



27 July 2021

Senator Susan McDonald
Senator for Queensland
Chair of Rural and Regional Affairs and Transport Legislation Committee

BY EMAIL: rrat.sen@aph.gov.au

Dear Senator

PARLIAMENTARY INQUIRY - DEFINITIONS OF MEAT AND OTHER ANIMAL PRODUCTS

On behalf of Smithfield Cattle Company, we write regarding the Parliamentary inquiry '*Definitions of Meat and Other Animal Products*'.

Our properties are located near Proston in the South Burnett region of Queensland and also near Goondiwindi in the Border Rivers region of Queensland. We are significant contributors to our local communities and we trace our history in the Australian beef industry back to 1928. Our business reputation has been built on our hard work, integrity and reliability.

We object to synthetic or plant-based (alternative) product producers using the words "beef" or "meat" on their packaging because it is misleading and unjust.

MISLEADING AND DECEPTIVE

The Cambridge Dictionary website defines the word "meat" to mean:¹

- (1) The flesh of an animal when it is used for food. (2) Important, valuable, or interesting ideas or information.*

The same dictionary defines the word "beef" to mean:²

- (1) The flesh of cattle, eaten as food. (2) A complaint. (3) Strength, power, or force.*

Based on these definitions, there can be no circumstance under which it is appropriate for an alternative product producer to use the words "meat" or "beef" to describe their product on their packaging.

¹ <https://dictionary.cambridge.org/dictionary/english/meat>

² <https://dictionary.cambridge.org/dictionary/english/beef>



The Australian Competition and Consumer Commission website states the following:

It is illegal for a business to engage in conduct that misleads or deceives or is likely to mislead or deceive consumers or other businesses. This law applies even if you did not intend to mislead or deceive anyone or no one has suffered any loss or damage as a result of your conduct.³

We submit that the mere inclusion on packaging of the word “beef” or “meat” to describe a product that contains neither beef nor any other kind of meat, must either be intended to mislead or deceive consumers or is likely to mislead or deceive them.

We accept that the offending packaging will make reference to the product being “plant-based” or to not contain “animal products” but are these references always adequate to ensure that every consumer will not make an error thinking they are buying a product that is beef or another meat, when it simply is not? If it is likely that just one consumer will be misled into buying an alternate product thinking it is beef or another meat, then the vendors should be prohibited from using these references.

While not directly on point, the writer has previously purchased a packet of “Jerky” assuming that under all circumstances jerky would be dried meat. This erroneous assumption was discovered after having tasted the product and on reading the balance of the packaging which noted that the product was plant-based.

It is irrefutable that packaging can mislead or deceive, whether it is intentional or not. Regardless of the balance of the text appearing on a package or label, the use of words that can imply the contents are something they are not, is inappropriate and probably unlawful.

PASSING OFF

When considering the matter before this inquiry, we were minded to consider the common law tort of passing off. We appreciate that this common law principle was designed to protect individual traders but for the sake of argument let us assume that the beef industry is a sole trader and the alternative product producers are another.

While we appreciate that Wikipedia is sometimes the medium of fake news, the website makes the following statement about “passing off”:⁴

The law of passing off prevents one trader from misrepresenting goods or services as being the goods and services of another, and also prevents a trader from holding out his or her goods or services as having some association or connection with another when this is not true. [Emphasis added]

³ <https://www.accc.gov.au/publications/advertising-selling/advertising-and-selling-guide/avoid-misleading-or-deceptive-claims-or-conduct/misleading-or-deceptive-conduct>

⁴ https://en.wikipedia.org/wiki/Passing_off



We do not consider it a stretch to conclude that the alternative product producers are using the words “beef” or “meat” on their packaging to draw “some association or connection” with beef products when, having regard to the above definitions, there cannot be one.

Three elements are required for a passing off action to be successful:

- There must be goodwill owned by a trader (the beef industry).
- Misrepresentation.
- Damage to the goodwill.

The beef industry in Australia has a tremendous amount of goodwill with Australian consumers and those in the countries to which our products are exported. The Meat and Livestock Australia Beef Fast Facts 2020 publication states the following:

- Domestic expenditure on beef was approximately \$7.8 billion in 2019.
- In 2019, Australia exported 76% of its total beef and veal production.
- The value of total beef and veal exports in 2019 was A\$10.8 billion.
- Australia is the 2nd largest beef exporter in the world behind Brazil.

These statistics speak for themselves on the matter of goodwill.

We have previously stated that the packaging of the alternative products is misleading or deceptive because they misrepresent the true nature of the products.

Lastly, the sale of alternative products to consumers that unwittingly buy the products thinking they are beef or a beef derivative must surely have an adverse impact on the goodwill of the beef industry.

We submit that the alternative product producers are collectively breaching the common law tort of passing off (conceptually at least) and the beef industry should have rights to protect its interests. Thankfully the Senate has an opportunity to end the inappropriate conduct of the alternative product producers. They should be forced to market their products without references to “beef” or “meat”. They do this to ensure that consumers make some association or connection with our products in terms of taste, texture, aesthetics and/or meal use. Profiting from the attributes of an unrelated product that is not the subject of a sale, is unjust.

CONCLUSION

Our industry operates in a highly transparent manner. Honesty is the foundation of the mutual respect we have built with our customers and consumers, and it is our expectation that other food producers do the same. We need to level the playing field between these alternative products and real meat. As committed beef producers all we want is a fair go for the product our family has produced for generations.



Thank you for the opportunity to make this submission. If you have any queries or would like to discuss our views on this matter, then please do not hesitate to contact the writer.

Kind Regards

Andrew Shearer-Smith
Chief Executive Officer
SMITHFIELD CATTLE COMPANY