Brand Owners and the Food Safety and Standards (Advertising and Claims) Regulations, 2018

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Navarre Ebenezer Roy shares his insights on Brand Owners and the Food Safety and Standards (Advertising and Claims) Regulations, 2018. It happens atleast once a week at lunch. While catching up with colleagues on a variety of topics is an option, the sight of food brought or bought by the people around invariably leads to a conversation on fitness or health. Either the refusal to partake in the sharing of some food on account of the calories it contains or the promotion of an organic vegetable over its inorganic [for lack of a better word] counterpart, we've become fairly conscious of what we eat. Words like organic, fresh, gluten free, lactose, MSG, which weren't particularly a part of the Indian vocabulary have now enriched our lunch time conversations. One issue that does comes up particularly as lawyers [read paranoia – distrusting] at our table is whether or not the food and the claims about the food are real. Is it really organic? Is that in fact sugar-free? Do you trust the packaging? Well, the Food Safety and Standards Authority of India [FSSAI] shares those concerns and late last year, published a set of regulations called *The Food Safety and Standards (Advertising and Claims) Regulations, 2018* to govern what claims can be made on packaged food and advertising for food. **Background** The draft of the Regulations was originally published on 13th March 2018 for comments and the final version was published on 19th November 2018. The Regulations are in force and all companies engaged in the manufacture and distribution of food were to be compliant with its regulations before **1st July 2019**. **Types of Conditions** The Regulations are aimed at governing and regulating the claims and statements made on product packaging and advertisements. The Regulations broadly cover the following types of claims:

- Nutrition claims (including nutrient content or nutrient comparative claims);
- Non-addition claims (including non-addition of sugars and sodium salts);
- Health claims (reduction of disease risk);
- Claims related to dietary guidelines or healthy diets;
- Conditional claims; and
- Claims that are specifically prohibited.

While the Regulations define and list out the types of claims, they have also listed a schedule which contains the criteria to legitimately make such a claim:

- For instance, you can claim your product is "fat-free" if there is less than 0.5 g of fat per 100 g for solids or 100 ml for liquids.

The Regulations also list out the procedures for seeking approval to use a particular claim and redressal of non-compliance under these regulations [which includes a hefty fine of INR 10 Lakhs

approximately USD 14,400]. **Conditional claims**: While, I won't be going into each of the claims, from a trademark/brand owner perspective the regulations on Conditional Claims are quite interesting. *Regulation 4 (7) states, Where the meaning of a trade mark, brand name or fancy name containing adjectives such as "natural", "fresh", "pure", "original", "traditional", "authentic", "genuine", "real", etc., appearing in the labelling, presentation or advertising of a food is such that it is likely to mislead consumer as to the nature of the food, in such cases a disclaimer in not less than 3mm size shall be given at appropriate place on the label stating that* – "**This is only a brand name or trade mark and does not represent its true nature**". *Regulation 9 (2) states, Claims containing adjectives such as "natural", "fresh", "pure", "original", "traditional", "Authentic", "Genuine", "Real", etc. , when used, shall be in accordance with conditions laid down in Schedule V and the claims containing words or phrases like "home-made", "home cooked", etc., which may give an erroneous impression to the consumer shall not be used.* So if your trademark contains a portion or part which includes any of the listed words when they don't, in fact, fit the criteria, it is mandatory to have the mentioned disclaimer. For instance, if I were to start selling packaged strawberry juice under the brand "Natural Navarre" [call me Mr. Vain] for me to use the mark without a disclaimer, the product should fit the criteria for me to use the word Natural. Criteria to use the word Natural – Schedule V: So if my juice fails the threshold of (a) and (b), I would have to use the disclaimer. **Trademark Search**: If you were wondering that my use of "Natural" as a part of my trademark was a bit absurd to begin with, I conducted a trademark search in Classes 29 and 30 [relating to food stuff] for marks which included the listed words and the results were quite interesting, which are mentioned below:

S.No.	Word Mark	Class	No of marks
	Natural	29	507
	Natural	30	760
	Fresh	29	1628
	Fresh	30	2197
	Pure	29	1120
	Pure	30	1002
	Original	29	91
	Original	30	184
	Traditional	29	31
	Traditional	30	105
	Authentic	29	19
	Authentic	30	48
	Genuine	29	06
	Genuine	30	08
	Real	29	286
	Real	30	698

At present, there are about 8690 trademarks which include the words "natural", "fresh", "pure", "original", "traditional", "authentic", "genuine", "real". This does not include trademarks which

translate to or mean any of the listed words. Clearly "Genuine" is the least used on trademarks and "Fresh" is the most commonly used as a part of the trademarks filed. **Things to Do** If you are a proprietor of one of the 8690 trademarks which incorporate one of the mentioned words or have marks which translate to or mean "natural", "fresh", "pure", "original", "traditional", "authentic", "genuine", "real" here's what you probably ought to do:

1. Step 1 – Check if you are compliant – Schedule V of the Regulations lists out the conditions to be met to make a particular claim.

1. Step 2 – If you don't fit the criteria you need to make an application along with the fee seeking approval to use the claim as a part of your packaging/advertisement.

1. Disclaim – If you don't get the approval you will need to use the disclaimer "This is only a brand name or trademark and does not represent its true nature"

Deadline The deadline to comply with this exercise and the packaging to be compliant was 1st July 2019. It would be interesting to see if any notices were sent out by the FSSAI to brand owners now that the deadline has passed. The Regulations are clearly aimed at protecting the interests of the customers which is a great initiative and brand owners need to be careful about picking good trademarks and not misleading the general public. As with any new regulation or law, it will take time for it to find its feet and it would be interesting to see it applied. With the introduction of these Regulations for food products, judging the proverbial book by its cover may be fine and all that glitters and labelled accordingly just might be gold.

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