



The Law of Tea

Making health claims for tea products isn't as simple as it seems

Tea is the world's most popular prepared drink. Canadians drink more than nine billion cups of it a year. Currently the tea industry is experiencing real growth; in 2007, the Canadian tea market grew to over \$388 million in annual sales. Technically, tea in Canadian law is defined to be the beverage made from the *Camellia sinensis* bush. This tea first arrived in Canada in 1716 having been imported by that new joint stock enterprise, the Hudson Bay Company. Of course, Aboriginal Canadians had been drinking other forms of "tea" long before that. There are four basic types of tea: black, green, oolong and white tea. All others are technically herbal infusions (or tisanes) of some single ingredient or blend of flowers, herbs, roots, spices, fruits, berries or other plants.

The law of tea is more complex than most Canadians realize. Depending on how it is represented, tea (made from the *Camellia sinensis*) is regulated as either a food or a natural health product (NHP). Sold in a tea or tisane form, the product is regulated by the Canadian Food Inspection Agency as a food under Division 20 of the *Food and Drug Regulations*. If the product is in a non-food format – such as a pill or tablet – with health claims, then it may be regulated as a natural health product by the Natural Health Products Directorate at Health Canada. But this distinction is not so clear and the situation is changing.

After an extensive government review of the scientific literature, on May 9, 2007 a monograph was posted on Health Canada's website

allowing all infusion teas made from *Camellia sinensis* to make three claims as natural health products: source of antioxidants for the maintenance of good health; increases alertness; and helps to maintain and/or support cardiovascular health. Naturally, manufacturers of tea beverages were pleased that Health Canada scientists were finally recognizing what they had been saying all along. All manufacturers had to do was apply to be a NHP, which they did.

Yet without any warning or negotiation with the tea industry, the Health Canada website was changed in October 2007 so that the monograph no longer accepted the claims for tea beverages because Health Canada had changed its mind – hot beverage teas were now foods. Presumably, however, if other products added green tea extract and applied to be a NHP they could make the claims because this part of the monograph was not deleted.

Bear with me: the plot thickens. Given the deep regulatory confusion on food-like NHPs, the tea industry was then offered an olive branch – if you agree to be a food, said Health Canada's Food Directorate, then we agree to exempt you from the long established rule that no foods can make antioxidant claims and we agree you can make the biological role claim that "green tea increases antioxidant capacity in the blood" or "green tea has an antioxidant effect in blood (or on blood lipids)." The result is that green tea beverages can now make antioxidant claims as foods, the first that Health Canada has so recognized.

Because there is no pre-market approval required for these type of biological role claims, black tea manufacturers could also assert the claim on labels, billboards and other media if they think that they have the science to support it and are prepared to take the regulatory risk, but they would not get the pre-market approval for television ads as green teas now should. Herbal teas, like other products, can apply to be NHPs and try to assert various claims depending on their tolerance for regulatory risk.

Let this sorry tale be a warning to other products that are currently making health claims because they have applied to be NHPs, and which they cannot make as foods. Most energy drinks, vitamin enriched waters, several health bars and many other food-like NHPs, for example, are now competing on the same shelf with foods that cannot make these claims. They too could be vulnerable to capricious regulatory action. But they need not worry too much that the policy will be cleared up any time soon. Internal documents reveal that Health Canada now intends to seek a regulation to make all "foods" with claims regulated as food even if they have applied to be NHPs, a process that they admit will take years. In the meantime, confusion reigns supreme, with enforcement non-existent or uneven, and wholly unpredictable. ■

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