

QUARTERLY NEWSLETTER

JUNE 2013

Changes to Food Labeling & Advertising Law

Suppliers and distributors of food should be aware of the new Food Standard (Standard 1.2.7 - Nutrition Health and Related Claims of the Australia New Zealand Food Standards Code) which came into force on 18 January 2013. The new Food Standard regulates nutrition content and health claims on food labels and in advertisements.

Businesses in Australia and New Zealand have 3 years to comply with the requirements of the new Food Standard. During this period, businesses may follow either the new Food Standard or the former Food Standard 1.1A.2 but not both.

Businesses involved in the supply and sale of food products should ensure their food products comply with the new Food Standard. We recommend you seek legal advice as soon as possible to ensure that your business satisfies the new requirements involving labeling, advertising and correct product representations.

Criminal Liability of Directors/Officers

Directors and managers including those in supplier chain, logistics and operations are affected by the *Statute Law Amendment (Directors' Liability) Act 2013* (Vic) which commenced operation on 14 March 2013. The Act deals with the liability of directors and managers in the event a company or corporation commits a crime.

These provisions of the Act apply to officers. An "Officer" means a person who is an officer (as defined in section 9 of the *Corporations Act 2001* (Cth)) of the organisation, or a person who is concerned in, or takes part in the

management of the organisation. However, a person who does not make or participate in making decisions that affect the whole or a substantial part of the business of an organisation may still be concerned in the management of an organisation and hence, be considered an "officer".

To demonstrate the exercise of due diligence in order to prevent something being done means to take all reasonable steps to prevent such an event from happening together with exercising reasonable care and skill.

An accessorial liability provision means that if an organisation commits an offence, an officer of the organisation also commits the offence if the officer authorised or allowed the commission of the offence by the organisation or was knowingly concerned in any way (whether by act or omission) in the commission of the offence.

Directors and managers should take careful note of these provisions. MLB Lawyers & Associates can provide training to directors and managers to prevent potential breaches of the Act.

Changes to Trademark opposition

If your business has recently filed a trademark application, the amendments to Australian trademark legislation which commenced operation on 15 April 2013 will apply. The purpose is to reduce delays in resolving substantive oppositions to applications for registration and oppositions to non-use removal applications.

The period for opposing a trademark application has been reduced from 3 months to 2 months. An extension may be granted in limited circumstances, namely when there is an error or omission, or circumstances beyond the control of the

person opposing the trademark application.

If an applicant wishes to defend its application and challenge the opposition, it must file a Notice of Intention to Defend within 1 month of being given the opponent's Statement of Grounds and Particulars.

The time frames and procedures after a Notice of Intention to Defend is filed have also changed.

Trademark owners should be familiar with these changes in order to effectively protect their trademarks and for this reason are advised to discuss with their legal advisors how the new regime will affect them.

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