New Zealand Food Regulation Ministerial Council;
- Ministers do not jeopardise the openness and transparency of the FSANZ process by giving in to contrary industry interests:
- the Ministerial Council will continue to support the position that all biomarker claims be treated as high-level health claims, requiring premarket assessment and approval by FSANZ.

A biomarker maintenance claim would suggest a food maintains health biomarker levels — for example, "this food helps to maintain healthy cholesterol levels as part of a balanced lifestyle". Biomarker enhancement claims, on the other hand, suggest that a food can improve biomarker levels, whether it be increasing the presence of healthy biomarkers or reducing the presence of unhealthy biomarkers. To continue the cholesterol example, a biomarker enhancement claim would be similar to claims such as "reduce your cholesterol uptake" and "...with plant sterols which reduce cholesterol uptake", which can be found on two products already on the market.

Consumer perception

ACA disagreed with this distinction between the degree of promise implied in a biomarker maintenance claim and the degree of promise implied in a biomarker enhancement claim. Regardless of whether a product is claiming to maintain healthy cholesterol or reduce high cholesterol, we believe that many consumers will simply see a claim about cholesterol and buy the product with the belief that it is 'good for cholesterol' without making the distinction between enhancement and maintenance claims.

On top of that consumers could potentially read more into a cholesterol claim than is actually stated. For example, a consumer might see a claim about cholesterol and believe that the food will reduce the risk of heart disease. While the actual claim might not refer to heart disease consumers will draw their own inference based on prior knowledge of links between cholesterol and heart disease.

An explicit heart disease claim is classified as a high-level health claim and subject to pre-market assessment and approval by FSANZ. Therefore, if there is the potential for consumers to interpret a biomarker claim as a claim about heart disease, then ACA believes biomarker claims should be regulated in the same way as a serious disease claim.

It seems that Ministers were also of the same thinking. When FSANZ reported back to the Ministerial Council in May 2004, the Council determined that

maintenance claims would be treated as high-level health claims, therefore subjecting them to pre-market assessment and approval by FSANZ, rather than being subject to a streamlined assessment and verification process but not actual approval by FSANZ. CHAFS welcomed the May decision to treat all biomarkers as high-level health claims as it will require them to be treated with the level of caution they deserve.

Industry outrage

The Australian Food and Grocery Council called the decision a "death blow to innovation in the Australian food industry", claiming that tens of millions of dollars of investment in research and development would be lost and Australia's international competitiveness would be eroded. The NSW Minister for Primary Industries, Mr Ian Macdonald, agreed, stating that the decision could "hamper the ability of Australian manufacturers to keep pace with other food marketers on the global stage". Mr Macdonald also said that it was a "terrible outcome for our food industry and consumers and I will not let it rest".

Mr Macdonald made no secret of the fact that he intended to get the issue of biomarker regulation back on the agenda for the next Ministerial Council meeting — now due to take place in March 2005 — suggesting that he would inject a common sense approach to the debate. ACA understands that Mr Macdonald is attempting to lobby his Ministerial Council colleagues who were in favour of the cautious approach, to change their minds about biomarker claims by proposing a streamlined process for assessment of individual claims.

Mr Macdonald reasoned that biomarker maintenance claims did not imply that a product would alter a person's state of health and therefore they should be subject to a streamlined verification process. A streamlined process would eliminate the requirement for public consultation, meaning that manufacturers would not have to disclose any intellectual property, and supporting evidence could remain commercial-in-confidence.

A streamlined approval process flies in the face of the FSANZ statutory requirement to be open and transparent, and would be contrary to the requirement for two rounds of public consultation. To some it seems that the idea of public consultation just gets in the way of product development and industry innovation. In ACA's opinion public health and consumer interests should be the driving force behind health claims regulation, not industry and market demands.

But why should health claims be treated any differently? Well, unfortunately they may not be. It seems that the furore surrounding health claims has resulted in a review of FSANZ assessment and approval processes. While the point of contention over health claims was the requirement to disclose commercial-in-confidence information, there is also concern that the FSANZ process is unnecessarily lengthy and hinders the prompt development or amendment of food standards.

Conflict of interests

Following the release of the Food Regulation Review Report of 1998, Ministers for Primary Industry and Agriculture were invited to join their Commonwealth, State and Territory Health counterparts on the new Australia New Zealand Food Regulation Ministerial Council. At the time ACA expressed grave concerns about this, fearing that it would result in the main responsibility for food regulation being passed to the Primary Industry and Agriculture Ministers and away from the health portfolio.

The FSANZ Act of 1991 lists public health and safety, consumer information, and misleading and deceptive conduct as the top priorities of the food regulatory body. However, according to the Act, FSANZ must have regard to, among other things, consistency between domestic and international food standards, efficient and internationally competitive food industry and fair trading in food.

In March 1999, ACA wrote to the Prime Minister to express its concerns about a possible shift of food regulation from the health to the agriculture portfolio. ACA urged Mr Howard to retain responsibility for food within the health portfolio where there was sufficient expertise and perspective to deal with the range of important and rapidly emerging food issues.

ACA suggested that under the agriculture portfolio consumer confidence in the food supply would be threatened because of the likely conflict of interests. It would be difficult for agriculture Ministers to balance the FSANZ Act consumer responsibilities — such as public health and safety and consumer information — with their duty as agriculture Ministers to enhance and support the Australian food industry and achieve market outcomes such as export and product innovation. The Australian Medical Association, the Public Health Association of Australia, The Dietitians Association of Australia,

And now ACA's worst fears have been realised — the responsibility for food regulation in NSW has been handed to a Minister whose prime interest is establishing a market for Australian produce, rather than protecting the health and safety of Australian consumers. Can we expect other states to follow suit? The NSW position on biomarker claims is a perfect example of commercial interests overshadowing consumer interests when responsibility is passed to agriculture or primary industries Ministers.

Those in favour

Minister Macdonald listed NSW, Victoria, the Commonwealth Government and the New Zealand Health Department as those Ministers in favour of the more

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The Heart Foundation and the Australian Institute of Environmental Health also publicly echoed these concerns.

In April 2004, the NSW Food Authority was launched, bringing together Safe Food Production NSW with the food regulatory functions and resources of the NSW Department of Health, thereby bringing the responsibility for food regulation into a single portfolio — a first for state and territory food regulation in Australia. Unfortunately, the responsibility for this new Authority rests with the Minister for Primary Industries. While the NSW Minister for Health is still a member of the Ministerial Council, he does not have primary responsibility for food regulatory or enforcement issues, or developing NSW positions on Ministerial Council decisions.

liberal, industry-friendly approach to health claims. Queensland, the Northern Territory, Tasmania, Western Australia, South Australia and the ACT voted for the premarket assessment and approval of all biomarker claims.

ACA, as part of the Coalition for a Healthy Australian Food Supply, wrote to the health Ministers in these states and territories commending them for their decision and their stand against commercial interests. However, in the face of renewed lobbying efforts by the food industry and pressure from the NSW Minister, ACA is again urging these Ministers to stand firm in their decision and maintain their stance should Minister Macdonald be successful in putting the issue back on the agenda for the next Food Regulation Ministerial ci Council meeting.