

# The Health-Washed Line Between Foods and Natural Health Products

by Geneviève Eliany

Health Canada's Natural Health Products Directorate (NHPD) describes its role as ensuring ready access to natural health products that are safe, effective and of high quality while respecting freedom of choice and philosophical and cultural diversity.

Initially, products like cereals and energy drinks were granted natural product numbers (NPN) by the NHPD but they are now being transitioned to the "food" category in an attempt to reduce confusion among consumers. Health Canada writes: "[t]he end goal of this transition process is to ensure that products that look like foods and are consumed as foods are regulated as foods. In doing so, Canadians will be able to make more informed choices due to consistent nutrition information and labelling requirements."

Despite Health Canada's efforts to clarify product categories, there is an increasing blur between foods and natural health products caused by large-scale marketing and branding initiatives. This is often referred to by critics as "health-washing" or "nutriwashing."

For example, both original Cheerios and Honey Nut Cheerios carry a large green banner across that box that reads "Oat fibre helps lower cholesterol." On the other hand, a natural product like Renew Life's Fibre-Tastic! claims only "Source of



Fibres for the Maintenance of Good Health." In examining both claims, we see that a food product with a relatively small amount of oat fibre can make a very specific, enticing and artistically appealing claim on its box while the therapeutic fibre supplement is permitted to make only a general, meaningless claim.

The general nature of natural health product (NHP) claims is consistent and evident with a glance at labels. Vitamin C claims are perhaps the most surprising given its strong association with immunity. Few people would reach for vitamin C for wound healing!

## Spotlight on claims

**NOW Foods C-Complex:** Factors for the maintenance of good health and for normal development and maintenance of bones, cartilage, teeth, gums and a factor in wound healing.

**AOR Vitamin C:** Vitamin C is a factor in the normal development and maintenance of bones, cartilage, teeth and gums.

**Jamieson Vitamin C:** A factor in the maintenance of good health.

As part of its broad marketing strategies, Kraft Canada includes an artistic green "Sensible Solutions" banner with nutritional highlights on its packaging. In a similar fashion, PepsiCo brands its products with a green "Smart Choices Made Easy" checkmark badge. Both are used to manipulate consumers into believing they are making wise nutritional choices. However, the mere presence of whole grains, or the addition of fibre and synthetic vitamins, does not make a product healthy or a wise choice in support of health and well-being.

The health-washing marketing trend and the increasing

number of claims on highly refined and processed foods devalue the informative aspects of the NPN regime. The current regulatory system requires the use of vague pre-approved stock claims, only accentuating the confusion for consumers to make informed choices in the marketplace.

The legal definitions are of little help in differentiating products. Under the Food and Drugs Act, "food" is defined as "any article manufactured, sold or represented for use as a food or drink for human beings, including chewing gum, and any ingredients that may be mixed with food for any purpose whatever."

"Natural health product" means a substance set out in Schedule 1 of the Natural Health Product Regulations (NHPR) or a combination of substances in which all the medicinal ingredients are substances set out in Schedule 1, a homeopathic medicine or a traditional medicine, that is manufactured, sold or represented for use in:

- the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state or its symptoms in humans;
- restoring or correcting organic functions in humans; or
- modifying organic functions in humans, such as modifying those functions in a manner that maintains or promotes health.

The example of the Cheerios cereal product and its chole-

terol claim could fit the natural health product definition if it were considered a substance in accordance to Schedule 1 of the NHPR. To reconcile the similarities between natural health products and foods, Health Canada takes into account the product's composition, representation, format, and its public perception and history of use. The Food and Drug Regulations outline permitted nutritional additives for foods, and a therapeutic claim beyond the regulatory scope should make the food an NHP—but did not for Cheerios.

### Unfair advantage for some

This current regulatory system is very confusing and has unfair advantages for some manufacturers who benefit

from health-washed marketing. A therapeutic fibre supplement or any other NHP should not be more limited in its claims than a processed food. NHP manufacturers are at a growing disadvantage vis-à-vis mass health-washing schemes. Consumers are deceived because general claims and health-focused marketing by multinational corporations amount to misinformation without meaningful guidance. This is a curious trend since NHP licensing should allow for specific claims.

### Levelling the playing field

The regulatory answer is a difficult one. Claims and health-washing could be banned entirely, more heavily

CONTINUED ON PAGE 12

### HEALTH-WASHED LINE

CONTINUED FROM PAGE 11

regulated, presented with a government disclaimer, or all manufacturers could be granted carte blanche.

Each solution has its proponents but for NHP manufacturers wishing to rid themselves of the NHPD's shackles on health claims, the most promising option for the Canadian regulatory landscape may rely on freedom of expression. American courts have held that a truthful product claim is permissible if supported by scientific evidence. As a result, the U.S. Food and Drug Administration cannot ban health claims simply because the current scientific literature is inconclusive. Instead it may require a disclaimer be added to the label.

The series of decisions, available with highlights at [www.emord.com/significant-legal-cases.html](http://www.emord.com/significant-legal-cases.html), is significant because nutritional science is problematic. Studies vary and scientific consensus may be elusive. Without patents, the cost of long-term research and clinical trials is often unaffordable for most companies. On the other hand, history has shown that seeds of valid research and outlier holistic opinions, previously denied for decades, gain mainstream acceptance over time. We are seeing this currently with microbiome research and the recognition of probiotics, and an acknowledgment of the role inflammation, not fats, plays in heart disease.

Canadians will be in a better position to make informed decisions about their health, NHPs

and the foods they choose if meaningful health claims are permitted. While my bias is for a legislated presumption of safety as proposed by the Natural Health Products Protection Association's (NHPPA's) Charter of Health Freedom, the bureaucratic infrastructure for regulatory oversight already exists. The NHPD could either approve the claim or require a disclaimer under the NHP licensing process. Consumers would have NHP claims to ponder and investigate to make their own informed choices instead of wading through a sea of meaningless generalities and corporate health-washing of food products.

In the meantime, think of each purchase as a vote of support for the products you wish to see in the marketplace. I suggest you read ingredient

lists carefully and consider that splashy nutritional banners on food packaging are probably health-washing for corporate benefit. Use critical judgment and seek guidance from a natural health practitioner for in-depth guidance on NHPs.

Finally, to learn more about and take part in the NHPPA's current campaign for greater access to NHPs and truthful product claims, visit [www.nhppa.org](http://www.nhppa.org). You will find information on both active campaigns and the Charter of Health Freedom. ☺

Geneviève Eliany is a lawyer specialized in food and drug matters, natural health product regulation at Buckley & Company. She practised homeopathy and nutrition for 10 years before shifting to law. You can reach her on Twitter @wholisticlawyer. [www.buckleyandco.ca](http://www.buckleyandco.ca)

wholly :  
noggin

It's REAL food!

vegan, paleo, organic  
gluten / dairy / soy / GMO free  
very high in omega-3,  
high in fibre

Raw Whole Food Bar

whollynoggin.com

Fueled by Nature for  
Sustained Balanced Energy

ORGANIC • BIOLOGIC  
CANADA • VEGAN

USDA  
ORGANIC

U