



HFMA UPDATE

by Graham Keen,
Executive Director

My 'Jules' moment...

"Yeah, I was sitting here, eating my muffin and drinking my coffee, when I had what alcoholics refer to as a moment of clarity."

– Jules, *Pulp Fiction* [screenplay – Quentin Tarantino]

Every now and then you are confronted with an epiphany – a moment of absolute clarity – and my 'Jules' moment occurred on the most recent of my frequent visits to Brussels. I was in town to meet with a senior Commission official close to the European Commissioner for Health and Consumer Policy, John Dalli. I had hoped that the meeting could be one final attempt to investigate some type of compromise in order to ward off the most extreme impacts of the Nutrition and Health Claims Regulation.

As I have said on many occasions, this Regulation will change forever the landscape in which our industry operates, and challenge the very core of what our industry is all about. It goes to the heart of how we communicate with our consumers and, if enforced to its logical conclusion, threatens every form of commercial communication with consumers at store level. If you thought the implementation of the THMPD was traumatic for this industry, you ain't seen nothin' yet!

So, back to my meeting. The official I met told me in no uncertain terms that this Regulation had been created with our industry in mind, the implicit implication being that we are an industry that has been misleading consumers about the benefits of our products for decades, and we would now receive our comeuppance. This same official then told me that the passage of the Regulation had been blissfully unencumbered by any sort of opposition from Member State officials and MEPs, including



those in the UK, so why would the Commission compromise now?

So, there I had it. The realisation that the Commission will stop at nothing, has no interest in discussion and compromise, has utterly no sympathy for companies that have been trying to behave responsibly and completely fails to appreciate the beneficial role of our industry in helping consumers to have a healthier diet and lifestyle.

No matter that we have been shouting from the rooftops to anyone that will listen for the past couple of years about the injustice of how EFSA has unilaterally opted to apply an inappropriate form of assessment to the assessment of health claims, and the terrible impact that would result.

No matter that we were completely sold down the river by our own Food Standards Agency, who back in 2007 led us into supporting this Regulation by telling us that "most" Article 13.1 'generic' health claims were expected to survive the assessment process, when, in fact, in reality the complete opposite has happened. All efforts to point this out to what is now the Department of Health have completely fallen on deaf ears.

No matter that a growing number of key MEPs from around Europe are seriously questioning what is happening, and are now pointing out to the Commission that this was not the outcome that they thought they

were voting for when they approved the passage of this Regulation.

No matter that close to 450 CEOs or senior executives from very concerned industry companies from no less than 22 EU member states have signed a letter to the President of the European Parliament, asking for his intervention, and to try to bring some sense of sanity and reason to what is happening.

No matter that a major body of scientific opinion is very unhappy at the extent to which their life's work in the field of human nutrition is being dismissed by an intransigent European Food Safety Authority, which feels that the only way to judge health claims is by the application of a near-pharmaceutical style of assessment, in spite of the fact that the Regulation was written in such a way that this would not be the case.

No matter that we are still awaiting the decision of the EU Ombudsman, who decided that the industry's complaint of maladministration by the European Commission of the health claims regulation was worthy of further investigation.

Such is the catalogue of errors surrounding the implementation of this unfortunate piece of legislation that a gentleman from Holland (it's not just we Brits that are deeply sceptical of the Brussels 'machine') called Bert Schwitters has written

a new book entirely devoted to this debacle! Called *Health Claims Censored – The case against the European health claims regulation*, his 450-page work attempts to set the record straight. On the back cover it states the following, a damning indictment of the current situation: '*Health Claims Censored* exposes the European Health Claims Regulation as an imbroglio of conflicting, disproportionate and inappropriate concepts aimed to permanently silence all but a few food business operators in the field of nutrition and health. Although the Regulation leaves the Precautionary Principle unmentioned, it is the unprecedented and totally unwarranted application of that principle in the field of commercial speech that underlies the unconditional prohibition and censoring of health claims on food products. Under the flag of a 'high level of protection' and 'highest possible standards of scientific assessment', the Regulation and its administration by the European Commission and the European Food Safety Authority, leads to the destruction of knowledge about the potentially beneficial health effects of foods. Seen by its adherents as an 'Atlantikwall' against misleading commercial information, the Regulation ruthlessly and effectively prohibits non-misleading information also.'

The result of all of this is that we are being painted into a corner by the Commission and left with very few alternatives by way of fighting back. A lot of very careful consideration is going into what, as an industry severely under threat, we do next.

If you want to know more, or would like to join the HFMA or learn more about our activities, please contact me at graham@hfma.co.uk.

HFMA membership is vital to ensure that your company keeps abreast of the fast-changing regulatory environment. The HFMA is the UK's best source of information and most effective defender of our industry's interests. To help the HFMA defend your business at this most critical time contact hfma@hfma.co.uk or call 020 8481 7100.

