

The Netherlands

News Flash from The Netherlands

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We are happy to provide you with a patchwork of news from the Netherlands, as there have been several food related developments since the beginning of this year.

I. New Self-Regulatory Code on Field Marketing

As of 1 January 2016, a new self-regulatory code has been introduced that may influence advertisers in the food business. The Advertising Code on Field Marketing¹ (*Reclamecode Fieldmarketing*) deals with any type of advertising in relation to sales and promotion outside sales premises, including door-to-door marketing as well as distributing flyers or samples on the street. The code contains several general and specific rules regarding these activities. Amongst others, field marketers must wear a badge and be able to identify themselves; wear recognizable clothing bearing the logo or name of the advertiser; not approach a consumer with more than one other field marketer at a time; not approach a consumer more than once per occasion; respect age restrictions, including e.g. a prohibition on providing samples to children under 13 without their parents' consent; only conduct door-to-door marketing between 9 am and 9 pm on weekdays and between 10 am and 8 pm on Saturdays (door-to-door marketing on Sundays and holidays is not allowed) and respect the expression of consumers that field marketing is not wanted.

Fieldmarketing is often used by advertisers (in the food industry). This self-regulatory code aims to regulate the unwanted side effects of field marketing. Every consumer or competitor can file a complaint with the self-regulatory Advertising Code Committee in case they are of the opinion that an advertiser

acts contrary to the provisions in the Field Marketing Code.

II. Labelling and Alcoholic Beverages

The second update comes from the field of alcoholic beverages. On a European level alcohol consumption and labelling requirements get a lot of attention. Also in the Netherlands, both the authorities and the sector itself are continually developing strategies to avoid alcohol abuse by high-risk groups such as pregnant women. The pregnancy logo for alcoholic beverages is not (yet) obligatory in the Netherlands. However, the sector encourages the use of the pregnancy logo. A survey held by the industry organization STIVA shows that in July 2015 60% of the labels of spirit drinks and 67% of wine labels already contained the logo. STIVA expects that these percentages will increase over 2016.

Another development: the alcohol sector is concerned about a recent opinion of the Health Council of the Netherlands (*Gezondheidsraad*). Recently, the *Gezondheidsraad* issued a new alcohol directive that replaces the old directive of 2006 and contains non-binding advice on, amongst other issues, alcohol consumption. The *Gezondheidsraad* is the independent Dutch advisory body of the government. The most important concern of the sector is the advice on alcohol consumption has changed from "drink moderately" to "drink no alcohol". The sector points out that the *Gezondheidsraad* applies a stricter standard than other countries. In the opinion of the sector at large, no new research exists that justifies changing the old standard of a maximum consumption of two glasses alcoholic beverages per day for men and one glass per day for women. As this discussion is still ongoing, no end-conclusion can be drawn yet.

* Hoogenraad & Haak advocaten, www.hooghaak.nl.

1 Available on the Internet at <https://www.reclamecode.nl/nrc/pagina.asp?paginaID=292%20&deel=2> (last accessed on 21 March 2016).

III. Botanicals and the Dutch Advertising Code Committee (ACC): an Interesting Combination

In country report EFFL 1/2016 we explained that the ACC has an outspoken view on health claims for botanicals. While health claims for botanicals are 'on hold' at a European level, the ACC treats the presentation of botanicals very critically, effectively marginalising the possibilities to market their health benefits. In its decisions, the ACC requires hard scientific evidence that substantiates claims made for botanicals, regardless of the question whether the claims are on hold. Most recently, the Board of Appeal of the ACC overruled a decision in this respect and applied a softer approach. If the advertiser makes clear that the EFSA procedure regarding the claims that are on hold is still pending, he does not need to substantiate these claims. As this decision is still very recent, time will tell how advertisers will apply this new "guidance" from the Board of Appeal. Will it be sufficient to include a disclaimer on the packaging/in the advertisement stating that "The European procedure approving of this claim is still ongoing"?

Since the advertiser in that specific case did not mention the "provisional character" of the claim used, the Board of Appeal found that the advertiser should make a plausible argument that the claim is correct. The advertiser was (of course) not able to fulfil this obligation. The Board of Appeal referred to a negative Scientific Opinion of EFSA in which the conclusion can be found that there was no "cause and effect relationship" between the ingredient and the effect claimed. Therefore, the Board of Appeal decided that the claim used was misleading.

IV. Conclusion

Food law is currently under a great deal of development in the Netherlands. The self-regulatory system plays a large role in the interpretation of European food law. Since it is very easy to file a complaint with the Advertising Code Committee (online and without costs for consumers), a large number of decisions on advertising law are being issued. An increasing part of these decisions concern (advertising related) food law, such as claims and interpretation of FIC-Regulation.