

CONTENTS

FOOD PACKAGING in India: *caveat venditor*

| | |
|--|---|
| Introduction | 2 |
| 1.0 The PFA and the PFA Rules..... | 2 |
| 2.0 The SWMA and SWM Rules..... | 3 |
| 3.0 ECA | 3 |
| 4.0 Enforcement agencies and the Regulatory mechanism..... | 4 |
| Conclusion..... | 5 |

FOOD PACKAGING in India: *caveat venditor*

INTRODUCTION

A package is a benchmark of safety standards and ensures that the food it contains is safe, harmless, wholesome, and nutritious to the consumer. To safeguard the interests of the consumer, packaging laws and regulations have been enacted with the concern of consumer protection and in recognition of the principle of *caveat emptor*.¹ As defined under section 2 (x) of the Prevention of Food Adulteration Act, 1954 (“**the PFA**”), “*package*” is “*a box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper, or other thing in which article of food is placed or packed*”² and if it is not labeled in accordance with the requirements of PFA or PFA Rules it shall be deemed to be “misbranded.”³

The present newsletter describes the principal packaging regulations along with the authorities that ensure India’s food safety system. In India, the packaging regulations for food products are mainly covered under four principal legislations and their corresponding rules as well as prescribed standards – these are the PFA and the PFA Rules, the Standards of Weights and Measures Act, 1976 (“**the SWMA**”) and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (“**the SWM Rules**”), the Agriculture Produce (Grading and Marketing) Act, Bureau of Indian Standards (“**BIS**”), various mandatory quality control orders issued under the Essential Commodities Act, 1955 (“**ECA**”).

1.0 The PFA and the PFA Rules

Keeping in view the gravity of the wide-spread and persistent problem of food adulteration, it is crucial for the authorities to ensure that the food items that are available in packages in market are hygienic, fresh, and healthy. The PFA seeks to prevent health hazards involved in consuming adulterated food. It prohibits the commission of the certain activities and *mens rea* is not an essential ingredient to establish the offence. The PFA prohibits manufacture, storage and sale of adulterated food and the responsibility of adequate packaging of food and its safety falls on the manufacturer of the food product(s).

Under the PFA, “Food” means “*any article used as food or drink for human consumption other than drugs and water and includes:- (a) any article which ordinarily enters into, or is used in the composition or preparation of, human food, (b) any flavouring matter or condiments, and (c) any other article which the Central Government may having regard to its use, nature, substance or quality, declare by notification in the official Gazette, as food for the purposes of this Act.*”⁴ It includes cereals, oil, sugar, cooked food, drinks, spices, colouring matters, flavouring matter, water (natural as well as packaged mineral water), tobacco, etc, all of which should be packaged in accordance with the regulations under the PFA Rules.

The PFA Rules⁵ deal with the packing and labeling of food and requires the following declaration in the packaging of an article of food:

¹ Caveat emptor means “Let the purchaser beware”

² Section 2 (x) of the PFA

³ Section 2 (ix) (k) of the PFA

⁴ Section 2 (v) of the PFA

⁵ Part VII of the PFA Rules (Rule 32)

- the name, trade name or description of food contained in the package;
- the names of ingredients used in the product;
- the common name of the flavour of the natural flavouring substances;
- a symbol in red colour to indicate the product as non-vegetarian food if any ingredient in part or whole is of animal origin,⁶ for vegetarian food symbol with green colour circle and square should be displayed;⁷
- the name and complete address of the manufacturer/importer/vendor/packer;
- a declaration for the net weight/number/measure of volume of content;⁸
- the batch number or lot number/code number;
- the month and year in which the product was manufactured/pre-packed;⁹
- all packages of irradiated food logo, the month and year till the product is best for consumption;
- a declaration as: “BEST BEFORE * _____ DATE/MONTH/YEAR” or “BEST BEFORE * _____ DAYS FROM PACKAGING.”

In furtherance to the above, several other guidelines for food articles and certain specific instructions for infant milk substitute and infant milk, meat and meat products, natural mineral water, naturally carbonated natural mineral water, and packaged drinking water are also prescribed in the PFA Rules. The different forms of labels for each variety of food article has been prescribed in Rule 42 and “label” has been described as a display of written, marked, graphic, printed, perforated, stencilled, embossed, or stamped matter upon the container, cover, lid or crown of any food package.

⁶ The symbol shall be prominently displayed on the package having contrast background and should be on the principal display panel in close proximity to the name/brand name of the food as indicated in rule 42 (zzz) (16), and also on the labels, pamphlets, leaflets, and advertisements in any media

⁷ As indicated in clause (17) of sub-rule (zzz) of rule 42 of PFA Rules.

⁸ Except in biscuits, breads, confectionery and sweets where the weight may be expressed as average net weight or minimum net weight

⁹ The exception is in case of carbonated water containers and packages of biscuits containing 60-120 grams and packages of food weighing less than 60 grams, bread, and milk

2.0 The SWMA and SWM Rules

In addition to the PFA Rules, SWMA and SWM Rules provide some more labeling requirements related to weights and measures of the food articles. Per SWMA, every unit shall be based on the metric system which is adopted from the international system of units recommended by the General Conference on Weights and Measures and such additional units as may be recommended by the International Organization of Legal Metrology. Chapter IV (section 39) of SWMA stipulates that for interstate trade or commerce of commodities in packaged form, intended to be sold or distributed, every commodity has to bear upon it a label declaring the identity of the commodity therein with its net quantity, accurate number, the unit sale price, the sale price of the package, the name and address of the manufacturer and also of the packer or distributor, the statement as to the net weight, measurement or number of the contents,¹⁰ and the common or generic names of the commodity. The labeling requirements under SWM Rules are confined to regulate the accuracy in weights and measurement of the goods whereas the PFA monitors every specific detail related to the food article including the ingredients and their declaration to check adulteration in articles of food.

A declaration of the designation of the person in charge of the consumer care cell with phone number, e-mail address along with the mailing address is also to be provided.¹¹ The Central Government may specify reasonable variations in the net contents of the commodity in a package as may be caused by the method of packing or the ordinary exposure which may be undergone by the commodity after it has been introduced in the market place.

3.0 ECA

Under ECA, a number of mandatory orders meant for regulating hygienic conditions have been issued, such as Food Product Order, 1955 (“**FPO**”), Milk and Milk Products Order, 1992, Meat Product

¹⁰ Exceptions to this are commodities which may undergo changes in weight or measure due to climatic variations (bread, soap, etc) and the qualifying statement “when packed” is added to the net weight or measure.

¹¹ Pursuant to the Notification GSR425(E) dated July 17, 2006

Order, 1973 (“**MPO**”) and Edible Oils Packaging (Regulations) Order, 1998.

The FPO, promulgated under section 3 of ECA, regulates the quality and hygiene of fruit and vegetable products including synthetic beverages, syrups, and vinegar. The FPO is implemented by the Ministry of Food Processing Industries through the Directorate of Food and Vegetables Processing at New Delhi. All labels are expected to carry the license number, special identification mark of the manufacturer, the batch/code number along with the date of manufacturing. FPO prohibits use of any statement, design or device, which is false or misleading. Synthetic products associated with fruits and vegetables should clearly be marked “**SYNTHETIC**” in bold.

The MPO regulates the licensing and labeling of all meat products. The common name of the product as understood by the consumer should be given along with net quantity and a list of ingredients. When any preservative or colouring agent is used, a statement to that effect should be given. When permitted artificial flavouring agent is used, the words, “Artificially Flavoured,” should appear on the label in prominent letters in continuance of the name of the product. No statement, word, picture or design, which may convey a false impression or give a false indication of origin or quality, can appear on the label. The registering authority carries periodic inspection of the premises, vehicle, any material, sample of raw meat etc. in which manufacture or process, or business in meat or any meat product is carried on, with a view to ensuring compliance with the provisions of MPO and may seize or detain raw materials, documents, account books or other relevant evidence connected with the non-compliance of the MPO.

4.0 Enforcement agencies and the Regulatory mechanism

The primary national public agency for food articles in India is the PFA. Recently, the Food Safety and Standards Authority of India has been established under the Food Safety and Standards Act, 2006 (“**FSSA**”) as a statutory body for laying down standards for articles of food and regulating manufacturing, processing, distribution, sale and import of food so as to ensure safe and wholesome

food for human consumption. The PFA will be repealed from the date to be notified by the Central Government as per the FSSA.¹² Till new standards are specified, the requirement and other provisions of the PFA shall continue to be in force as a transitory provision for food standards.

The Directorate General of Health Services, Ministry of Health and Family Welfare has been designated as the nodal Ministry for liaison with the *Codex Alimentarius Commission* that has developed an international food standards code. It is also responsible for framing and implementation of the PFA. The Codex Committee on Food Labeling is also addressing the labeling issues for the Codex General Standard for the Labeling of Prepackaged Foods. BIS has a Product Certification Scheme that aims at providing third party guarantee of quality, safety and reliability of products to the ultimate customer.

The Food Authority¹³ regularly monitor the food products in market. The Food Inspector collects food samples and sends it to the public analyst and to the local health authority (“**LHA**”).¹⁴ If the sample is adulterated, LHA institutes prosecution against the vendor, manufacturer, distributor, and any other business. Even a purchaser can get the food products analyzed by public analysts for a fee and if the sample is found adulterated, the purchaser is entitled a reimbursement. The purposes of quality control are: (i) protection of nutritional value of food articles, (ii) protection from contaminated food and ensure that the weight and quality of food are what is paid for, (iii) prevent deceitful activities by suppliers, damage to equipments used for manufacturing food articles and false accusation by suppliers, and (iv) to ensure that food laws operating in a country are complied with.

¹² Visit <http://www.fssai.gov.in/PFA.aspx> (visited on September 8, 2009). Till date sections 3, 4, 5, 6, 11 to 15, 16, 18, 30, 81 to 86, 87, 90, 91, 92, 93, and 101 of FSSA have come into effect by various notifications as available at <http://www.mohfw.nic.in/pfa.htm> (visited on September 8, 2009)

¹³ Per section 2 (vi) of PFA, Food (Health) Authority means the Director of Medical and Health Services or the Chief Officer in charge of health administration in a state

¹⁴ Per section 2 (viii) of PFA, Local (Health) Authority means the officer appointed by the Central Government or the State Government to be in charge of health administration in local area

If any person packs, distributes, stores, delivers, or sells commodities, which does not meet the requirements of the packaging regulation, he can be punished by a fine up to INR 5,000¹⁵ (approximately US \$100) and upon repetition there can be imprisonment of up to five years as well as fine. Section 72 of SWMA provides for prosecution before a magistrate, however, in the first instance, Legal Metrology department settles the case by charging a compounding fee¹⁶ which can be up to INR 5,000. For the next three years, a subsequent offence cannot be compounded¹⁷ and will have to be taken to the court. But after three years, an offender again becomes eligible to get a case compounded.

CONCLUSION

Labeling should help consumer make an informed choice between different products. Therefore, the packaged food article should be in such a condition that the buyer is fully acquainted with the facts about the food article and, also, the food article should have merchantable quality. Packaging has grown as a major industry in India and to safeguard the interests of the consumer, all the food products manufactured or processed should be packed in accordance to the regulations. Though the packaging regulations are stringent and varied, with the FSSA and awaited corresponding Rules, the packaging system will be more harmonized and easier. *Caveat emptor* is slowly paving the way to the concept of *caveat venditor*.¹⁸ **(Neeraj Dubey)**

¹⁵ Section 63 of SWMA

¹⁶ Section 74 of SWMA

¹⁷ Compounding means compromise and compounding of offence means a compromise between the parties to a dispute ending in a settlement which is more precisely an attempt to condone an offence for a consideration, basically a credit fixed by the authorized officer of the Department of Legal Metrology.

¹⁸ It means "Seller Beware."

Contact Lawyer

Priti Suri
p.suri@psalegal.com
Mobile +(91) 98100-92842

Neeraj Dubey
n.dubey@psalegal.com
Mobile +(91) 98186-04907

Contact Details

PSA
Legal Counsellors
E-601, Gauri Sadan
5, Hailey Road
New Delhi – 110 001
India
Tel: + (91 11) 43500-500
Fax:+ (91 11) 43500-502