

## **Workshop**

# **“Food products and information to consumers”**

**EFLA/Federalimentare/Assolombarda**  
**Milan, 6 June 2011**

**Avv. Luciano Di Via**

## **The Italian regulation of commercial practices concerning nutritional and health claims**

- Italian Consumer Code and Misleading Advertising Law, both applied by the ICA;
- Italian Advertising Self-Regulation Code applied by the Giurì;
- Law on food labelling applied by the Ministry of Health, the Financial Police, Local Health Authorities.

## **The Italian regulation of commercial practices concerning nutritional and health claims**

The ICA executes its powers in two different ways:

- application of Regulation (CE) No. 1924/2006 («Claims Regulation») as a way to identify an unfair commercial practice under the Consumer Code
- advocacy to the European Commission

## **Application of the Claims Regulation by the ICA as a way to identify an unfair commercial practice under the Consumer Code**

- Check if the health claim is approved by the Commission or if it is provisionally accepted (contained in the general list drawn up by the Commission and transmitted to EFSA);
- Check if the claim respects the general limitations and principles of the Claims Regulation;
- Check the advertisement under the general criteria provided by Consumer Code and Misleading advertising Italian law.

## **Application of the Claims Regulation by the ICA as a way to identify an unfair commercial practice under the Consumer Code**

**5 relevant proceedings closed with sanctions :**

- PS 917 Benessere Attivo (MILA) - **€ 100.000**
- PS 195 Alixir (Barilla) - **€ 200.000**
- PS 20 Danacol (Danone) - **€ 250.000**
- PS 649 ProActiv (Unilever) - **€ 100.000**
- PS 5595 Pastariso (RisoScotti) - **€ 120.000**

## **Application of Claims Regulation by the ICA as a way to identify an unfair commercial practice under the Consumer Code**

The main ICA proceedings where the Claims Regulation was used as an instrument to identify an unfair commercial practice:

- **PS 20 *Danacol***, closed with Decision No. 19816, of 29 April 2009, imposing a sanction of **€ 250.000** on Danone
- **PS 5595 *Pastariso***, closed with Decision No. 19816, of 29 April 2009 imposing a sanction of **€ 120.000** on Risoscotti

## **Application of the Claims Regulation by the ICA as a way to identify unfair commercial practice under the Consumer Code**

### *PS 20 Danacol*

ICA underlined :

- (i) in the Danone advertisements, the problem of cholesterol had been presented in very simplistic terms: “*Eaten too much at Christmas? Take Danacol!*”;
- (ii) the lack of any indication to enable consumers to understand in what situations Danacol may be taken; what kind of people can benefit from it and to what extent; its limited and complementary role with diet and a change in lifestyle;
- (iii) the lack of any reference to limitations that are legally mandatory on the packaging (e.g., max 3 g per day);
- (iv) the incomplete reference to tests and studies mentioned in advertisements. Moreover, the ICA underlined the unfair endorsement of a medical association in the message of the advertisement in order to increase credibility that also generates confusion as to the “pharmacological” nature of the product (Art. 12 of the Claims Regulation).

## **Application of the Claims Regulation by the ICA as a way to identify an unfair commercial practice under the Consumer Code**

### **PS 5595 *Pastariso***

The ICA deemed unfair the use, in commercialising the product “Pastariso Scotti Attiva” of the claim “beta-glucans that helps to REDUCE CHOLESTEROL”;

The ICA underlined that the claim was unfair because a portion of Pastariso possesses 0.75 g of beta-glucans instead of 3 g required to obtain the restraining/reducing effect on cholesterol (see Art. 5 lett d) Reg. 1924/06.

In addition the ICA found that the information related to the product at issue was written with characters smaller than the principal claim, and with a different placement.



## **Application of Claims Regulation by the ICA as a way to identify an unfair commercial practice under the Consumer Code**

In both cases, the ICA stigmatised:

- lack of information about nutritional components and conditions;
- misleading use of endorsement of medical associations.

The administrative Judge of First Instance (“TAR”) intervened on the ICA decisions reducing the fines

# Advocacy to the European Commission

## Letter to UE Commission and to EFSA

Invitation to plan specific guidelines on the use of health and nutritional claims (uniform application of Community rules). Specification of general clauses of the Regulation No. 1924/06 (Art. 3 lett. a): the use of nutritional and health claims must not be false, ambiguous or misleading).

Specific problem highlighted: Use of a claim to emphasise the effectiveness of the product in unsuitable terms as regards the nature and effects that can be reasonably expected (emphasis on health problems; relevant omissions concerning appropriate diet and a healthy lifestyle).

## **Conclusion**

ICA pays great attention in the enforcement of unfair commercial practices regarding health and nutritional claims on labels and in advertising.

Progressive extension of the ICA's parameters of evaluation, considering that ICA officials indicated the possibility in future to base the analysis also on the Law No. 4/2011 (Italian legislation on the origin of food products) and, in particular, on Artt. 4 and 5, concerning the labelling and the advertising of food