

Japanese Food Mislabeling and the Government's Response

Introduction

The mislabeling of food became a prominent news story in 2013, as Japanese newspapers revealed that even high-end restaurants and department stores were guilty of selling mislabeled food. Anxious consumers, fearing for the safety of their food, turned their anger against not only the companies that had been mislabeling food, but also the government for failing to adequately monitor and regulate the labeling of food. In response to these criticisms, the government launched several new policies on food labeling and revised the Act against Unjustifiable Premiums and Misleading Representations (AUPMR). This paper will provide a brief overview of Japan's recent food mislabeling problem and the response of the Japanese government.

A rash of food mislabeling instances in 2013

In October 2013, the Hankyu Hanshin Hotel (HHH), one of the most prestigious hotels in Japan, conducted an internal investigation, spurred by reports of food mislabeling at other restaurants,ⁱ and found 47 instances in which food had been mislabeled in menus at HHH restaurants. For example, menus at HHH restaurants misrepresented processed meat injected with beef tallow as "beefsteak," ordinary sparkling wine as "Champagne," vegetables grown with pesticide as "organic vegetables," and chocolate purchased on the market as "handmade chocolate." HHH announced that food had been mislabeled in menus at HHH restaurants at a press conference held on October 23, 2013. There, the HHH explained that it was a long-standing custom in the restaurant business to exaggerate the quality of foods being sold. This explanation evoked outrage amongst HHH's customers.ⁱⁱ HHH was severely criticized for its defiant attitude at the press conference..

HHH's press conference marked the beginning of a rash of exposures of food mislabeling instances. Consumers became more concerned about the negative health implications of improper food labeling. For example, a consumer with an allergy to the materials used in meat processing could become severely ill if they were served processed meat that was improperly labeled as "steak." Observing consumers' fierce response to the HHH press conference, many restaurants and department stores conducted internal investigations into their own food labeling practices. As a result, numerous instances of food mislabeling were revealed. In October and November,

2013, more than 400 companies admitted to having sold improperly labeled food items. Among these companies were many prestigious restaurants and food retailers, such as Ritz-Carlton, Mikasa, Teikoku, Daimaru Matsuzakaya, and Mitsukoshi. As consumers' distrust of food labeling surged near the end of 2013, pressure mounted on the Japanese government to conduct a thorough review of the government's food labeling policies and regulations.

History of the AUPMR

Mislabeled has long been one of the more prominent problems plaguing the food industry. The labeling of food is one of the primary means of advertising available to a food vendor. Government regulations allow food vendors to include so-called "puffing" in their advertisements. Opinions about a food item are considered puffing because they are not facts and they are not considered to be a legally binding promise. Facts about a particular food item, however, should be accurately delivered to consumers because those facts must accurately communicate information about the quality and origin of the food item in order to protect consumers. For years, the Japanese government has been confronted with the difficult challenge of balancing the economic freedom of food vendors against the consumer interest to have food labeled accurately.

Information on food labels can be classified into three categories:

- (1) Information that the vendor is legally required to present;
- (2) Information that the vendor is allowed to present; and
- (3) Misleading information that the vendor inappropriately presents.

Various laws, such as the Food Sanitation Act, the Japanese Agricultural Standard Law, and the Health Promotion Law, regulate information that a food vendor is legally required to include on food labels for fresh and processed foods sold at retail stores. In contrast, there are no Japanese laws that require restaurants to include certain information. This means it is within the law for a restaurant to not have a written menu. Therefore, every piece of information included in a restaurant menu is either Type (2) or Type (3) information, i.e., information that the vendor is allowed to present or misleading information that the vendor inappropriately presents.

The Japanese government is responsible for surveillance of Type (3) information. However, there is much debate as to where the line between Type (2) and Type (3) information should be drawn. Determining whether information presented on a food label or menu is 'puffing' (i.e., lawful) or mislabeling (i.e., illegal) will often times depend on a variety of factors. For example, if a food vendor makes an exaggeration as to the

quality of a food item in a situation where it is obvious the food vendor is joking, that information would not be categorized as misleading Type (3) information. For this reason, the determination as to whether certain information constitutes improper or inaccurate food labeling needs to be made on a case-to-case basis.

The AUPMR, established in 1962, is an important law in that it provides a mechanism for the government to regulate the labeling of food items. The AUPMR was promulgated in response to a series highly publicized food mislabeling instances which began in 1960 when the government found that many canned food producers sold cans of horse and whale meat under the label of “beef.”ⁱⁱⁱ At first, the government attempted to prosecute the guilty producers for fraud. However, since the fake “beef” cans were sold at lower prices than the real beef cans, the selling of the fake “beef” did not meet the legal conditions for prosecuting fraud.^{iv} Therefore, the Japanese government had no means of prohibiting the type of mislabeling that occurred with the incidents of fake “beef.”

In addition to the problem of the fake ‘beef’ cans, numerous food vendors at the time were also grossly exaggerating the nutritious effects of their foods. Consumers began to demand for more accurate food labeling, leading to the promulgation of the AUPMR. The AUPMR prohibits vendors from presenting their commodities and services in a manner that is substantially different from what they are in actuality, or in a manner that will cause a consumer to believe that the product is better than it really is.^v

Trade organizations composed of companies in the food industry have been collaborating with the Japanese government to enforce food labeling regulations. One example of this collaboration between business entities and the government is the system of the Fair Competition Codes. Under the Fair Competition Codes, a group of companies in the food industry can organize to form a fair trade conference. Once the fair trade conference is approved under the terms of the AUPMR, the conference is then authorized to establish standards for the labeling of food. For example, the Japan Milk Fair Trade Conference, one of the fair trade conferences approved under the AUPMR, allows food vendors to label an item as “milk” only when the nonfat milk solid content of the item is 8.0% or higher and the milk fat content of the item is 3.0% or lower. In order to prevent confusion amongst consumers, the AUPMR requires all companies participating in the food industry, including those who do not participate in any fair trade conferences, to observe the standards of food labeling established by the fair trade conferences.

When the government finds an instance of potentially mislabeled food, the

government disposes of the matter through a process of administrative adjudication. If the vendor is found to have mislabeled a food item, the vendor is then required to disclose the fact of mislabeling to the public and to institute measures designed to prevent the mislabeling from recurring. If a vendor does not comply with the requirements imposed through this administrative process, the vendor is subject to imprisonment and/or fines. In light of the fact that mislabeling has the potential to produce substantial profits for vendors, the administrative penalties that have typically been imposed pursuant to the provisions of the AUPMR are relatively small, and many argue that these penalties fail to act as a sufficient deterrent to prevent food mislabeling.

The 2013 revisions to the AUPMR

As a response to the rash of food mislabeling cases in 2013, the Japanese government established a special committee to investigate the food labeling problem, called *Shokuhin Hyouji tou Mondai Kankei Fushouchou tou Kaigi* (translation: “the Council for Food Labeling Problems etc. among the Related Ministries, Agencies, etc. “; hereinafter “*Shokuhin Hyouji Council*”). The *Shokuhin Hyouji Council* consisted of the Chief Cabinet Secretary, the Minister of State for Consumer Affairs and Food Safety, and representatives from the ministries and agencies engaged in consumer affairs. The *Shokuhin Hyouji Council* found three primary reasons why mislabeling was so rampant. First, the level of awareness concerning compliance with labeling regulations was low in the food industry. Second, the government’s public relations strategy in regards to the AUPMR was insufficient. Third, the government’s system of regulating mislabeling was rife with imperfections.

On December 19, 2013, the *Shokuhin Hyouji Council* presented a three-pronged approach for reforming the government’s food labeling policies. The first-prong of this approach was to take action against those food vendors that had already been found to have committed acts of food mislabeling. Thus, on December 19, 2013, the government instituted an administrative penalty process under the AUPMR against three companies. The second-prong was to provide detailed guidance to food business companies on their legal obligations in regards to the labeling of food. Thus, on March 28, 2014, the Consumer Affairs Agency (CAA), an external bureau of the Cabinet Office, published a new guideline booklet on the application of the AUPMR.^{vi}

The third-prong of the approach recommended by the *Shokuhin Hyouji Council* was to revise the AUPMR to allow for a more efficient and streamlined investigation

and penalty process. Based on this recommendation, on March 11, 2014, the government submitted a bill for the revision of the AUPMR to the Japanese Legislature. The bill passed in June of 2014 and will come into force in December of 2014. Prior to the recent revision to the AUPMR, only the CAA was in charge of investigating suspicious food labeling instances and issuing administrative penalties to those who were found to have mislabeled a food item.^{vii} In contrast, the revisions to the AUPMR provide that, in addition to the CAA, the prefectural governments, the ministries, and the government agencies having jurisdiction over food policies, such as the Ministry of Agriculture, Forestry and Fisheries, are also in charge of investigating suspicious food labeling instances and issuing administrative penalties to those entities found to have mislabeled a food item.

Introducing a surcharge system under the AUPMR

As mentioned earlier, it is often argued that the penalties imposed upon those entities found to have mislabeled a food item are insufficient to deter additional food mislabeling in the future. In response to these concerns, on October 24, 2014, the government submitted a bill for the revision of the AUPMR for introducing a surcharge system for those entities found to have mislabeled a food item. The bill, which passed through the legislature on November 19, 2014 and will come into force in the spring of 2015, contains three primary provisions. First, if a vendor, after an administrative proceeding, is found to have mislabeled a commodity or service and the sale of the mislabeled commodities or services exceeds 50 million yen, the vendor must pay a surcharge of 3% of the sale to the national treasury. Second, if a vendor who is found to have mislabeled a commodity or service voluntarily refunds consumers who bought the mislabeled commodities or services, then the applicable surcharge will be reduced by the amount of the refunded money.^{viii} Third, a vendor can have a surcharge reduced if the vendor voluntarily reports its own mislabeling before the CAA or other authorities start an investigation for mislabeling.

ⁱ On June 24, 2013, Prince Hotel announced the release of a report titled *Menyu Hyouji to Kotonatta Shokuzai wo Shiyo Shiteitakoto ni Kansuru Owabi to Oshirase* (translation: 'Notice and Apologize for Having Used Materials in Foods that are Different from What are Written in Menus'). In this apology, Prince Hotel listed 55 instances in which its own

restaurants had improperly labeled food in their menus. For example, Prince Hotel offered domestically grown vegetables in their menu despite serving their patrons only imported vegetables. Prince Hotel's announcement became a topic of conversation in the hotel industry and motivated HHH to conduct an internal investigation of HHH's food labeling practices.

ii Interestingly, while the instances of HHH's mislabeling are similar those of Prince Hotel, HHH's announcement received a much harsher response from the general public. One reason for the harshness of the public response to HHH is likely the ambivalence displayed by HHH at its October 23 press conference (see Morita, M, *Shokuzai Giso* (Food Mislabeling), Tokyo: Gyosei, 2014).

iii This incident began when a consumer reported at a public health center that she found a fly in a "beef" can. The public health center conducted an investigation and detected that the can of "beef" contained whale and horse meat. The government then conducted a full inspection of the contents of all "beef" cans on the market and found that many of them also used horse and whale meat. Frustrated with the fake "beef" can problem, an organization called the Housewives' Federation began a nationwide campaign denouncing the mislabeling of food items.

iv This is because whale meat was cheaper than beef at that time.

v The AUPMR covers the labeling of all commodities and services sold to consumers. The application of the AUPMR is therefore not limited to food. In addition, the AUPMR also regulates misinformation in regards to the terms of a transaction. For example, the standard retail price of an item cannot be advertised as a "limited-time-only" price.

vi The guideline booklet, presented in a question and answer format, is available at www.caa.go.jp/representation/pdf/140328premiums_4.pdf.

vii Before the CAA was established in September 2009, the Fair Trade Commission, another external bureau of the Cabinet Office, was in charge of enforcing the AUPMR.

viii If the total amount of money that the vendor refunds to consumers exceeds the calculated surcharge (i.e., 3% of the sale of mislabeled commodities and services), then the vendor need not to pay any money to the national treasury.