To: The Project Manager – Proposal 235
Food Standards Australia New Zealand

14th August 2002

Submission on Proposal P235 – Review of Food type Dietary Supplements.

Introduction

Horleys market sports nutrition products in Australia and New Zealand, including some Food Type Dietary Supplements (FTDS) and wish to have the following views considered in the review process.

Purpose of Product

Horleys believe that FTDS should be regulated by the Food Standards Code. This should be achieved by means of vertical standards that segregate these products from general-purpose foods. In general, Horleys strongly oppose the idea of FTDS being regulated as medicines. The vast majority of these products are manufactured by the mainstream food industry. Many aspects of medicines regulation are far more complex and expensive than that required in the food industry. The nature of the vast majority of FTDS do not justify medicines style regulation.

Should a 2-category, Food–Medicine system eventuate, Horleys feel that the presence of nutritionally significant amounts of any of the three macro nutrients (eg fat, protein or carbohydrate) could serve as a basis for deciding which regulations a product sits under. Format is not a good clear-cut basis. Tablets for example could represent a grey area. A milk tablet with added substances should be a food, but a vitamin tablet is unlikely to be seen as a food.

Added Substances

There is a need to extend the permissions for added substances beyond 'nutritional purpose', as there are physiological benefits from primarily non-nutritive substances. These include compounds involved in biochemical pathways, cellular energy production, immune system support, intestinal health, enhanced cognitive function, antioxidant and ergogenic effects. Many of these substances have their origin in foods of plant or animal origin, that have been part of human diets for long periods of time.

Alpha Lipoic acid and Conjugated Linoleic Acid are substances that should be considered for permission.

Botanicals

Permission for the addition of the following should be considered.

Garcinia Cambogia

Ginseng
Gaurana
Coleus Forskohlii

Single and Mixed Foods

Permissions should include both single and mixed foods.

Should FTDS be permitted to be mixed foods, Horleys can see no reason to exclude any particular type of food from the permissions.

Labeling

Horleys strongly support labeling requirements that allow consumers to make safe, informed choices and create a level and fair playing field for industry. Such requirements need to include mandatory labeling of the content substances added for nutritive or physiological function. In some cases the appropriate means may be via % labeling and in other cases via declaration in nutritional information panels.

In many cases universally accepted reference values do not exist for substances for which permissions may be granted. An attempt to set reference values for claims would be confusing to many consumers. Indeed reference values are often meaningless where enhanced need results from specific physiological conditions (eg stress, demanding exercise).

General warning statements which are mandatory for all products manufactured under any vertical standard for FTDS may not be appropriate. This principal currently applies to standard 2.9.4 Formulated Supplementary Sports Food and causes some frustration. Advisory statements should be applied on an ingredient basis as appropriate.
For example standard 2.9.4 requires a statement that the product is not suitable for Pregnant Women. Many products manufactured under this standard are simple mixtures of protein concentrate powders, with or without added vitamins, minerals and amino acids. Pregnant women are no more at risk from these products than any other group. However if Garcinia Cambogia extract (Hydroxycitric Acid) were permitted (it currently isn't), then it might be appropriate that pregnant or breast-feeding women be discouraged from using these products. Not because there is any evidence of harm to them, but because this product has a mild appetite suppressing effect and pregnancy and breast feeding place increase energy requirements on a women's bodies. In a situation such as this, it would be more appropriate for the ingredient to trigger a mandatory statement than to impose a mandatory statement for all products manufactured under the prescribed name.

FTDS should not be exempt from nutrition information requirements.

Health claims if permitted in the future should extend to FTDS where these products include ingredients for which health claims have been approved.

Contextual statements referring to the total diet should be considered on a case-by-case basis.

There should be a requirement for foods manufactured and marketed as FTDS to be labeled with the prescribed name.

Summary

Horleys would prefer to see FTDS fully regulated with a separate set of vertical standards. Enforcement of industry codes of practices does not seem practical. Of particular concern would be compliance of imported products. Full regulation is more likely to result in an even playing field for all those operating in the industry and ensure that consumers are provided with consistent and comparable information. Horleys therefore support option 2bii.

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