



# India: New Disclaimers For Food-Related Trademarks

20 December 2018

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Trademark owners in the food business, they will now have to introduce disclaimers when they use certain terms in their marks, brands or labels, so that consumers are not misled or deceived as to the nature of the products being sold, according to new regulations issued by India's food regulator.

As per the Food Safety and Standards (Advertising and Claims) Regulations, 2018 ("the Regulations", [see here](#);) issued recently by the Food Safety and Standards Authority of India (FSSAI), food business operators cannot use the words/phrases such as "natural", "fresh", "pure", "original", "traditional", "authentic", "genuine", "real", etc., on food labels, brands or trademarks, except under specific conditions.

The Regulations, which will have a significant impact on India's burgeoning consumer goods market, pertains to instances where the meaning of a trade mark, brand name or fancy name containing such adjectives in the labelling, presentation or advertising of a food is likely to mislead a consumer as to the nature of the food. In such cases, the label/mark/brand name must contain a disclaimer of at least 3 millimetres in size, appropriately placed, stating that, "\*This is only a brand name or trade mark and does not represent its true nature".

These Regulations stem from a growing recognition of the importance of consumer protection in the food business in India, and the necessity to establish fairness in claims and advertisements of food products, and to make food businesses accountable for such claims /advertisements. The restrictions on the use of the terms and the requirement to add in a disclaimer mainly seek to restrict open-ended uses of these terms on frivolous grounds, according to the FSSAI.

The food regulator has already permitted food business operators to use many claims without seeking prior approval. But claims that are not standardised under these regulations may require approval from the FSSAI and should be supported with sound scientific basis.

The Regulations contain general principles for claims and advertisements; criteria for nutrition 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, and conditional claims. The Regulations also identify claims that are specifically prohibited, and procedures for approval of claims, as well as redressal of non-compliances under these Regulations.

Some of the restrictions introduced in these Regulations include the following:

1. Advertisements for food products that undermine the importance of healthy lifestyles or portray the food product as a complete replacement of normal meal are not permitted.
2. Food businesses cannot advertise or make claims undermining the products of other manufacturers so as to promote their own food products or influence consumer behaviour.
3. Food businesses will need to seek prior approval from FSSAI for claims pertaining to reduction of disease risk, other than those specified in the Regulations.

The Regulations also lay down the punishment for persons, including third parties, who advertise or are party to the publication of any misleading advertisements that do not comply with these regulations. In such cases, a penalty with a fine extending upto INR 10,00,000 (~USD 14,000) is applicable, under Section 53 of the Food Safety and Standards Act 2006.

The Regulations require food business operators to comply with all its provisions by 1st July, 2019.