

The Use of Food Marketing Terms

Guidance Note No. 29

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I. BACKGROUND

The labelling and advertising of food is governed by the main principle outlined in Regulation EC No 178/2002 on the general food law:

“Without prejudice to more specific provisions of food law, the labelling, advertising and presentation of food or feed, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, shall not mislead consumers.” Article 16

It is recognised that the marketing of food is essential for business development in the food industry and that marketing terms are designed to resonate with consumers. However, when marketing terms are used incorrectly they have the potential to mislead. Consumers should be confident that the foods they buy are accurately and truthfully described and labelled. Food businesses should also be confident that genuine descriptions of their food are not undermined by the use of undefined marketing terms by other food businesses.

2. PURPOSE

This document sets out guidance¹ for food manufacturers, retailers and food service businesses to assist in the responsible use of marketing terms when placing their products on the Irish market to ensure they convey clear meanings and are not misleading to consumers. These guidelines will aid in compliance with the rules governing the labelling, advertising and presentation of food as specified in Article 16 of the general food law (Regulation (EC) No 178/2002) and expanded in Article 7 of Regulation (EU) No 1169/2011 on the provision of food information to consumers. The use of these terms should be considered in the context of the label as a whole, the presentation of the product, and on a case-by-case basis.

¹ Guidance notes from the Food Safety Authority of Ireland are intended to help food businesses to comply with their legal obligations. They are not a substitute for the law. The ultimate arbitrators on compliance with legal provisions are the Irish courts.

3. SCOPE

This guidance applies to all foods placed on the Irish market² except where European or Irish national law covers the use of certain marketing terms for specific foods, e.g. traditional butter³, or where foods are registered as traditional specialities guaranteed (TSG), protected designation of origin (PDO) or protected geographical indication (PGI)⁴.

4. RESPONSIBILITIES OF FOOD BUSINESS OPERATORS

Food business operators should ensure that food information provided to consumers is compliant with relevant legislation as a first priority. This includes Regulation (EU) No 1169/2011 on the provision of food information to consumers as well as certain food commodity specific marketing legislation (https://www.fsai.ie/legislation/food_legislation.html). As a second priority, food business operators should then take account of the guidance contained in this document when placing marketing terms on food labels and when using marketing terms as part of advertising activities.

When using marketing terms, food business operators should always bear in mind the general principles governing the provision of food information to consumers in Regulation (EU) No 1169/2011:

“1. Food information shall not be misleading, particularly:

- a) as to the characteristics of the food and in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production;*
- b) by attributing to the food effects or properties which it does not possess;*
- c) by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients;*
- d) by suggesting, by means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient, while in reality a component naturally present or an ingredient normally used in that food has been substituted with a different component or a different ingredient.” Article 7*

Food business operators should aim to ensure marketing terms used on foods are compliant with relevant legislation and information contained in this guidance note as soon as possible. However, as a minimum, the information in this guidance note applies to the labels of foods placed on the market and/or presented and advertised after December, 2016.

² Food businesses based outside of Ireland and producing food to be placed on the Irish market should use these guidelines or equivalent guidelines recognised by their national competent authority.

³ The word 'traditional' is allowed to be used together with the word 'butter' in circumstances laid down in Council Regulation (EC) 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

⁴ Council Regulation (EC) 1151/2012 on quality schemes for agricultural products and foodstuffs.

5. SPECIFIC GUIDELINES ON THE USE OF CERTAIN MARKETING TERMS

In addition to general compliance with the legal obligations set out in Section 4, food business operators should ensure that the use of certain marketing terms is consistent with the specific provisions laid out as follows in sections 5.1-5.4.

5.1 Artisan/Artisanal

The terms ‘artisan’ or ‘artisanal’ or similar descriptions using these terms should only be used on foods or in advertising of foods that can legitimately claim to meet all of the following criteria:

1. The food is made in limited quantities⁵ by skilled craftspeople⁶
2. The processing method is not fully mechanised and follows a traditional⁷ method
3. The food is made in a micro-enterprise⁸ at a single location
4. The characteristic ingredient(s)⁹ used in the food are grown or produced locally¹⁰, where seasonally available and practical

5 Limited quantities means total production by the food business operator of less than 1,000 kg or litres of food per week on average over a year (this limit is aligned with the higher limit in other national rules covering an activity which is considered ‘marginal, localised and restricted’ see S.I. No. 168 of 2012 and S.I. No. 340 of 2010).

6 A skilled craftsperson is someone who has special expertise in making food in a traditional manner (see footnote 7).

7 Traditional has the meaning defined in Council Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs: “...*proven usage on the domestic market for a period that allows transmission between generations; this period is to be at least 30 years;*”.

8 A micro-enterprise is defined as an enterprise which employs fewer than ten persons (or whole time equivalents) and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million. (Commission Recommendation 2003/361/EC).

9 Examples of characteristic ingredients are milk in cheese, pork meat in ham, strawberries in strawberry jam, oats in porridge. This is not intended to be a definitive list of characteristic ingredients. As a rule of thumb, the characteristic ingredient(s) are those that would normally require a quantitative ingredient declaration (QUID) under the food information regulations.

10 Within a 100 km of the manufacturing/food service establishment (this limit is aligned with the sale and supply limit set in other national rules covering an activity which is ‘marginal, localised and restricted’, see S.I. No. 168 of 2012 and S.I. No. 340 of 2010).

5.2 Farmhouse

The term 'farmhouse' or similar terms that create an impression that a food originates on a farm should only be used on foods that can legitimately claim to meet all of the following criteria:

1. The food is made in a single location on a farm¹¹
2. The food is made by a micro-enterprise¹²
3. The characteristic ingredient(s)¹³ used in the food are grown or produced locally¹⁴

It is recognised that there are certain foods that have used the term 'farmhouse' and similar terms for many years. Such terms when used on these specific foods are well understood by the consumer and therefore, the term 'farmhouse' and similar terms may continue to be used on the following foods whether they meet the three criteria above or not:

- Bread with a split and rounded crust with or without flour dressing
- Bread mixes used to make 'farmhouse' bread with a split and rounded crust
- Soup made with coarse cut or chunky vegetables
- Paté made with a coarse texture
- Cheese produced on a farm¹¹

It is further recognised that for some other foods, the qualifier 'style' has been used in the context of the word 'farmhouse' to similarly convey a rustic look or a coarse or a chunky texture, e.g. farmhouse-style ham. The use of this qualifier is not considered helpful to consumers. If this term is used, the food must not be labelled or marketed in such a way that the consumer is misled into believing the product is an authentic farmhouse food, i.e. a food meeting the three characteristics above. Additional qualifiers should be used to clarify the level of authenticity or link to the original product, whether by the region of origin, source of ingredients or method of production.

In addition, a derogation is also necessary for fresh, pasteurised milk and cream since these are short shelf-life products where processing occurs within the region of the farm within a short time period. Although the use of the term 'farmhouse' to describe these products would not be acceptable, the use of the term 'farm fresh' has been associated with such products for a number of years and may continue to be used.

11 A farm is where an individual farmer (or group of individuals, e.g. partnerships and other legal structures through which a business is conducted) exercises an agricultural activity. Such partnerships or other legal structures relate solely to the group of individuals running the farm and not to any larger partnerships or legal structures of a commercial or retail company (adapted from definition of 'farmer' in Common Agricultural Policy glossary of terms: <http://ec.europa.eu/agriculture/glossary/>).

12 A microenterprise is defined as an enterprise which employs fewer than ten persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million (Commission Recommendation 2003/361/EC).

13 Examples of characteristic ingredients are milk in cheese, pork meat in ham, strawberries in strawberry jam, oats in porridge. This is not intended to be a definitive list of characteristic ingredients. As a rule of thumb, the characteristic ingredient(s) are those that would normally require a quantitative ingredient declaration under the food information regulations.

14 Within a 100 km of the manufacturing/food service establishment (limit aligned with the sale and supply limit set in national rules covering an activity which is marginal, localised and restricted' see S.I. No. 168 of 2012 and S.I. No. 340 of 2010).

5.3 Traditional

The term 'traditional' conveys a sense of continuity and an impression that a food is made in a time-honoured way or to a time-honoured recipe. The term 'traditional' or similar descriptions using this term should only be used on foods that can legitimately claim to meet at least **one** of the following criteria:

1. The food is made to an authentic recipe which can be proved to have existed without significant modification¹⁵ for at least 30 years

and/or

2. The food has been made using a method of preparation that has:

- Existed for more than 30 years although automation and mechanisation of these methods is acceptable

and

- Does not deviate substantially from the traditional food processing method associated with a certain type of food

It is recognised that for some other foods, the qualifier 'style' has been used in the context of the word 'traditional'. The use of this qualifier is not considered helpful to consumers. If this term is used, the food must not be labelled or marketed in such a way that the consumer is misled into believing the product is an authentic traditional food, i.e. a food meeting at least one of the two characteristics above. Additional qualifiers should be used to clarify the level of authenticity or link to the original product, whether by the region of origin, source of ingredients or method of production.

¹⁵ Significant modification means changes to the ingredients of a recipe that could alter the flavour, texture or appearance of the food in such a way as to effect consumer choice. This includes replacement of characteristic ingredients with modern equivalents that were not available at the time the recipe was developed, e.g. replacing meat in a sausage with low or high pressure MSM (mechanically separated meat).

5.4 Natural

The use of the marketing term 'natural' or variations on this term, e.g. naturally better, natural goodness, gives the impression that a food exists in, or is formed by, nature. Food business operators are specifically reminded that such a term cannot be applied to a food when in fact all other similar foods are natural (Regulation EU No 1169/2011 Art 7 (1) (c)).

5.4.1 Single ingredient foods

A minimally processed single ingredient food can be called 'natural', provided it differs in this characteristic from all similar foods. For such a food to be considered 'natural' it must meet the following criterion:

1. The food¹⁶ is formed by nature and is not significantly interfered with by man¹⁷.

By way of example, consider a bag of peeled and cut carrot batons which is a single ingredient food (only carrots) that is not significantly interfered with by man (only washed, peeled and chopped – see footnote 17). This product could use the marketing term 'natural' because it meets criterion 1 above but only if it differed in its characteristic from other similar product, i.e. it must also comply with Art 7 (1) (c) of Regulation EU No 1169/2011 on food information to consumers. For the example product to have different characteristics from other similar product as required by the legislation, other similar products would then have to contain additives or be processed in such a way that it would be considered to have been significantly interfered with by man (see footnote 17).

¹⁶ Food business operators are reminded that additives are ingredients and therefore, a single ingredient food cannot contain additives. Such foods containing additives are compound foods (see section 5.4.2).

¹⁷ 'Significantly interfered with by man' does not include minimal processing like: chopping, slicing, grinding, peeling, juicing, blanching, pasteurising, freezing, drying, etc. as these do not significantly change the nature of the food. It does include more complex forms of processing like: concentration, cooking processes more severe than pasteurisation (70°C for 2 min or equivalent), curing, brining, refining, chemical extraction, genetic modification, cloning, etc. Fermentation is also considered a 'natural' process, but subsequent processes may disqualify the final product from the description 'natural'.

5.4.2 Compound foods

Compound foods contain more than one ingredient and as such are formed by man through processing and cannot therefore, be considered as being 'natural'. However, provided that such compound foods are different from similar compound foods, i.e. compliant with Art 7 (1) (c) of Regulation EU No 1169/2011 on food information to consumers, it is then permissible to market these foods as 'made with natural ingredients' or terms with a similar meaning when the compound food can meet all of the following criteria:

1. The ingredients¹⁸ are formed by nature and are not significantly interfered with by man¹⁹
2. The ingredients¹⁸ and the final food are:
 - a. Additive-free or
 - b. Contain flavourings that are natural as defined in European law²⁰ or
 - c. Contain other food additives that are obtained from natural sources, e.g. plants, by appropriate physical processing (including distillation and solvent extraction) or traditional preparation processes

By way of example, consider a cooked ham produced without the preservative nitrite. This product would have to be made of ingredients that are formed by nature, e.g. pork, water, salt, etc. (each ingredient meets criterion 1) and also do not contain any 'artificial' additives (each ingredient meets criterion 2; e.g. salt without anti-caking additive) and in addition, the final product cannot contain 'artificial' additives itself (final product meets criterion 2; e.g. no nitrite additive present). Such a product could be described as 'natural ingredient ham'. This designation would also comply with Art 7 (1) (c) of Regulation EU No 1169/2011 on food information to consumers, because it would have special characteristics compared to other ham which normally contain artificial additives like nitrite.

The use of the term 'natural' has sometimes been restricted by law and in other cases has become synonymous with a certain type of product. In these specific cases, the term 'natural' may continue to be used on products which may not meet the two characteristics listed above. The following foods fall into this restricted category:

18 The ingredients of compound foods can be single ingredients like milk or compound ingredients like cheese. In the latter case, the ingredients in the compound ingredient would also have to meet criteria 1 and 2.

19 'Significantly interfered with by man' does not include minimal processing like: chopping, slicing, grinding, peeling, juicing, blanching, pasteurising, freezing, drying, etc. as these do not significantly change the nature of the food. It does include more complex forms of processing like: concentration, cooking processes more severe than pasteurisation (70°C for 2 min or equivalent), curing, brining, refining, chemical extraction, genetic modification, cloning, etc. This does not apply to additives prepared from natural sources as described in criteria 2. Fermentation is also considered a 'natural' process, but subsequent processes may disqualify the final product from the description 'natural'.

20 Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC.

- 'Natural mineral water': Can only be used on water that meets the requirements of Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters
- Foods that are permitted to bear nutrition and health claims preceded by the words 'natural' or 'naturally' as specified in the Annex of Regulation (EC) No 1924/2006²¹
- Dairy products that have, for many years, included the term 'natural' to indicate that the dairy product is manufactured only from milk, using only the starter cultures necessary for fermentation and are free from other ingredients, additives, flavourings and colours, e.g.
'natural yoghurt' : plain, unflavoured yoghurt
'natural fromage frais' : plain unflavoured fromage frais
'natural cheese' : plain unflavoured cheese

21 The use of the words 'natural' or 'naturally' can be considered either a nutrition or health claim under the criteria set out in Regulation (EC) 1924/2006. Where a food naturally meets the condition(s) laid down in the Annex to this Regulation for the use of a nutrition claim, the term 'naturally/natural' is permitted as a prefix to the claim, e.g. 'naturally low-fat'.

WORKING GROUP MEMBERS

This Guidance Note was prepared by the Food Safety Authority of Ireland with the help of a working group:

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