
The Netherlands

The Claim List in Dutch practice: Anticipation and alternative wordings

Recently the Board of Appeal (“CvB”) of the Dutch Advertising Code Committee (“RCC”) showed us one of the first examples of applying regulation EC/432/2012 (“Claim List”) in practice. According to the CvB, the Claim List can already be applied in its judgment, prior to 14 December 2012. Also, the Dutch list of alternative wordings is adapted in this decision of the CvB.

A complaint was filed about claims made for a product called ‘Berry Blaster’. In the advertorials the consumer was lead to believe that ‘Berry Blaster’ supports the “*cleaning effect of the liver*” and the “*cleaning of the body by the liver*”. Although the RCC¹ at first instance found these claims to be misleading, the CvB² concluded otherwise. The CvB decided it is permitted to make such claims for the ‘Berry Blaster’ product because of the sufficient amount of choline the product contains.³

In The Netherlands, some associations⁴ have composed a list of indicative terms that can be used as alternatives for the wordings in the Claim List. This list has been prepared in conjunction with the Dutch government⁵ and the KOAG/KAG.⁶ The list was drafted to clarify the boundaries between permitted and non-permitted claims. In this particular case, the permitted claim from the Claim List could be replaced – according to the Dutch list with alternative wordings – by the claims that were mentioned in the advertisements.

In the ‘Berry Blaster’ case the CvB stated explicitly that it wanted to involve the Claim List in its judgment, although this legislation officially only

1 RCC, 19 April 2012, 2012/00073.

2 CvB, 12 July 2012, 2012/00073.

3 The Claim List shows that the claim “*choline contributes to the maintenance of normal liver function*” is allowed if the product contains at least 82,5mg of choline per 100g.

4 FNLI, CBL, NPN and Nprofarm.

5 Netherlands Food and Consumer Product Safety Authority, NVWA.

6 KOAG/KAG is the Inspection Board for the Advertising of Medicinal Products to the General Public and for the Promotion of Health Products.

gets into force on 14 December 2012. Because the European Committee has already approved various claims about the ingredient choline, the CvB found it needed to anticipate of the new European legislation. We see this case as an example of how the Claim List will be applied in the Netherlands in the future. Also, this case shows the added value of the Dutch indicative list: very practical and a good guideline.

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