



HFMA UPDATE

by Graham Keen,
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Fixing a hole



I truly believe that if there is to be a 'dividend' resulting from Brexit, something that makes sense of everything involved in our exit from the EU, then it needs to be that we can legislate ourselves better and, along the way, correct some of the crazy legislative mishaps that have been the story of our lives for the last 10-20 years.

One such example would be to put a halt to the extraordinary situation whereby the term 'probiotic' has been effectively banned in the UK, and elsewhere in the EU as well (assuming that those member states decide to implement and enforce EU legislation with the same vigour as is the case here in the UK). One of the unintended and damaging consequences of the implementation of Regulation (EC) 1924/2006 on Nutrition and Health Claims (NHCR) has been the effective prohibition of the use of the term 'probiotic'. This is having a profound impact on the market for probiotic products in the UK and throughout most of the EU, is suppressing innovation in this sector and, most importantly, is not serving the best interests of consumers.

There is no EU-specific regulatory framework for probiotics. In the absence of an EU legal framework, the term 'probiotic' has traditionally been used by food business operators in the UK (and elsewhere, in particular, in Italy) in the labelling, presentation and advertisement of thousands of foodstuffs to indicate a particularity of such products, i.e. the presence of live bacteria, or as a 'customary name' (under FIC and preceding labelling rules in Europe). Irrespective of the alleged and undefined health connotations inherent to the term 'probiotic', such use of the term is traditionally included on foods to inform

consumers about the true nature of the products, and to enable them to distinguish probiotic products from other products with which they might be confused. Indeed, whilst consumers are familiar with the term 'probiotic', this may not be the case with the names of the specific microorganisms. The term 'probiotic' is arguably mandatory under EU food labelling and food supplement rules as it meets the test for a 'customary name', i.e. is well understood without further explanation.

It is now accepted that there is a clear link between the approach to, and acceptance of, probiotic claims inside and outside of the EU, and the fact that the market for probiotic products in the EU is declining, but still rising strongly outside the EU. Euromonitor International estimates a reduction in retail sales value of pro/prebiotic drinking yoghurt of c. €500m since 2012 in Austria, Belgium, France, Germany, Netherlands and the UK. Four EU member states authorise the use of the term 'probiotic'; Czech Republic, Denmark, Netherlands and, most notably, Italy. In Italy, probiotic sales are double that of France (€0.3bn versus €0.15bn) and this can be directly equated to the 'approved' status of 'probiotic' in Italy, compared to France where it is not. This extraordinary situation

was explained by Signor Bruno Scarpa, a senior official from the Italian Ministry of Health, who explained at a European Parliament workshop in November 2017 that the Italian case for acceptance of the term 'probiotic' as a food without a therapeutic effect (i.e. a nutrition claim). His conclusion was that the best solution on an EU-wide level was for 'probiotic' to be determined to be a nutrition claim.

Recital 17 of the EU Regulation on the provision of food information to consumers (FIC, EU 1169/2011) states that: "The prime consideration for requiring mandatory food information should be to enable consumers to identify and make appropriate use of a food and to make choices that suit their individual dietary needs." However, this is clearly not happening in the case of probiotics in food and food supplements. We have evidence in the form of substantial consumer research that consumers clearly understand the term 'probiotic', and recognise probiotic products as a distinct classification of products containing live 'good' bacteria, whether in food, beverages or food supplements.

The HFMA strongly advocates a solution via adoption of the term 'probiotic' as a nutrition claim under the NHCR. This would resolve the current stalemate, but still leave

open the opportunity for individual companies to make health claim submissions. We believe that using a document (the 2007 Commission guidance) with no legal effect that is over 10-years-old to justify a policy approach that clearly does not work, is not acceptable. We are therefore calling on the UK authorities to support a solution being proposed by the EU-wide industry that would require a simple change to the 2007 Commission guidance, and not undermine the fundamental principles of the NHCR. We should advocate the position taken by several other EU member states, i.e. permit the term 'probiotic' as a nutrition claim in the UK within the existing provision in the Annex relating to 'CONTAINS [NAME OF THE NUTRIENT OR OTHER SUBSTANCE]', and we should urge other EU Member States to support this viable solution that would allow the probiotic industry to reinstate a generic, customary denomination that meaningfully expresses the nature of these foodstuffs and is recognised and used widely around the world.

The time to act is now. Consumers should be appropriately informed about probiotic products, and action taken before further damage is inflicted on this well-understood and long-established market that has significant potential for innovation beyond just gut health. **hfb**

Our strength as an industry comes from speaking with one voice and presenting a united front. So, to help us in our efforts to protect this industry and benefit from the gold-standard advice we provide, join the HFMA at the earliest opportunity. To learn more about our activities, please contact me at graham@hfma.co.uk, or visit www.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.

