

# Scanning the Horizons

## Quarterly Update

**MATARIKI** is a time for remembering the past, celebrating the present and looking the future.

The theme for 2023 is Matariki Kāinga Hokia (Matariki calls you home). It is an opportunity to connect with whānau and friends, and remind ourselves of what home means.

In this issue we reflect on regulatory updates in the past 6 months, look at current marketing trends and think about how regulatory strategy can help guide businesses into the future. There is a range of challenges and opportunities ahead, so it is time to take stock of where we are so far and what we need to be thinking about for the future.



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## Marketing Trends

**Four key food trends that continue to dominate are SUSTAINABILITY, HEALTH, PERSONALISATION and TRUST.**

These trends have previously been highlighted in different trend updates and it is clear they are predicted to continue to be major indicators of consumer purchasing behaviours globally<sup>1</sup>.



Sustainability is driven by concerns about the environmental impact of food choices<sup>2</sup>. It covers a wide range of topics including packaging, business practices, company ethics, plant-based choices, regenerative farming, and natural/organic ingredients. A key target for regulatory action is green or environmental claims so now is the time to review what claims are being made and how these claims are being substantiated. There is further information on the EU green claims directive in this newsletter.

Also, in relation to substantiation, is another key theme, trust. Consumers are becoming very mindful of how product claims are being supported and whether they are indeed truthful. Brands with loyal consumers or strong support bases see the benefit of this trust when they do not compromise their values or integrity. This trust also plays out in the social media space where influencers with strong communities are able to generate click through rates (CTR) much higher than those for paid brand ads<sup>3</sup>.

Health and personalisation are becoming quite complementary to each other. Consumers are looking for products that provide health benefits specific to their individual needs and lifestyles. The top three trending health benefits are gut, immune and focus<sup>4</sup>. These trends are clearly reflecting the current state of global affairs as we navigate in this post Covid environment.

Plant based also fits within this trend as consumers are looking for specific alternatives that fit within their personal dietary choices. Plant based for some also connects directly with health benefits such as avoiding allergies.

Overall, these 'mega' trends are predicted to continue for some time and shape global food choices.



# Regulatory Updates

## Regulatory updates and changes from around the world

**EU: The Green Claims Directive (GDC) focuses on ensuring consumers have legitimate sustainable choices and aims to prevent greenwashing through regulation.**

Sustainability is continuing to drive consumer purchasing behaviour and as a result greenwashing is a widespread issue for environmental claims. A survey by the European Commission found that consumer trust in green claims is extremely low with 40% of claims having no supporting evidence<sup>5</sup>. The GDC will establish a minimum standard for environmental performance claims by developing a common criterion for how businesses should substantiate and communicate any environmental claims. There are likely to be increased costs because companies must have a robust environmental claims management framework and external verification of this framework by an accredited third party<sup>6</sup>. Whilst the final implementation is at least 2-3 years away, it is recommended

to start looking at the detail soon to understand the implications for specific claims.

**UK: Food Standards Agency (FSA) has proposed new advice on precautionary allergen labelling** and is seeking views from industry and consumers on the draft advice<sup>7</sup>. Precautionary allergen labelling is voluntary (compared to mandatory allergen labelling regulations) and includes statements such as 'may contain nuts' or 'made in facility that manufactures soy'. The FSA conducted a survey in 2021 and found that consumers were confused by precautionary allergen statements due to differences in wording between products and variations in font styles and sizes<sup>8</sup>. The proposed advice aims to provide standardised requirements on when and how to apply precautionary statements. These statements are expected to identify which of the specific 14 major allergens they are referring to. For example, 'may contain nuts' would need to be amended to specify the specific type of nut.

**AUSTRALIA and NEW ZEALAND: Food Standards Australia New Zealand (FSANZ) is has opened a call for comment** on the proposal

to remove the oligosaccharide prohibition in infant formula<sup>9</sup>.

This prohibition relates to the combination in IFP of inulin-type fructans (ITF) and/or galacto-oligosaccharides with lacto-N-neotetraose (LNnT). FSANZ has concluded that there are no public health and safety concerns with the combination of LNnT with ITF or galacto-oligosaccharides. If approved, this permission will allow these substances to be used in infant formula up to maximum permitted amounts. LNnT is a human milk oligosaccharide (HMO) permitted to be added to IFP at a level similar to human milk.

**USA: The Federal Trade Commission (FTC) published guidance on substantiating health benefit claims** at the end of 2022<sup>10</sup> and in 2023 has issued a Notice of Penalty Offences Concerning Substantiation of Product Claims to nearly 700

advertisers<sup>11</sup>. Although the target of the guidance is dietary supplements, food products with functional claims are also included as the guidance covers marketing of any health-related product.

The primary theme of the guidance is that claims must be substantiated by competent and reliable evidence. There are definitions for accepted scientific evidence and the amount of evidence required to support a claim. It is indicated that the desirable level of evidence is randomised, controlled human clinical trials which the FTC states are the most reliable form of evidence and are generally the type of substantiation that experts would require for health benefit claims.

There is an overlap between the FTC and the FDA. The FTC has primary responsibility for claims in advertising while the FDA has primary responsibility for claims on labelling and other promotional materials. Both agencies work together to ensure consistency across both labelling and advertising.

# QUARTERLY FOCUS: REGULATORY STRATEGY

**Market size, geographic location, consumer demographic and proposition, purchasing trends, tariffs, and trade barriers are all factors in assessing a business export opportunity.**

One aspect that is not always considered early on is the regulatory impact. Regulation of food products is wide reaching, covering ingredients, food additives, labelling, claims, registration, and manufacturing. Additional requirements for animal products, dairy, and organics, only increase the level of complexity.

Whilst the desire is to have a single formulation with only one label that can go into all target markets, the reality is somewhat different. From trying to navigate different food additive permissions to understanding how to fit the vast array of mandatory labelling requirements on a single label, the final proposition is never quite the same as the original concept.

There are some key factors that can be used to define a regulatory strategy which allows flexibility and sense checking when assessing an export opportunity. Five specific factors are **FORMULATION, LABELLING, CLAIMS, MANUFACTURING** and **MARKET ACCESS**.



A regulatory strategy that combines these factors can be used to understand the real challenges and

opportunities of any export market. Formulations can often be the most time consuming and expensive things to change so it makes sense to check the regulatory permissions for all potential ingredients as early as possible in the product development process. An early check of potential claims is also advantageous because this can help guide proposition, storytelling, required ingredients, and desired product classification. There is little benefit in designing a food for a specific health benefit if that benefit cannot be communicated under food regulations.

Sometimes markets can be grouped together using a single label but pay close attention to specific requirements for nutrition information and importer/distributor details. These commonly vary between markets. Understand the domestic language requirements and whether this can be address using multi-language labelling, over labelling or if indeed a unique label is required.

Product registration or notification requirements have an impact on the manufacturing premise certification and the type of documentation required to facilitate registration or notification. Especially if there is a need for ongoing official assurance or other export certification. Ensure the manufacturing facility carries the appropriate level of certification e.g. RMP for animal products.

Understanding regulatory requirements and building these into the product development process enables products that optimise market access wherever possible. In addition, understanding the regulatory requirements for operating in a specific market can help to inform whether an export opportunity really does make business sense or if it is in fact too difficult to support long term.

## What to Watch and Read?

Key HVN webinars and resources are available now to watch and read.

### SAVE THE DATE:

[Foodomics 2024 will be held 19-21 March 2024 at the Tākina Wellington Convention and Exhibition Centre, Wellington.](#)

READ: [New Zealand International Science Festival Programme](#)

READ: [Scanning the Horizons Patent Landscape Snapshots](#)

READ: [IP Strategy Roadmap for New Zealand F&B Companies](#)

## References

1. [Deloitte: The Future of Food](#)
2. [Gitnux Blog: Food Marketing Trends Worth Watching in 2023](#)
3. [Crafted: Top 10 Marketing Tactics for Food & Beverage Brands in 2023](#)
4. [Mintel: Global Food and Drink Trends 2023](#)
5. [European Commission Energy, Climate Change, Environment: Circular Economy Green Claims](#)
6. [MFAT Market Intelligence Reports: EU Tackles Products with 'Greenwashing'](#)
7. [UK FSA News: FSA Seeks Guidance on New 'May Contain' Guidance](#)
8. [FSA Precautionary Allergen Labelling \(PAL\) & Precautionary Allergen Information: the 'may contain' consultation Report on findings and summary of stakeholder responses](#)
9. [FSANZ Media Centre: Call for Comment on the Removal of Oligosaccharide Prohibition in Infant Formula](#)
10. [FTC: Health Products Compliance Guidance](#)

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**Smart Regulatory Solutions**