

**Submission to Food Standard Australia New Zealand (FSANZ) on Proposal P293:
Nutrition, Health & Related Claims**

February 2012

Yakult Australia Pty Ltd

Yakult Australia would like to thank Food Standards Australia New Zealand (FSANZ) for the opportunity to provide comment on Proposal P293: Nutrition, Health and Related Claims.

Yakult Australia Pty Ltd has been manufacturing Yakult in Australia since 1994. Worldwide Yakult has been available to the public for almost 80 years, with an outstanding reputation, and exemplary scientific and safety record. Yakult is a fermented milk drink which contains a very high concentration of a unique, beneficial bacterium, *Lactobacillus casei* Shirota strain also known as a probiotic.

Probiotics are live, beneficial bacteria that help to maintain and improve the levels of 'good' bacteria in your digestive system, thus contributing to optimal digestive function. As the first probiotic product made and sold in Australia, Yakult is committed to maintaining the quality of its service to customers, with an understanding of the need to support this unique product through continual research and education. Further information on Yakult can be found at www.yakult.com.au.

Yakult Australia's position on the issue of fat-free and % fat free claims

Yakult Australia acknowledges the work FSANZ has done over the past 8 years and the complexities involved in developing a standard for nutrition and health claims. A Food Standards Code that ensures public health and safety, while recognising the varying needs of the different stakeholders.

We value the importance of fat-free and % fat-free claims in view of public health and in preventing misleading or deceptive conduct. This is why we chose not to make fat-free/ % fat-free claims on our products despite being low in fat (or fat free). As a company that produces a functional food product, we aim to create awareness by providing our consumers with sufficient information to help them make informed decisions.

Yakult Australia provides the following comments in relation to the call for submissions on Proposal P293: Nutrition, Health & Related Claims:

- 1. Does the revised drafting accurately capture the regulatory intent as provided in Attachment B? Please consider the clarity of drafting, any enforceability issues and the level of 'user-friendliness'.**

Although beyond the scope of this submission, the regulatory intent and enforceability issues for nutrition content and health claims used on food labelling versus those included in media advertising or on print are not clearly defined. While we agree the role of the Food Standards Code is to provide regulatory framework around food safety, labelling and sourcing, and not to regulate food advertising, some clarification as to this overlap should be briefly addressed.

2. What evidence can you provide that shows consumers are purchasing foods of lower nutritional quality because they are being misled by fat-free or % fat-free?

Not applicable.

3. Do you support option 1 (Status quo), option 2 (Voluntary action through a code of practice) or option 3 (Regulate with additional regulatory requirements for fat-free and % fat-free claims)? Please give your reasons.

Yakult supports option 2 (Voluntary action through a code of practice). This option will provide food industry the opportunity to work alongside FSANZ in using the fat and % fat free claims appropriately.

We believe there are other food companies in the industry that carry the same values of integrity and would be pro-active in upholding option 2 (Voluntary action through a code of practice) when dealing with the issue of fat-free and % fat-free regulation.

Yakult Australia suggests that this be carried out using a set of guidelines that can be tailored by the food industry peak body in accordance with government and public input.

The guidelines should be initiated with moderate and manageable requirements to help encourage and push the food industry in the right direction. This opportunity will enable the food industry to work progressively in reducing fat and sugar content. If the food industry is given the opportunity to partake in a code of practice, it will promote ownership, responsibility and a proactive response.

Food companies will be encouraged to partake in the code of practice which will be enforced by a complaints committee, similar to what has been established under the Australian Food and Grocery Council (AFGC) Code of Practice for Food Labelling and Promotion (January 2011).

This will reduce the need for government enforcement and additional cost.

A set and reasonable time frame will allow the food industry to show that responsible changes are attainable, and can be carried out, in earning the trust of the public, public health community and government. If meaningful objectives and benchmarks can be achieved by the end of the agreed time period, industry should be allowed to continue with the voluntary codes of practice for fat-free and % fat-free claims.

Successful self-regulation requires that the code of practice take into account:

- meaningful and appropriate benchmarks,
- objective evaluations,
- input from government and the public,
- transparency and accountability from the food industry.

4. Please comment on the possible options for additional regulatory requirements for fat free and % fat free as follows:

a) Which option do you support and why?

Option 2 (Voluntary action through a code of practice) please refer to reasons stated in response to question 3.

b) What is an appropriate sugar concentration threshold for options 3(B) and 3 (D)? Where possible, provide information and evidence to support your suggested threshold value.

It is our belief that sugar concentrations should not be used as a threshold suggested by options 3 (b) and 3(d).

Food and beverage items should be viewed as complete entities instead of focusing on just specific or singular ingredients. Choosing to focus specifically on sugar as a threshold can be misleading to consumers who may take extreme and negative views in actively avoiding sugar. Consumers may end up with a distorted perspective of food, choosing to focus solely on reduced fat and sugar products, while neglecting the importance of total energy, fibre or salt content in view of a healthy well-balanced diet (as required in meeting individual nutrition and energy needs).

A number of different studies by Saris et al¹, West & de Looy², Drummond & Kirk³ demonstrated significant weight loss can still be achieved on low-fat diet ad-libitum or energy-restricted, despite an increase in carbohydrate whether simple (sugar) or complex.

While there has been much debate on which has the greater impact on body weight, fat versus carbohydrate (sugar) in diet, the simplest way to answer this question was to focus on various diet studies that vary in macronutrient composition, but were equal in total energy⁴. Studies found that 'clamping' total energy produces similar weight changes irrespective of macronutrient composition of the diet^{5,6}.

If the concern is to prevent consumers from being misled by fat-free and % fat-free claims (believing that such claims are inherently 'healthier' due to low fat content but may instead be high in sugar, thereby contributing to increased energy intake), then energy content should be used as the threshold instead. Total energy content per 100g would be more suitable to be used in place of the total sugar concentration threshold in preventing the increase in energy intake.

The energy threshold limits would need to be set specifically for each of the various food categories to prevent food items low in fat, but high in calories from making fat free or % fat-free claims.

c) Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe?

Yakult Australia supports voluntary action by the food industry through a code of practice. However, a suitable other option would be the co-regulation model. This option would allow balanced representation between industry, government and consumer representatives. This method will give food industry the opportunity to actively participate and be accountable in seeking to promote public health.

Summary

- a) We support option 2 (Voluntary action through a code of practice).
- b) We believe regulatory intent and enforceability issues need to be further clarified in relation to the overlap between health claims on labels and in print or advertising media.
- c) We believe using threshold limits on sugar is contrary to encouraging healthy views of foods and beverages and that total energy or calorie content should be used instead if threshold limits were decided upon.

References

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2. West JA & de Looy AE, "Response to weight reducing diets including and excluding sucrose as a sweetener." *Proceedings of the Nutrition Society*, 1996; 55(1A): 125A.
3. Drummond S & Kirk T, "The effects of different types of dietary advice on body composition in a group of Scottish men." *Journal of Human Nutrition and Dietetics*, 1998; 11(6): pg.473-485.
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6. Swinburn BA, Caterson I, Seidell JC & James WPT, "Diet, nutrition and the prevention of excess weight gain and obesity." *Public Health Nutrition*, 2004; 7(1A):pg.123-146.

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