SUBMISSION TO THE SENATE INQUIRY INTO THE COMPETITION AND CONSUMER AMENDMENT (AUSTRALIAN FOOD LABELLING) BILL 2012 (NO. 2)

AUSTRALIAN MADE CAMPAIGN LIMITED

October 2012

SUMMARY AND RECOMMENDATIONS

Australian Made Campaign Limited (AMCL) welcomes the opportunity to make this submission on the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2).

Consumers are increasingly concerned about the origins of the food they eat. Such concerns are driven by a number of factors – economic, health & safety and environmental. Research clearly shows that consumers have a strong preference for the fresh and processed food they buy to be Australian.

It is also clear that consumers are dissatisfied with the current labelling laws, particularly as they relate to processed foods, and are seeking a system which provides greater clarity.

AMCL acknowledges the shortcomings in the current labelling regime and welcomes the proposal before Parliament as stimulating discussion on an important issue. However we believe the proposal as it stands requires substantial revision before it could be considered an acceptable alternative to the current food labelling system.

RECOMMENDATIONS

AMCL's recommendations on food labelling are that:

- all food products should be required to carry a country of origin claim;
- the 'Product of …' claim, as defined in the Australian Consumer Law, should be retained for food products;
- the 'Made in …' claim, as defined in the Australian Consumer Law, should be retained for processed foods;
- the definition of 'substantial transformation' needs to be made more exclusive in relation to food products so that it is more difficult for certain products, particularly those with a high imported content, to meet the substantial transformation test necessary for the 'Made in …' claim;
- regulations should be drawn up specifying those processes, or combinations of processes, which do not constitute substantial transformation for the purposes of a 'Made in …' claim;
- the use of qualified claims such as 'Made in Australia from imported and local ingredients' should no longer be permitted unless the product meets the tests for an unqualified 'Made in Australia' claim;
- the criteria for such qualified claims should be clearly defined in legislation;
- an administrative mechanism should be established to enable a company to obtain a ruling as to whether a product meets the criteria for a particular country of origin claim.

COUNTRY OF ORIGIN LABELLING FOR FOOD – CURRENT SITUATION AND CONCERNS

AMCL has been aware for some time of growing consumer concerns (in Australia and overseas) about the country of origin of fresh foods and of ingredients in processed food products. Drivers of these concerns include anxieties about food safety (as in the melamine in milk scandal in China) and environmental impact issues (such as food miles). In addition, many Australians wish to support the Australian economy and the country's farmers and fishermen by buying locally produced products whenever possible.

The Australian Grown label was created (by the Federal Government) in 2007 in response to these concerns of consumers and producers to provide a simple and effective method of identifying Australian produce, and has been enthusiastically taken up by major retailers including Coles, Woolworths, ALDI and Metcash/IGA.

However, the major area of consumer concern continues to be the 'Made in …' claim and related qualified claims, such as 'Made in Australia from local and imported ingredients'.

The 'Made in …' claim, as currently defined in the Australian Consumer Law and consequently the Food Standards Code, relates to manufacturing processes and costs of production, rather than to content. A food product which contains a high percentage of imported ingredients can still legally be described as 'Made in Australia', provided it meets the twin criteria of 'substantial transformation' in Australia and 50% of costs incurred locally.

The cost criterion is relatively straightforward – it is either met or it isn't, although where there is a sizeable imported component, it can be affected quite dramatically by movements in the exchange rate.

Our major area of concern is in the interpretation of the term 'substantial transformation' in regard to food products, particularly as set out in the ACCC booklet '*Food and beverage industry: country of origin guidelines to the Trade Practices Act*'. Under these guidelines, mixing, homogenisation, coating and curing are all processes "*likely to be considered as substantial transformation"*.

Thus, mixed diced vegetables, blended fruit juices, crumbed prawns and ham and bacon may qualify as Australian Made **even though all the major ingredients may be imported**, as long as 50% of the cost of production is incurred in Australia.

We note from the same publication that the government has the power to make regulations stating that certain changes are <u>not</u> considered to constitute substantial transformation for the purposes of the legislation, however no such regulations have been made.

Qualified claims, such as 'Made in Australia from local and imported ingredients', are a particular source of confusion and concern for consumers and business alike. ACCC guidelines state that such a claim may be made when a product does <u>not</u> meet the criteria for an unqualified 'Made in Australia' claim. They may also be used, apparently, when a product <u>does</u> meet the criteria for an unqualified 'Made in Australia' claim and the company wishes to provide more information about the product.

There is a widely held belief that 'Made in Australia from local and imported ingredients' means that local ingredients make up more than 50% of the product's content, and that 'Made in Australia from imported and local ingredients' means that imported content predominates. However there is no published guideline to support this.

The Australian Consumer Law is silent on the question of qualified claims.

Problems with the 'Made in …' claim were recognised in the Blewett Review of Food Labelling, which proposed as an alternative "*a consumer-friendly, food-specific country-of-origin labelling framework, based primarily on the ingoing weight of the ingredients and components*". This proposal forms the basis of the current Bill.

THE AUSTRALIAN MADE, AUSTRALIAN GROWN LOGO

Australian Made Campaign Limited (AMCL) is the not-for-profit public company set up in 1999 to administer the Australian Made, Australian Grown (AMAG) logo. The logo, consisting of a stylised kangaroo inside a triangle, is a registered certification trade mark governed by a Code of Practice approved by the ACCC.

AMCL administers the logo in accordance with a Deed of Assignment and Management Deed with the federal government and reports annually to the Department of Industry, Innovation, Science, Research and Tertiary Education on its operations.

AMCL's core funding is derived from licence fees paid by companies to use the logo. It receives no financial support from government for its core operations. DIISRTE currently provides some grant funding for a project under its Buy Australian at Home and Abroad program.

The AMAG logo supports growers and processors in Australia by helping them to clearly identify to consumers that their products are Australian. It does this in conjunction with a campaign encouraging consumers to look for the logo when shopping.

The logo is available for use with the following descriptors:

- Product of Australia
- Australian Made
- Australian Grown (qualified and unqualified)
- Australian Seafood
- Australian (for export markets only).

When used with the AMAG logo without qualification, 'Australian Grown' is as defined in the Australian Consumer Law – that is, all the significant ingredients have been grown in Australia and all production or manufacturing processes have taken place in Australia.

When qualified by the name of an ingredient or ingredients, e.g. 'Australian Grown Potatoes', it indicates that at least 90% of the content (net weight) of the product is grown in Australia, and 100% of the named ingredient (in this instance potatoes) is grown here, and all the processing takes place in Australia. An example of this would be frozen potato wedges made in Australia from Australian grown potatoes where some minor added ingredients (oils, spices, flavourings) are imported.

In 2011, AMCL moved to amend the rules for use of the logo with the 'Australian Made' claim to exclude certain processes which are currently considered under ACCC guidelines to constitute substantial transformation. Thus products such as ham and bacon processed in Australia from imported pork, imported coffee beans roasted in Australia, imported prawns crumbed in Australia, and blends of local and imported juices are no longer eligible to carry the AMAG logo. They do not meet the substantial transformation test essential for the 'Australian Made' claim and they cannot

access the 'Product of Australia', 'Australian Grown' or 'Australian Seafood' claims because of the imported content.

The rules and criteria for use of the logo are set out in the Australian Made, Australian Grown Logo Code of Practice.

Over 1750 companies are currently licensed to use the AMAG logo, with numbers growing strongly in recent years. 13% of licensees are in the food and beverage sector. The vast majority of AMAG licensees use the logo with the 'Australian Made' claim.

COMMENTS ON THE BILL

Item 1. 'Product of' not to be used on food products

The Bill does not set out criteria for a general 'Grown in ..' claim (although it defines the term). Is it intended that 100% Australian products use 'Made of Australian ingredients'?

'Product of' is probably the most appropriate claim for products such as wild caught seafood, mineral water, dairy products, wine, etc.

AMCL recommends that the 'Product of' claim (as defined in the ACL) should be retained. A special claim for seafood products, such as the one defined in AMAG Code of Practice, could also be included.

Item 2. Proposed claim '*Made of Australian ingredients*' for products with minimum 90% Australian ingredients by weight excluding water:

We believe this claim could be misleading – it could easily be interpreted as meaning that 100% of the ingredients are Australian.

The place of manufacture is still important. The Bill needs to include criteria around processing taking place in Australia, otherwise this claim could apply to products made overseas using Australian ingredients.

Where the product includes imported rehydrated ingredients, the water used in the reconstitution process should be counted as imported content.

Finally, we believe that 90% dry weight is a very high threshold – very few products will be able to comply with this. AMCL introduced a similar set of criteria for its qualified 'Australian Grown' claim in 2007 (although water was included in the calculation), however takeup has been minimal.

Item 3. Packaged food not eligible for '*Made of Australian ingredients*' claim

Under this proposal, the vast majority of processed food products will not be required to carry a country of origin claim. AMCL believes that this is a step backwards and that all food products should carry a country of origin statement. AMCL therefore recommends retention of the 'Made in …' claim albeit with stricter criteria.

It should be noted that the 'Made in Australia' claim is highly prized by exporters of Australian food and beverage products. Consumers overseas value such products because of Australia's reputation as a clean and green environment, with high standards for product quality and safety.

AMCL recommends that regulations should be drawn up to specify what processes, or combination of processes, do not constitute 'substantial transformation' for food products.

It may also be beneficial to consider additional criteria for food products, such as a minimum threshold for Australian content.

Specific criteria for *qualified claims* should be set out in legislation. If using the words 'Made in …' the product must meet criteria for an unqualified claim.

Where a product does not meet the criteria for an unqualified 'Made in …' claim, it should be required to make an accurate and appropriate representation, e.g. 'Packed in Australia from imported ingredients', 'Blended in … ', 'Gherkins grown in India, processed in Australia', etc.

Item 4. 'Regulated fresh food'

This should apply to all fresh food (meat, fruit, vegetables, seafood, nuts and grains).

It is unclear from the Bill what form the required statement should take. If it is to be 'Grown in …', specific criteria need to be set out. These criteria should be those currently set out in the ACL.

Item 5. Unpackaged food not grown in Australia

Such items should also be required to carry a country of origin statement.

General comments

AMCL believes the proposal, as it stands, will cause further confusion for consumers and have the effect of disadvantaging a large number of genuine Australian manufacturers and processors by precluding them from using legitimate country of origin claims on their products.

The existing scheme, extended to cover all food products and with tightening of the definitions for substantial transformation and qualified claims, supported by an appropriate consumer education campaign, would provide a significantly improved country of origin labelling regime.

Ian Harrison
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