

The grey zone of food labelling for e-commerce

Gary Gnirss

The Canadian Food Inspection Agency (CFIA) recently shared the results of a consultation process about voluntary guidelines for foods sold through e-commerce. This consultation was conducted in May-June 2022. CFIA and Health Canada are reviewing the feedback to develop voluntary guidelines.

Food labelling

Current federal food labelling laws, such as the *Food and Drug Regulations* (*FDR*), and the *Safe Food for Canadians Regulations* (*SFCR*), focus on prepackaged products. Most consumer food labelling requirements were written with the idea that a food would be sold to consumers in a package in a physical store.

Currently, there are no rules requiring online vendors to provide food labelling information similar to the one on the actual packaging. Unless the online vendor voluntarily provides information, a consumer may not have access to sufficient data in terms of ingredients, allergens, and nutrition to make an informed purchase, as they would when making an in-store purchase. While some online vendors provide this information, it is not a universal practice. Inconsistency and the lack of uniformity in providing key information before a purchase can be frustrating for consumers.

You may wonder why CFIA is not making it mandatory for e-stores to provide label information like that on a physical package.

Regulatory challenges

In the long run, such regulatory modernization will be needed for uniformity. In the short term, industry,



CFIA and Health Canada may not have sufficient information to create comprehensive and effective regulations. Further, the absence of online labelling information does not pose immediate health concerns as the required information will be on the packaged product.

CFIA and Health Canada will likely aim at learning more voluntary guidelines are being implemented. This is not an unusual approach to rule making. It is great if objectives can be attained by guidelines. If not, rules will follow. Similar considerations were in place prior to mandatory nutrition and allergen labelling.

Striving for consistency

One of the larger concerns with online retailers providing label information is the assurance that information on the website is consistent with what's on the actual product label. I have found U.S. label on foods sold to Canadians online.

Also, when a formulation is updated, how quickly will the ingredient or allergen information on the website be updated? How can online information be more integrated to that on the current inventory of foods sold?

The goal is to provide consumers with reliable information. This, even in our highly technologically linked world, seems to have obstacles. Overcoming these obstacles might be more readily available to large retailers. Small online retailers might find themselves at a disadvantage. The voluntary guidelines, hopefully, will provide an easy-to-adopt framework for websites to share accurate information.

Marketing paradox

Canadian food laws also cover advertising. Concerns related to foods misrepresented on e-commerce platforms can be dealt with by current laws. Enforcement may, however, be more challenging for CFIA as they seem to be more active in a physical space. Online images of package food are often a hero shot. This is an image of the packaged product. It may not include mandatory information such as net contents or indicate if the food contains artificial flavours. There is nothing illegal about a hero shot, unless it misrepresents the food.

Claims, including nutrient content or health representations, are subject to the same rules as an any other food. Such claims fall under advertising. The manner in which supporting information is provided might be slightly different than that on a food label, as there are specific rules governing advertising. In general, what is prohibited on a label is prohibited in advertising.

Statistics Canada reported that in 2020 the sale of grocery and household items in Canada reached $3.9 billion. Canada Post reported that an average online shopper in 2022 placed 26 e-commerce orders. Online shopping is here to stay, so it's important to have some guidelines around labelling of foods sold online.

Gary Gnirss is a partner and president of Legal Suites Inc., specializing in regulatory software and services. Contact him at president@legalsuites.com.

Photo © Piman Khrutmuang / Adobe Stock