Commission Regulation (EC) No 1168/2009 of 30 November 2009 refusing to authorise a health claim made on foods, other than those referring to the reduction of disease risk and to children's development and health (Text with EEA relevance)

COMMISSION REGULATION (EC) No 1168/2009

of 30 November 2009

refusing to authorise a health claim made on foods, other than those referring to the reduction of disease risk and to children's development and health

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods[(1)], and in particular Article 18(5) thereof,

Whereas:

(1) Pursuant to Regulation (EC) No 1924/2006 health claims made on food are prohibited unless they are authorised by the Commission in accordance with that Regulation and included in a list of permitted claims.

(2) Regulation (EC) No 1924/2006 also provides that applications for authorisations of health claims may be submitted by food business operators to the national competent authority of a Member State. The national competent authority is to forward valid applications to the European Food Safety Authority (EFSA), hereinafter referred to as the Authority.

(3) Following receipt of an application the Authority is to inform without delay the other Member States and the Commission and to deliver an opinion on a health claim concerned.

(4) The Commission is to decide on the authorisation of health claims taking into account the opinion delivered by the Authority.

(5) Following an application from Brudy Technology SL, submitted on 9 October 2008 pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the effects of Algatrium® on antioxidant response (Question No EFSA-Q-2008-705)[(2)]. The claim proposed by the applicant was worded as follows: 'Algatrium® promotes your antioxidant response: a singular nutritional substance that has scientifically demonstrated in humans a stimulation of the own cells antioxidant defences'.

(6) On 16 March 2009, the Commission and the Member States received the scientific opinion from the Authority which concluded that on the basis of the data presented,

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 1168/2009. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

a cause and effect relationship had not been established between the consumption of Algatrium® and the claimed effect. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.

(7) The comments from the applicants and the members of the public received by the Commission, pursuant to Article 16(6) of Regulation (EC) No 1924/2006, have been considered when setting the measures provided for in this Regulation.

(8) Health claims referred to in Article 13(1)(a) of Regulation (EC) No 1924/2006 are subject to the transition measures laid down in Article 28(5) of that Regulation. However, for the health claim 'Algatrium® promotes your antioxidant response: a singular nutritional substance that has scientifically demonstrated in humans a stimulation of the own cells antioxidant defences', the Authority concluded that a cause and effect relationship had not been established between the consumption of Algatrium® and the claimed effect. Therefore, the claim does not comply with Regulation (EC) No 1924/2006, and consequently the transition period foreseen in Article 28(5) of that Regulation is not applicable. A transition period of six months should be provided for, to enable food business operators to adapt to the requirements laid down in this Regulation.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

The health claim set out in the Annex to this Regulation shall not be included in the Community list of permitted claims as provided for in Article 13(3) of Regulation (EC) No 1924/2006.

However, it may continue to be used for six months after the entry into force of this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 November 2009.

For the Commission

Androulla VASSILIOU

Member of the Commission