



# Meat Analogues Legal Landscape and Enforcement

By

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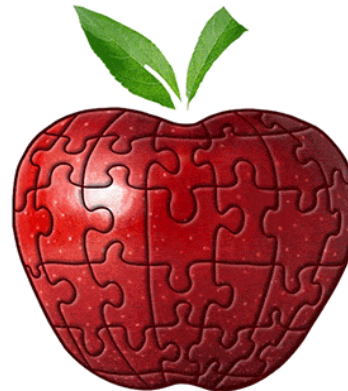


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## Outline

- Food Public Health issues – Department of Health (DoH)  
e.g. permissible ingredients, allergens, labelling
  - Foodstuffs, Cosmetics and Disinfectants (FCD) Act and Regulations (Section 2 and R146, others)
- Agricultural Products Standards (APS) Act - quality and composition – Department of Agriculture (DALLRD)
  - APS Act and Regulations (Section 6, R1283, R2410)
- GMO's – Consumer Protection Act (Section 24(6);Reg 7), possibly R25 under FCD Act



# Outline

- General deception of consumers - Consumer Protection Act and Regulations
  - Section 29 and 41 of CPA
  - Mislead or deceive as to properties, characteristics, quality, ingredients etc
- Marketing – Advertising Regulatory Board (ARB)
  - Deceptive claims - unsubstantiated – unregulated
  - Advertising but also on pack



## Outline

- **No single regulatory authority**
- Product jurisdiction fragmentation
- FCD Act enforcement – EHP’s at municipal level
- Department of Agriculture (DALLRD) –  
Inspectorate & Assignees (now mainly **Assignees!**)
- DTI – includes CPA (NCC/NCT) and NRCS
- Self Regulation – CGSO and ARB



## Current Issues

- Enforcement, or lack thereof – Assignees? EHP's?
  - **BIG CHANGE HAS OCCURRED!**
- Meat Analogue – composition and labelling under APS Act
  - Food Safety Agency (FSA – Assignee) Directive v Seizure
  - Interdict prevents FSA from doing what?
- Liability of person “in charge” of the premises
  - **Also in case of non-compliant labelling**



# CPA Impact on Meat Analogues

- Right to information in plain and understandable language (Sect. 22)
- False, misleading or deceptive representations (Sect. 41) e.g. properties, quality, characteristics etc
- Product labelling and trade descriptions (Sect. 24 etc)
  - GMO labelling
    - 5%
    - GM Free below 1%
  - meat products labelling (origin, process)
    - Which animal
    - naming



## Section 25 of CPA

(2) A person must not-

(a) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description;

(3) A **retailer** of goods must-

(a) **not offer to supply, display or supply** any particular goods if the retailer knows, reasonably could determine or **has reason to suspect** that-

(i) a **trade description** applied to those goods is likely to **mislead the consumer**





## **Section 6 of APS Act - Prohibition of false or misleading descriptions for products**

No person shall use any name, word, expression, reference, particulars or indication in any manner, either by itself or in conjunction with any other verbal, written, printed, illustrated or visual material, in connection with the sale of a product in a manner that conveys or creates or is likely to convey or create a false or misleading impression as to the nature, substance, quality or other properties, or the class or grade, origin, identity, or manner or place of production, of that product.



## **Reg 1283 and R2410 (APS Act)**

### **These regulations shall not apply to the following foodstuffs:**

Meat analogue products or non-meat based products that in general appearance, presentation and intended use correspond to (raw) processed meat products (e.g. vegan or vegetarian type processed products).

- **Compositional standards**
- **Naming**
- **These regulations do NOT override Section 6 of the Act (Act takes precedence)**



## **R146 - Labelling Regulations (FCD Act)**

9. The label of a pre-packaged foodstuff shall contain –
- (a) on the main panel, the **name of the particular foodstuff**, provided that where the **name is not a proper description of the foodstuff**, the name shall be accompanied by a *[sic]* **appropriate description** and where a name or names have been established for a food in a **Codex Alimentarius Standard**, at least one of these **names shall be used**;

So, if not under APS Act then the above applies – “**proper description**” – not a made up name or a catchy trade name

**Not enforced by FSA** but by EHP’s (DoH) – no interdict



# Advertising Regulatory Board (ARB)

- Free to a consumer
- Much simpler procedure than a Court procedure
- BUT can only consider matters provided for in the ARB code and **cannot rule on legal non-compliance of labels**
- Can rule on claims in advertising even if a regulated one
- No Jurisdiction in technical matters (except where shows claims to be false) e.g. composition of the product v claim in advertising



## DALRRD

### Principle Enforcement at National Level

- **Directorate Food Safety and Quality Assurance** enforces, e.g.
  - Agricultural Product Standards Act (Act 119 of 1990)
  - R1283 and R2410
- carries out its own inspections, but has appointed **assignees** e.g.
  - FSA
  - Authorised by Minister to issue directives, seizure etc

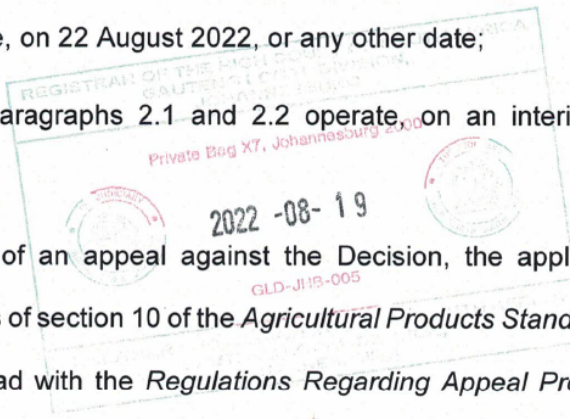


## Interdict of 19 August 2022

- **Can't** implement decision of 16 August 2022 against Applicant and its members to conduct **product seizures until 19 November 2022**
- Applicant is CGCSA – Interdict **ONLY** applies to protect **its members – 2.2 of interdict**
- **Applicant** to institute **Appeal** under **Section 10 of APS**
  - **It can't as the finding wasn't against the CGCSA!**
- **THUS, Assignee can carry out all other actions against CGCSA members and ALL actions against non-members on date of interdict**



- 2.2. The first respondent and/or the second respondent are interdicted from seizing any meat analogue products presented for sale in the Republic of South Africa from any (and all) of the applicant's members' points of sale, whether at facilities, retail or wholesale premises, conveyances or otherwise based on the Decision, or otherwise, on 22 August 2022, or any other date;
- 2.3. That the orders in paragraphs 2.1 and 2.2 operate, on an interim basis, pending:
- 2.3.1. the finalisation of an appeal against the Decision, the applicant will institute in terms of section 10 of the *Agricultural Products Standards Act*, 119 of 1990 read with the *Regulations Regarding Appeal Procedures* (GN R1260 of 2019 published in Government Gazette 42726 of 27 September 2019), which are promulgated in terms of section 15 of the APS Act; and/or
- 2.3.2. the finalisation of a review against the Appeal Board's decision; and/or
- 2.3.3. the finalisation of a review of the Decision;
3. the rule nisi is returnable on 17 November 2022; and





## **Inspection by Assignee**

- The assignee may, during business hours of the industry in question in the case of compliance to regulations:
  - ✓ enter any place, .....any product, ..... is  
.....produced, processed, treated, prepared, classified, graded, packed, marked, labelled, kept, removed, transported, exhibited or sold
  - ✓ inspect or test or cause to be tested any quantity of a product





## Scope of Powers of Assignee

- Particular product e.g. processed meat
- Regulations define scope of inspections – must inspect for compliance with APS Act and regulation – not arbitrary quality characteristics
- Sampling in accordance with regulations, where provided for
- The owner of the product in question shall pay
- **DO NOT PREAPPROVE LABELS!!!**



## Enforcement under APS Act

- **Directive to comply** – deadline set
  - Can **Appeal** or resolve with a **dispensation**
  - Can resolve by **fixing the problem** e.g. over label
- **Seizure notice** – **INTERDICT 19 Nov 2022**
  - NO dispensation possible
  - Stop sale immediately
  - ONLY REMEDY is to rectify problem or discard product
- **Prosecution** – fines and/or imprisonment possible



## Warrants and Searches

- **CANNOT** issue a dispensation, only Executive Officer can do that
- Assignee can enter premises **with a warrant issued by the Court** and **seize any product**, material, substance or other article or any book or document
  - **INTERDICT IN PLACE TO SEIZE PRODUCTS**
- **May use force** reasonably necessary to **overcome resistance** to such entry or search.



## Seizure of Products

- **With a warrant** seize some or all product, material, substance or other article, or any book or document
  - may afford evidence of the commission or suspected commission of any offence
  - is intended to be used in the commission of any such offence.
- **No warrant** – risk of destruction of evidence etc



## **APPEALS**

- Appeals process which applies to inspectors also applies to Assignees
- Lodge appeal **WITHIN 10 DAYS** in prescribed period and pay the prescribed Appeal fee
- Assignee is bound by decision of Appeal Board
- decision of an appeal board together with the reasons therefore shall be in writing



## **No possibility of dispensation**

- at DOH & DTI
- Medicines and Related Substances
- NRCS

## **Unless specific regulations**

- e.g. R 638 (Regulation 14)



## **LIMITATION OF LIABILITY**

**No person, including the State, shall be liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty under or by virtue of this Act, or in respect of anything that may result therefrom.**

**- What if no warrant ? No indemnity!**



## Penalties - FCD Act:

- **First offence:** fine  $\leq$  R50K or  $\leq$  6 months imprisonment or both
- **Second offence:** fine  $\leq$  R100K or  $\leq$  12 months imprisonment or both
- **Third offence:** fine  $\leq$  R200K or  $\leq$  24 months imprisonment or both

## Penalties - APS Act:

Penalties according to the type of offence. False or misleading description – e.g. Section 6 of APS:

- **First offence:** fine or imprisonment  $\leq$  2 years
- **Second offence and subsequent:** fine or imprisonment  $\leq$  4 years





## Penalties CPA

- Fine or  $\leq 12$  month
- imprisonment or both
- Fines not exceeding 10 % of the annual turnover or R 1 000 000



# Possible consequences for the products:

- Forfeiture
- Re-labelling
- Destruction



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## Questions?

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