



May 13, 2022

Subject: Reconsideration and redetermination of a label complaint

In accordance with the decision of the Federal Court of Appeal (Canada (Attorney General) v. Kattenburg, 2021 FCA 86), the Canadian Food Inspection Agency (CFIA) has reconsidered and redetermined an earlier 2017 response to a complaint regarding “country of origin” labelling for two wines produced in the West Bank and sold in Ontario. This redetermination is made following a thorough review and consideration of the facts (including the specific labels in question), the Federal Court of Appeal direction in this matter, submissions from the two litigation parties to the appeal and relevant laws and policies under the CFIA’s responsibilities.

The two specific wines in question are: Psagot Winery M. Series Chardonnay KP 2014 and Shiloh Legend KP 2012 Shiraz Blend. They were available for purchase at the Liquor Control Board of Ontario (LCBO) in 2017 at the time that the complaint was made. The label for each indicated “Product of Israel” as the origin of these two wines.

It is the responsibility of regulated parties, including those who import food, to comply with the [Food and Drugs Act](#) (FDA), the [Food and Drug Regulations](#) (FDR), the [Safe Food for Canadians Act](#) (SFCA) and the [Safe Food for Canadians Regulations](#) (SFCR). Among other purposes, these acts and regulations are intended to enable consumers to make informed food choices based on information that is not “false”, “misleading” or otherwise in contravention of the applicable statutory and regulatory requirements.

Two broad prohibitions apply to all information provided in food labelling:

Subsection 5(1) of the FDA states:

No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

Subsection 6(1) of the SFCA states:

It is prohibited for a person to manufacture, prepare, package, label, sell, import or advertise a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, quality, value, quantity, composition, merit, safety or origin or the method of its manufacture or preparation.

As noted, as the original issue occurred in 2017, subsection 7(1) of the *Consumer Packaging and Labelling Act* (CPLA) applied at that time and states:

No dealer shall apply to any prepackaged product or sell, import into Canada or advertise any prepackaged product that has applied to it a label containing any false or misleading representation that relates to or may reasonably be regarded as relating to that product.

The food-related labelling provisions of the CPLA are no longer applicable with the coming into force of section 6 of the SFCA in 2019. This, however, does not change that a regulated party

must ensure their label is not “false”, “misleading” or “deceptive” or “likely to create an erroneous impression” related to its “origin”.

With respect to origin of imported wine, the FDR specifically provides at B.02.108:

“A clear indication of the country of origin shall be shown on the principal display panel of a wine.”

In this regard, the Federal Court of Appeal at paragraph 14 stated:

“... section B.02.108 of the *Food and Drug Regulations* insofar as it contemplates that the origin of wine products be identified by reference to their “country of origin”, cannot be applied literally when dealing with products that do not originate in a recognized country.”

Global Affairs Canada (GAC) has informed the CFIA that Canada does not recognize permanent Israeli control over territories occupied in 1967 (this includes the West Bank) and that the West Bank is a territory outside of the internationally recognized boundaries of the State of Israel. In addition, GAC has informed the CFIA that Canada considers that there is no recognized country where the two wines in question were produced, although these wines were produced in an area administered by the State of Israel. Accordingly, as there is no recognized country where the wines in question were produced, the Federal Court of Appeal decision noted above applies. This means that, the “country of origin” labelling requirement under B.02.108 of the FDR does not apply to the labels of the two wines in question, and no “country of origin” needs to be included on the label.

Since section B.02.108 of the FDR does not apply, the references to the Canada-Israel Free Trade Agreement (CIFTA) that the CFIA previously relied upon as an indicator to make its earlier 2017 response is no longer warranted. Consequently, this redetermination is not focussed on whether a “country of origin” needs to be included on the wine labels in question, rather the CFIA must determine whether the origin claim, “Product of Israel” on the label of the two wines in question is “false”, “misleading”, or “deceptive” or “likely to create an erroneous impression” related to its “origin”, given the totality of the information provided on the label. A label that is not compliant with any one of these criteria would be considered to be in contravention of the relevant provision(s). In other words, a label does not need to be in contravention of all of the above-noted criteria to be in non-compliance of the applicable provision.

The CFIA has reviewed the submissions provided by the litigation parties on the appeal in respect of this matter. While these submissions helped inform this redetermination, many aspects fall outside the scope of the CFIA’s redetermination. In making a determination of whether relevant labelling provisions apply, the CFIA generally considers factors as set out in its Industry Labelling Tool. Further information can be found under:

<https://inspection.canada.ca/food-label-requirements/labelling/industry/general-principles/eng/1392324632253/1392324755688?chap=0>

Given the above elements and the totality of the information provided on the applicable two wine labels, the voluntary claim “Product of Israel”, without clarifying information, is considered “false” under the relevant provisions of the FDA, SFCA and CPLA. These wines were not produced

within the internationally recognized boundaries of the State of Israel and there is no clarifying information included on the labels in question to inform a consumer that the two wines in question were produced in an area of the West Bank administered by the State of Israel. Since the CFIA finds that the claim “Product of Israel”, on the labels of the two wines in question, is “false”, it is not necessary to consider other elements of the relevant provisions (e.g., “misleading”, “deceptive”, etc.) to determine compliance with those provisions.

Certain Charter rights and freedoms were raised in regards to this matter for the first time during the court proceedings. In this regard, the Federal Court of Appeal’s decision at paragraph 18 stated:

“It will also be open to the Agency to receive submissions and determine whether Charter rights and freedoms are relevant to its decision-making, again ensuring that there is a reasoned explanation for its decision.”

In this regard, it has been assessed that the Charter provisions have no application in this redetermination. With respect to the claim of freedom of expression, there is nothing that prevents consumers from expressing their views, and no requirement for the CFIA to inform consumers on issues raised by the litigation parties through the food labelling system, including as it relates to wine. The CFIA is responsible for the administration and enforcement of food labelling requirements under the FDA and the SFCA. It is not responsible for the label used on the sale of the product, nor is it required to inform consumers of matters of this nature. With respect to freedom of conscience, similarly, consumer choice in selecting a wine remains unrestricted by the government, allowing consumers to continue to act in line with their conscience.

It should be noted that this redetermination relates only to the two wine labels in question. It is not the role of the CFIA to suggest accurate labels or to approve labels. Instead, the CFIA determines compliance with labelling requirements by regulated parties based on the facts, including the information provided on the label, and the applicable law. The CFIA intends to engage in a consultation process later this year where input will be sought from interested stakeholders on policy relating to what might be acceptable origin declarations in this and similar circumstances.

Sincerely,

Canadian Food Inspection Agency