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Food Standards Australia New Zealand
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30 March 2012

Email: submissions@foodstandards.gov.au

Dear Sir/Madam,

P293 – Australian Beverages Council Submission

The Australian Beverages Council (the Beverages Council) is the peak body representing the \$7 billion non-alcoholic beverage industry. In Australia, the non-alcoholic refreshment beverage industry employs 6,211 Australians, and is a major contributor to the domestic economy through the provision and production of an extensive and innovative range of beverages. This, in turn, supports a large number of Australian producers, manufacturers and large and small businesses in addition to providing significant support and funding to community organisations.

The Beverages Council provides a single, united industry voice to a range of stakeholders including government, non-government organisations, media and general public. Membership of the Beverages Council comprises over 95% of the non-alcoholic industry's production volume, and is comprised of multi-national companies and small and medium businesses. A full list of members can be found in Attachment A,

The Beverages Council's guiding principles focus on: Safety; Education; Accountability; Education; and Collaboration. The industry achieves this through a range of commitments to a suite of policies and positions that underpin these values; e.g., Health and Wellbeing; Marketing and Communications; Product Information; and Environment. These are clearly articulated, substantiated and monitored documents to ensure our membership adheres to best practice.

The Beverages Council welcomes the opportunity to provide the attached submission with reference to P293 Health and Nutrition Claims. The Beverages Council has concerns with draft standard Proposal P293 and

therefore rejects the proposal outright. Concern exists amongst manufacturers that P293 does not provide regulatory intent, among other matters; the proposed standard is far too broad with the result being that its extensive reach unintentionally affects a number of products in the beverages category.

In summary, we make the following comments and observations:

1. Proposed draft of Standard 1.2.7 is too general and is considered to be regulatory over-stretch;
2. Minimum and effective regulation (in accordance with COAG principles) is not achieved;
3. P293 is inadequate in defining directly or indirectly 'health claim' and 'health effect';
4. In respect of fat-free and % fat-free claims in particular, there is no indication that consumers are being misled by, or the inadequacy of, nutrition information panels and the Beverage Council is in favour of maintaining the status quo.

We provide further detail on each of these points below.

1. Proposed Draft Standard 1.2.7 is too general

The proposed draft standard is far too broad with the result being that its extensive reach unintentionally affects a number of products in the beverages category, and this has not been considered. Examples of the effect of P293 include:

- a. Sports drinks, which are formulated and represented as suitable for the rapid replacement of fluid, carbohydrates and electrolytes would not be able to make claims under the proposed system. These products will no longer be able to make claims about assisting performance as they will not pass the NPSC due to their sugar content. Of course, sugar is one of the critical ingredients in sports drinks to provide energy
- b. Energy drinks, formulated specifically for an immediate transactional benefit (as distinct from a long term health benefit), would be unable to communicate these benefits. All of these functional benefits are capable of substantiation; and
- c. Beverages with clearly documented health and functional benefits will be permitted to be labelled as such - including hydration and fibre content - if the product composition does not meet criteria of the NPSC.

2. Minimum effective regulation (as per COAG) is not achieved in this proposal

The updated version of the draft standard adds further regulatory burden to the industry by moving away from self-substantiation of claims to the costly and time consuming processes of applications, with all claims to be assessed as high level health claims where there is not currently a prescribed health effect.

The beverages industry, as with many other industries, is facing extreme macro pressure from a range of sources including the imminent introduction of the carbon tax that expects to increase costs by as much as 20% and uncertainty in the area of front-of-pack labelling. This, coupled with a complex, convoluted and unworkable claims framework as outlined in the proposal places severe strain on all companies, especially the small and medium businesses.

3. P293 is inadequate in defining directly or indirectly 'health claim' and 'health effect'

P293 neglects to adequately define directly or indirectly 'health claim' and 'health effect'. The overall framework exhibits no characteristics of a user-friendly system and will difficult for companies to adopt, adhere to and comprehend.

The 'one size fits all' health claim model is inappropriate as the original intent was to generate an appropriate selection criterion for foods and beverages for a tiered approach to high level and general level health claims.

Consequently, this approach to assessment of nutritional merit via the NPSC and permitted claims will discourage innovation and development of beverages in Australia, particularly in relation to increasing levels of fibre, for example in juices. This deviation away from the industry's underpinning ethos of innovation will negatively impact on employment and the overall industry's viability.

There will be decreased opportunity for consumer education due to limitation on permitted claims on pack and in advertising. This will foster a greater degree of health illiteracy amongst consumers.

In terms of drafting;

- Insufficient time and limited scope of consultation on the new framework has been provided for response; considering the length and complexity of this proposal, and significant new changes in the new draft, it has been difficult to provide an in depth response to all aspects of concern.
- A cost benefit analysis via a RIS has not yet been reported on this proposal. Beverages Council considers this inappropriate as insufficient information has been supplied to undertake effective consultation in all aspects.
- Concern is raised in terms of cost of implementing this system including label and marketing changes, loss of opportunity costs, education and training.

In terms of user friendliness;

If P293 is enacted, a transition period of four years rather than two years is requested should the proposal be accepted.

A transition period of four years will allow for food-health relationships that are not yet approved to be assessed by FSANZ for inclusion within the transition period. This would include work FSANZ foreshadowed concerning the need for existing claims to be assessed. Industry will also have sufficient time to compile the appropriate information dossiers that will be required to accompany applications for assessment of claims.

A longer transition period will allow FSANZ to assess health claims presently proceeding through the European Parliamentary system (and that have already been subject to rigorous assessment by the European Food Safety Authority) for inclusion in the standard.

As previously stated, the beverages industry is currently facing extreme economic and regulatory pressure. This further emphasises the need for a four year phase-in period should the proposal be accepted.

In terms of enforceability:

1. Without any guidance from an industry code of practice, confusion is inevitable between responsibilities of ACCC and FSANZ with respect to fat free claims vs % fat free and how the relevant

state/territory food safety authorities will interpret and enforce the legitimacy or otherwise of a claim; and

2. In countries other than Australia definitions for fat free and % fat free claims differ significantly, further adding the difficulty and complexity of enforceability.

4. Fat-free and % fat-free claims

We address each of the questions specifically, below:

Question	Comment
<p>2. What evidence can you provide that shows consumers are purchasing foods of lower nutritional quality because they are being misled by fat-free or % fat-free claims?</p> <p>FSANZ is primarily interested in the substitution of foods of higher nutritional quality with foods of lower nutritional quality which have fat-free claims. Substitution within a general food group (e.g. choosing a different confectionery product) is of lesser importance.</p> <p><i>(Note: Please provide documented or validated evidence where possible)</i></p>	<p>There is no indication that consumers are being misled in regard to NIP. Promotion of consumer education would be the most appropriate tool to influence food selection rather than changing labelling.</p>
<p>3. Do you support option 1 (status quo), option 2 (voluntary action through a code of practice), or option 3 (regulate with additional regulatory requirements for fat-free and % fat-free claims)? Please give your reasons.</p>	<p>Beverages Council is in favour of status quo, option 1 continuing with an updated code of practice based on ANZFA Policy Guidelines for Nutrition Health and Related Claims – Policy Principles (1995).</p> <p>Option 3 is unacceptable because it would lead to unnecessary costs that have not been demonstrated to benefit the consumer.</p>

<p>4. Please comment on the possible options for additional regulatory requirements for fat-free and % fat-free claims (option 3) (refer section 8) as follows:</p> <p>a. Which option do you support and why?</p> <p>b. What is an appropriate sugar concentration threshold for options 3(b) and 3(d)? Where possible, provide information and evidence to support your suggested threshold value.</p> <p>c. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.</p>	<p>a) Regarding option 3; additional regulatory requirements are rejected outright. Existing code of practice for nutrient claims of food and food labelling should continue to be the main reference on this topic.</p> <p>b) Beverages Council does not support sugar thresholds for nutrition labelling as it is not a holistic assessment of the nutritional profile of the beverage/food. Disclosure statements will not be a cost effective tool, food categorisation would lead to more complex legislation and is technically complex in defining food categories, as would that relating to prohibition of products containing more than a selected threshold.</p> <p>c) As above</p>
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The Beverages Council believes that the standard should focus solely on the regulation of nutrition and health claims relating to long-term health benefits and the prevention of non-communicable diseases (NCDs).

We also note that the NPSC has been developed from the UK approach which uses scores based on the recommended diet for a child. As such, the NPSC does not in consider adults and as such is far too narrow. As an alternative, the Beverages Council supports a non-mandatory 'truth in labelling' code. This, reinforced with consumer education programs, would be a better approach to guiding consumer choice.

The Beverages Council would like to meet with FSANZ to address the specific concerns of the industry and respond to any queries that FSANZ may have arising from the attached submissions. Please contact me on the listed numbers or via e-mail (kim.staples@australianbeverages.org) to arrange a suitable time.

Yours sincerely



Kim Staples
BAppSc(Hons)
Health & Regulatory Affairs Manager
Australian Beverages Council

Attachment A

AUSTRALIAN BEVERAGES COUNCIL MEMBERSHIP AS AT 30 MARCH 2012

Bottlers and Distributors

100% Bottling Company P/L
Alpine Beverages Pty Ltd
Aquasplash P/L
Bayer Australia Limited
Beloka Water Pty Ltd
Bertshell Pty Ltd
Bevco Pty Ltd
Bickfords Australia Pty Ltd
Big Springs Riverina
Big Wet Natural Spring Water
Blue Mountains Natural Spring Water
Bundaberg Brewed Drinks Pty Ltd
Cantarella Bros Pty Ltd
Cascade Brewery Co Pty Ltd
CB Juice
Central Burnett Fruit
Coastal Springs Pty Ltd
Coca-Cola Amatil Ltd
Coca-Cola South Pacific
Cooks Soft Drinks
Cool Aqua Springs
Don Kyatt Pty Ltd
Eastcoast Beverages
Emma & Tom Foods Pty Ltd
Fosters Australia
Frezco Beverages
Frucor Beverages Ltd
Grove Fruit Juice P/L
HJ Heinz Australia Pty Ltd
Hopes Goulburn Cordials
IQ Beverages
Jolt Corporation Australia Pty Ltd

Juicy Isle Pty Ltd
Just Squeezed Fruit Juices
Just Water
Lillyman Bros
Lion
Lithgow Valley Springs
Mildura Fruit Juices
Mountain Fresh Fruit Juices
Mountain H2O
Nippy's Fruit Juices P/L
Nudie Foods Australia Pty Ltd
NZ Quality Waters Ltd
PET Technologies Ltd
Pleass Beverages
Red Bull Australia Pty Ltd
Saxby's Soft Drinks Pty Ltd
Schweppes (Aust) Pty Ltd
Springwater Beverages Pty Ltd
The Cape Grim Water Company
The Spring Water Man
TruBlu Beverages
Vitality Brands
Waterfarms Australia Pty Ltd
Wet Fix Pty Ltd
Wimmer Marketing Pty Ltd

Suppliers

Amcor Australasia
Amec Plastics Ltd
Aquatek Products Pty Ltd
Bev-Cap Pty Ltd
Beverage Holdings Pty Ltd
Black Mount Spring Water
Brooke-Taylor & Co
Bundaberg Sugar Ltd
Capitol Ingredients
CHEP

CHR Hansen
Cormack Packaging Pty Ltd
Correct Food Systems
Cuno Pacific Pty Ltd
Directus Australia Pty Ltd
Eaton Filtration
Ecolab Pty Ltd
Ed Ten Water
Elkay Pacific Rim (M) Sdn Bhd
Idexx Laboratories
Firmenich Ltd
Fruitmark
Interaust Foods Pty Ltd
International Flavours and Fragrances Inc
Invita Australia
Johnson Diversey
JNI Pallet Systems
Kerry Group / Mastertaste
KHS Pacific Pty Ltd
Lloyd's Register Quality Assurance
Manildra Harwood Sugars
Matthews Australasia Pty Ltd
MeadWestvaco
Millipore Australia Pty Ltd
National Measurement Institute
NCSI
Neverfail Springwater Ltd
Norco Foods
Nugan Quality Foods
O-I Asia Pacific
Pall Corporation
Peacock Bros Pty Ltd
PureCircle Australia Pty Ltd
Quality Assurance International (QUASI)
Roxset Australia
Scholle Industries Pty Ltd
Sensient Technologies Aust Pty Ltd

Sopura Australia Pty Ltd
Splatt Engineering Group
Sugar Australia Pty Ltd
Tate & Lyle ANZ Pty Ltd
The Product Makers (Aust) Pt Ltd
Tradex NZ & Australia
Visy Beverage Packaging
Vitality Brands
Waterworks Australia Pty Ltd
Woodbine Park (Operations) Pty Ltd
Zymus International Ltd