

Brand restrictions – Products law perspective

APRAM - INTA

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The example of nutrition and health claims for foods

- Regulation n°1924/2006 on nutrition and
health claims for foods –**

Trade marks that may be considered nutrition / health claims

- Scope : « *trade mark, brand name or fancy name* »
- Should be accompanied by a specific (and authorized) nutrition or health claim
- For trade marks or brand names : **transitional period of 17 years** to allow a change (in the event of non-compliance with the regulations) ! Just ended in January 2022...

Impact is huge for well-established brands.

Endgame : Fair communication - consumer protection

The example of the « sanitary message » in France

=> The path of consumer education



Sanitary message

- 4 messages to be used alternatively OR financial contribution

Large scope :

- drinks with added sugar, salt or artificial sweeteners or manufactured food products.
- Basically all **advertising and promotional messages** (TV, press, prints, online ads...)



Sanitary message

- Impact on the design of communications: in practice, the message must take up 7% of the surface area.
BUT not on packaging.



- At least, formulations are rather positive (with some flexibility in the choice of the message) and in the form of recommendations.
- But system may be reworked as potentially **counter-productive** : saturation & consumer confusion between information and ad.

The example of plant-based foods :

**The French battle over the use of references
to meat products :**

Really a matter of consumer protection ?

Meat names & Veggie foods

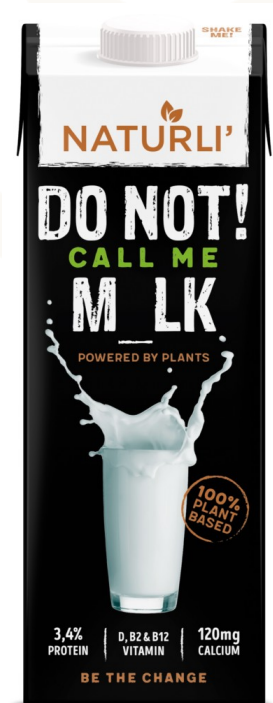


- First of all : a competitive battle, allegedly based on the risk of confusion for consumers.
 - > hardly followed by French courts since plant-based nature is quite clear.
- **But attempts to create legal/reg. constraints** : France is trying to protect meat designations (decree 2022-947 / Law on transparency)
 - > prohibition to use names referring to meat products when the products contains plant-based proteins.
 - > regulation currently suspended.

Not a public health issue: just an attempt to preserve a market.

What about dairy names ?

- Battle vs. dairy names : existing protection at EU level (unlike meat names)
- Attempts at EU level to increase the protection by prohibiting the visual references (not accepted).



Attempts at UE level

- Amendments 171 and 165 on dairy and meat names, for larger protection : **both rejected** !
 - European consumers were against a larger protection ! no risk of confusion for them... and on the contrary, interesting references to identify and understand the product.
 - EU MPs may have been afraid of the impact on their image, particularly given the environmental challenges.



Rules still being defined



For Member States : **trade-off between protecting traditional sectors and supporting innovation.**

In the background: **consistency with the European “Farm to Fork” strategy**, which encourages a reduction in the consumption of meat and animal products.

Controlling the names and advertising of plant-based products is a way of blocking market development.

-> How can you talk about *alternatives* without referring to the products for which they are an alternative?

-> Is it possible to create new terms and a new universe? Consumer acceptance ?



Thank you