



# LEBENSMITTELCHEMISCHE GESELLSCHAFT

Technical group of the GESELLSCHAFT DEUTSCHER CHEMIKER



19.07.01

## Discussion paper on nutrition claims and functional claims

(SANCO 1341/2001)

Dear Sir/Madam,

As an independent and neutral scientific association, the *Lebensmittelchemische Gesellschaft* (food chemistry society), a technical group within the *Gesellschaft Deutscher Chemiker* (society of German chemists), herewith takes up your invitation to submit its comments on the above discussion paper.

We should first of all like to state that we in principle expressly welcome the proposed new regulation of nutritional and functional claims. We largely concur with, and support, the discussion paper and propose only the few modifications discussed below.

The boards of the *Lebensmittelchemische Gesellschaft* and the *Deutsche Gesellschaft für Ernährung* held intensive discussions on just this topic at an internal seminar in December 2000 in Frankfurt, in the course of which they consulted recognised experts in the field and formulated recommendations. I will return to these recommendations further below.

Our comments on the discussion paper are as follows.

**No 2** The third sentence states that Angaben für die Verbraucher nicht in erheblichem Umfang irreführend sein dürfen (“claims should not mislead the consumer to a material degree”). From the standpoint of German law, first having to determine that something is "erheblich" (considerable) is quite a high barrier to overcome. In comparable cases, German law has hitherto adopted a different formulation that offers better protection, which we would also recommend for this text, i.e. "dass Angaben den Verbraucher nicht mehr als unerheblich irreführen dürfen" (“claims should not mislead the consumer to more than an immaterial degree”).

**Re No 23** We expressly recommend that reference products for comparative claims may only be products *marketed under the same designation*. A low-fat cream cheese is not at all the same product as a “reduced fat” cheese. The word “brand” in this connection is not particularly helpful either, since it will be associated with a manufacturer’s brand, which however usually covers a wide variety of different, non-comparable products.

**Re No 31** We advocate retaining in principle the minimum of 15% of the recommended daily allowance of a nutrient in order to justify a claim for this nutrient. Problems in this area have so far only arisen for soft drinks (mineral drinks), particularly on account of the taste. An exemption could be made for this group of products (5% or 7.5%).

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**Re No 32** Regarding the first point, we would again, as for 23, insist that only products *marketed under the same designation* may be compared. Otherwise, comparisons would in many cases be misleading for consumers, who normally do not have a detailed knowledge of the different compositions of products with different designations.

Regarding the first indent under the third point, we suggest allowing only a percentage figure for the same reasons.

The second dash under the third point is not necessary if only foods marketed under the same designation can be compared.

**Re No 36** This passage should be deleted in its entirety, since there is no need to deviate from the rules set out in paragraphs 33 to 35.

**Re No 48** At the seminar mentioned earlier, the *Lebensmittelchemische Gesellschaft* and the *Deutsche Gesellschaft für Ernährung* also devoted particular attention to the approval of functional products or claims. They issued the following recommendations:

“Claims relating to beneficial effects on health may not mislead the consumer and must have a sufficient scientific basis. Given the complexity of individual cases, general confirmations of the effects of secondary ingredients are generally not possible, so the manufacturer of a product should be obliged to provide substantiation for specific claims of beneficial effects on the part of his particular product in the form of corresponding documentation (scientific publications and, where appropriate, studies). This applies both to claims of beneficial effects on bodily functions and to claims of a reduced risk of a particular illness. Scientific expertise is indispensable for evaluating such documentation and should be regularly called upon.

The manufacturer should be given the opportunity to provide confirmation, voluntarily and at his own initiative, that the documentation compiled by him is sufficient to provide adequate scientific substantiation of the correctness of a claim. For purely national use, such confirmation should be issued by a central scientific agency in the Member State concerned. For Community-wide marketing, such a confirmation should be issued by the future European Food Authority (EFA)”.

We would be grateful if you could take these suggestions into account in your further deliberations.

Yours faithfully

(signed) Dr. A. Preuß