



On Bullshit and Section 5 of the *Food and Drugs Act*

In his classic 1986 essay “On Bullshit,” Princeton University professor Harry Frankfurt makes an important distinction between lying and mere “bullshit.” The liar knows and cares about the truth but deliberately sets out to deny or disguise it; the bullshitter doesn’t care about the truth, he is simply trying to impress us or sell us something. The honest man and the liar really care about the facts but the bullshitter isn’t concerned with the facts except insofar as they may be pertinent to his interest in getting away with what he says: “He does not care whether the things he says describe reality correctly. He just picks them up, or makes them up, to suit his purposes.”

Which brings me to food labelling. It is not well understood that Section 5 of the *Food and Drugs Act* not only prohibits false claims on pre-packaged food labelling, but it also makes it illegal to have statements that are “likely to create an erroneous impression.” The *Guide to Food Labelling*, which sets out the government’s interpretations of section 5 of the Act, does not expressly refer to bullshit, but it comes close when it explains why it is a criminal offence to make such factual statements: they “infer [sic] a false uniqueness and give an unfair advantage to that food.”

In practice, unless there is a pushy competitor complaint, the Canadian Food Inspection Agency does not usually take aggressive enforcement against mere bullshit claims. So, for example, even though green tea is the only pre-packaged food that Health Canada allows to make an antioxidant claim, there has been a shameless proliferation of implied claims through the use of a trace amount of green tea, blueberry or acai, or just “blueberry flavour” to give the erroneous impression that the food has antioxidant qualities. The companies don’t really care about the facts (the science on the real value of antioxidants is not that clear anyway), they just want to get away with creating an erroneous impression.

Bullshit on food labels is everywhere. Other tolerated bullshitting claims common today include sea salt (trying to create the impression it is healthier than ordinary salt — it is not), organic (trying to create the impression that the food is safer, more nutritious, more sustainable — it is not), brown eggs (trying to create the impression they are different nutritionally from white eggs — they are not), and non-GMO (trying to create the impression the product is safer — it is not).

While it is not exactly the same as bullshit, the Americans have quite a body of jurisprudence on what they call “puffery” in food advertising. As Professor David Hoffman explains in his learned article “The Best Puffery Article Ever,” the U.S. Food and Drug Administration has concluded that there is no harm in it if reasonable people are not likely to take the statement literally.

Our own Dr. Bill Riedel, retired Health Canada food microbiologist, writes and blogs regularly on what he calls “truthiness.” He claims, in retirement, to have “found salvation in the academic literature on bullshit.”

For my part, I got into this aspect of Section 5 when the regulator recently threatened to take action against a client when I argued that the enforcement was not warranted because the statement was scientifically true and not intended to give an erroneous impression (the issue was stating the Glycemic Index of the food). The regulator argued back that the scientifically illiterate consumer might nevertheless have an erroneous impression — the test, it says, is not what is implied but inferred. That, I say, is another type of bullshit. ■

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