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# Food Labelling Law in Ghana

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*"There would always be only one way for the young to reach the gleam. Cutting corners, eating the fruits of fraud."*

- Ayi Kwei Armah, *The Beautiful Ones Are Not Yet Born* (1968)

## Introduction

Current laws establishing food labelling obligations in Ghana have their genesis in a long history of legal provisions dating back to 1888. The current complement of labelling legislation consists of statutes and subsidiary legislation passed during a span of forty years from 1960 to 2000. The system has evolved through a number of regime changes, economic upheavals and rebirths and bears up well providing a very respectable assembly of food labelling rules which promotes both commercial interests and provides consumer information.

The food labelling regime faces, however at least two significant challenges. First, legislation creating labelling obligations over the years has become overgrown with several statutes governing labelling and even more subsidiary legislation dealing with labelling obligations for similar products in different ways. As well, responsibility for overseeing labelling obligations and enforcement has since the 1990s been murkily concurrent between two government departments. This challenge, however, is not unknown in other jurisdictions. Second, and a perhaps larger challenge, is the effectiveness of enforcement of food labelling obligations. Enforcement of these obligations is difficult not only because of jurisdictional issues between two government departments but also due to a lack of sufficient resources and to structural problems in the legislation governing food labelling itself. One such structural problem is the loss of the threat of effective fines as a means of encouraging labelling compliance because statutory limits have become meaningless with the devaluation of the Ghanaian cedi.<sup>1</sup> These challenges are not insurmountable and even now prospects for administrative and legislative reform are being considered to improve food labelling. These activities suggest then that the issue of food labelling remains one which is being taken seriously in Ghana.

This paper will be divided into three parts. The first part chronicles the historic development of food labelling law from colonial times to 1967 when the first significant "homegrown" Ghanaian laws on food labelling made their appearance. The second part examines the current regulatory structure for food labelling and sets out the major food labelling obligations in Ghanaian law. In the final part, an appraisal of the challenges facing food labelling law in Ghana is presented with comments on the adequacy of the current regime juxtaposed with possible avenues for reform available for modernizing Ghanaian food labelling law. An additional resource to this study is attached as an annex which sets out an historical and current account of Ghanaian food labelling legislation.

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<sup>1</sup> Even as late as the 1970s the official exchange rate was about 5 cedis to 1 USD. "Chapter 1 - The Making of the Crisis: From Nkrumah to Limann", Eboe Hutchful, *Ghana's Adjustment Experience: The Paradox of Reform* (Geneva: United Nations Research Institute for Social Development, 2002) at 7. In March 2003, 1 USD could be exchanged for about 8800 cedis.

Copies of this legislation are available in an accompanying volume entitled "Legislation and Subsidiary Legislation Affecting Food Labelling in Ghana (as of April 1, 2003)."

## ***A. The Ghanaian Food Market and Food Labelling***

The food market in Ghana has several levels. At a most basic level, a large portion of the population produces its own staples or buys unlabelled food directly from producers, from street vendors, or from small entrepreneurs. While any of these three sources may have some foods that are labelled, most bulk and fresh products will be neither labelled nor packaged. Ghana produces much of its own food supply, including fish, starches (such as cassava, yams, plantain, maize and rice), fresh vegetables (such as carrots, zucchini, tomatoes and onion), fruit (including bananas, mangoes, pineapples) and edible oils, particularly from palm-kernels. A second level of the food market consists of value-added products that are produced in Ghana and which are usually packaged and labelled. This includes hundreds or thousands of everyday food products such as basic starches, edible oils, spreads like peanut butter, drink products and chocolate. A third level of the food market is that of the supermarket, most of which are small and few in number by comparison to those found in European or North American countries, but which like the latter have a large variety of domestically-produced and imported foodstuffs almost all of which are packaged and labelled.

In addition to the domestic food market, Ghana produces food products for export. The most significant is cocoa, which has its own marketing board. But coffee and bananas are also produced. Ghana also has a significant export market in edible oils, particularly coconut meal (copra) and palm kernels. There are special regimes for the regulation of each of these products, although the regimes are not markedly similar. This interest on the part of the Ghanaian government is to be expected given the importance in ensuring that export products are of a high quality and are appropriately labelled so as to be attractive in international markets.

However, Ghana's interest in labelling issues extends far beyond its interest in securing and maintaining international markets for its primary agricultural exports. The food labelling regime also serves to pursue several other important objectives in Ghana such as protecting intellectual property of trademark holders, regulating fairness and establishing standards in the marketplace for the benefit of both vendors and consumers, and preventing fraud and deception in the marketplace. It is through the lens of each of these objectives that this study will analyze the development and evolution of Ghanaian food labelling law.

## ***B. Political and Legislative Context for Food Labelling Law***

Colonial legislation affecting food production and marketing first appeared in the Gold Coast in the late 19th century. This legislation, sometimes of a general nature, such as that standardizing weights and measures for marketplace regulation and sometimes of a specific nature to enhance exports such as for cocoa, was the embryo from which new legislation would take shape after 1957 in the new independent Ghana. A short account

of the political and legislative history of the region from the last two centuries demonstrates that political stability has not been a hallmark of Ghana until very recently. This history has produced a number of changes to the way in which legislation has been passed and its nomenclature. As well, Ghana's history of political upheaval has, no doubt, also been responsible for some of the intricacies of current labelling legislation examined in Part II of this study.

Ghanaian history has been one of successive waves of domination, conquest and re-emergence of various cultural and political groups. Ghana's break from its colonial masters dates from only 1957 when it became the first sub-Saharan African country to achieve independence. However, the history of the people and the region of what is present day Ghana have been documented to prehistoric times.<sup>2</sup>

Present day Ghana is located in what was formerly known as the "Gold Coast."<sup>3</sup> By the 18th century European powers, primarily the British, French and Portuguese, brought sub-Saharan Africa under their control. British control was made official began with the passage of the *Foreign Jurisdiction Act* in 1843 by the British Parliament, which gave the British Government control over the Gold Coast and several other regions of Africa. During subsequent years, British military and administrative institutions established control over the entirety of present-day Ghana.<sup>4</sup>

Colonial rule brought among other things, the development of new products for export trade. Of great significance was the development of the cocoa industry. Cocoa, indigenous to South America was first commercially grown by a Ghanaian, Tetteh Quashie, in 1879. Cocoa production took root, however, in 1886 when the British Governor of the Gold Coast, Sir William Brandford, gave his official support to the growing of cocoa in the Gold Coast. Its success in Ghana is evidenced by the fact that Ghana was the world's leading producer from 1910 to 1976 dropping to the third largest producer in recent years.<sup>5</sup>

On the political front, during the first half of the 20th century, Gold Coast citizens were permitted only a limited expression in their political future. However, protests after World War II and the rise of indigenous politicians pressured colonial authorities to grant

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<sup>2</sup> Patrick Puy-Denis, *Le Ghana*, (Paris: Editions Karthala, 1994) at 16-23.

<sup>3</sup> From approximately the year 1000 through to the 1500s, vast amounts of gold were exported from this region. The trade in gold eventually gave way to a trade in slaves. Despite this insidious change in commodity, trade in Ghana was a major component of its economy and formed a foundation for the receipt of European manufactured products well into the twentieth century and remains vital to its economic well-being today.

<sup>4</sup> For example, the Ashanti regions of central Ghana did not finally come under British rule until 1901 after the Ashanti Wars (1807-1874). See Puy-Denis at 217ff. By 1850, the first legislative and executive council was established for the administration of the colony of the Gold Coast with the first African member (Mr. George Blankson from Anomabu in western Ghana) of the legislative council named in 1861. Ultimate control of the colony remained however with the British Governor-General based in Sierra Leone. The Governor-General was also the Official Representative of the British Head of State for Sierra Leone, the Gambia and Lagos, see Puy-Denis, *Le Ghana* (Paris: Editions Karthala) at 217ff.<sup>4</sup> See also "Chapter 1 - The Making of the Crisis: From Nhrumah to Limann", Eboe Hutchful, *Ghana's Adjustment Experience: The Paradox of Reform* (Geneva: United Nations Research Institute for Social Development, 2002).

<sup>5</sup>J. E. K. Amoah, *Development of Consumption, Commercial Production and Marketing - Cocoa Outline Series* (Accra: Jemre Enterprises Limited, 1995) at 45.

increasing political freedoms until Ghana's independence from the United Kingdom officially took effect on March 6, 1957.<sup>6</sup>

Independence was not without its trials, trials which continue to present day Ghana.<sup>7</sup> The country has swung between civilian and military governments as well as between dictators and democratic assemblies. From independence in 1957 to 1966, the government of Ghana was presided over by Dr. Kwame N'Krumah.<sup>8</sup> A military government called the National Liberation Council (NLC), led by Lieutenant-General J.A. Ankrah, reigned from 1966 to 1969. His government passed a number of legislative acts very quickly upon coming to power including the first general labelling law.<sup>9</sup> The military government of the NLC was replaced by a civilian one lead by Prof. Busia in 1969 which ushered in the Second Republic and laws called the Constitution Acts of the Second Republic. However, the regime was short-lived and by 1972, a second military coup brought General Ignatius Kutu Acheampong to power under the banner of the National Redemption Council (NRC).<sup>10</sup>

The 10 year period following 1972 was a very turbulent one in Ghana. In 1975, the Executive Council of the NRC was abolished and replaced by the Supreme Military Council with laws passed during that period called Supreme Military Council Decrees. In 1977, a new ruling coalition of military and civilian individuals was formed but it was short-lived with a third military coup sweeping Lieutenant-General Frederick W.K. Akuffo to power in 1978. In 1979, reestablishment of a new civil multi-party democratic

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<sup>6</sup> For the purposes of this study it is important to note that all legislation prior to independence consists of legislation and subsidiary legislation of the colonial government. All legislation during the colonial period was recorded in the year that it was passed, for example Ordinance No. 9 of 1896 - Weights and Measures and was then occasionally consolidated. A final consolidation of pre-independence legislation occurred in 1954 for all legislation enacted on or before the 31st day of December 1951. This consolidation was in five volumes containing 224 chapters. The notation for a chapter in the consolidated Laws of the Gold Coast 1951 is, for example as follows: Weights and Measures Ordinance (Cap. 188). Any legislation promulgated after 31 December 1951 and before 6 March 1957 is only available as an ordinance of the year in which it was passed and thus bears a number from that year as its citation. Equally, pre-independence subsidiary legislation is recorded in the year of its introduction but it was consolidated one final time in 1956 for all subsidiary legislation passed on or before 31 December 1954. This consolidation is collected confusingly in a four volume set consisting of Volumes I to XI and chapters 151-272. Instruments in the consolidation are referred to by volume and page of the Subsidiary Legislation in Laws of the Gold Coast (1954). Some of this subsidiary legislation is still in force as in the case of *The Merchandise Marks (Prohibited Goods) Regulations, 1963 (VOL. X, p. 425)* All subsequent subsidiary legislation is collected in three series: from 1955-1959 under the abbreviation L.N. meaning "Legislative Notice; Statutory Instrument in Annual Volumes of Subsidiary Legislation (1955-1959)"; from 1960 - present under the abbreviation L.I. meaning Legislative Instrument (1960- ); or from 1960 - present under the abbreviation E. I. meaning Executive Instrument.

<sup>7</sup> See generally Eboe Hutchful, "Chapter 1 - The Making of the Crisis: From Nkrumah to Limann", Eboe Hutchful, *Ghana's Adjustment Experience: The Paradox of Reform* (Geneva: United Nations Research Institute for Social Development, 2002).

<sup>8</sup> During the time of Dr. N'Krumah's leadership, the country's government was transformed from constitutional monarchy to republic to one-party state. All laws under the three periods however are recorded under the same numbering system of an Act number and the year that it was passed.

<sup>9</sup> These laws bear the nomenclature of National Liberation Council Decrees plus a sequential number such as the Standards Decree, 1967 (N.L.C.D. 199).

<sup>10</sup> Laws passed during this period were called National Redemption Council Decrees followed by a sequential number and included for example, the Standards Decree, 1973 (N.R.C.D. 173).

government failed when a fourth and fifth coup brought Flight Lieutenant J. Rawlings to power to direct the formation of the new civil government.<sup>11</sup>

On 18 June 1979, Dr. Limann was elected as the leader of the People's National Party (PNP) and while the Constitution for the Third Republic was written by the A.F.R.C. and came into existence under the military regime, power was returned to civilians under the leadership of Dr. Limann on 1 October 1980. On 30 December 1981, however barely a year later, a sixth coup led again by Flight Lieutenant J. Rawlings deposed the civilian government and ended the Third Republic. Rawling went on to rule the country for two decades.<sup>12</sup> In 1992, Rawlings stepped down as military leader and stood for the presidential elections when the military handed power over to civilians under the Constitution of the Fourth Republic. He was successful in two elections but was barred by the Constitution from standing for a third term. In 2000, Dr. John Kufuor, from an opposition party was elected as Ghana's second President under the Fourth Republic.<sup>13</sup>

It is not surprising that food labelling legislation passed during this 40 year period was at times contradictory, or at least, not consistent. What is perhaps more surprising is that there was legislation passed on this issue at all.<sup>14</sup>

## **Part I - The Legislative History of Food Labelling Law in Ghana (1843-1966)**

While it may seem presumptuous to begin the study of food labelling law in Ghana with the start of the formal period of colonial rule (some labelling of foods must have existed in some form in pre-colonial Ghana), this period provides the best basis from which to proceed given the written record preserved by English colonial governments. By 1843, following 13 years of British nation-building in the Gold Coast by British General MacLean, the British Parliament passed the *Foreign Jurisdictions Act* which authorized Parliament to exercise its authority over the Gold Coast (and other colonial jurisdictions) in the same manner as if the country had been acquired by conquest or transfer.<sup>15</sup> Thus the adoption of English-style common law and legislation starting from 1843 became the heritage for all later jurisprudence of the Gold Coast and, after 1957, of Ghana to the present.

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<sup>11</sup> This transitional time saw several pieces of new legislation introduced as Armed Forces Revolutionary Council Decrees (A.F.R.C.D.) including for example the Standards (Amendment) Decree, 1979 (A.F.R.C.D. 44)).

<sup>12</sup> From 1981-1992, Rawlings was leader of the Provisional National Defence Council (P.N.D.C.) and thus laws promulgated under this regime were Provisional National Defence Council Laws (P.N.D.C.L.), such as the Food and Drugs Law, 1992 (P.N.D.C.L. 305B).

<sup>13</sup> All laws under the Fourth Republic are numbered by title, Year and a sequentially numbered act, such as the Food and Drugs (Amendment Act, 1996 (Act 523)).

<sup>14</sup> Furthermore, despite the turbulence of the 1966-1992 period, subsidiary legislation nomenclature did not change. Thus since 1959, all subsidiary legislation is referred to either as a Legislative Instrument (L.I. + number) or an Executive Instrument (E.I. + number). For the purposes of this study on Ghanaian food labelling law, all subsidiary legislation has been carried out by Legislative Instrument rather than by Executive Instrument.

<sup>15</sup> Patrick Puy-Denis, *Le Ghana*, (Paris: Editions Karthala, 1994) at 92-93.

Initial legislation in the Gold Coast did not focus on matters such as commercial or health issues but rather on the more immediate political ones designed to complete the process of colony-building. However, by the end of the 19th century, the first commercial statutes were passed. Ones such as the Merchandise Marks Ordinance of 1888, the Criminal Code Ordinance of 1892, the Towns and Public Health Ordinance of 1892, the Weights and Measures Ordinance of 1896 and the Trade Marks Ordinance, 1900 formed the embryo of the future legislative package that today regulates food labelling law in Ghana.

## ***A. Protecting Intellectual Property in the Marketplace***

Already in the 19<sup>th</sup> Century, the Gold Coast Administration introduced legislation to protect intellectual property and to prohibit the unauthorized use of such property. This was clearly to benefit commercial interests existing in the United Kingdom. In addition to the common law tort remedy of passing off, two ordinances were enacted to protect trade marks and to govern their legitimate use—Merchandise Marks and Trade Marks.

### **1. The Merchandise Marks Ordinances and the Merchandise Act, 1964**

#### **-the Merchandise Marks Ordinance, 1888<sup>16</sup> and its consolidation in the Merchandise Marks Ordinance, 1951<sup>17</sup>**

This legislation introduced liability specifically for the illegitimate use of trade marks and more generally for the labelling and sale of falsely described goods. The preamble of the Ordinance stated that the purpose of the legislation was “to regulate the law as to fraudulent marking of merchandise, and as to the sale of merchandise falsely marked for the purpose of fraud.” Thus the Ordinance proscribed the fraudulent use of trade marks, their forgery and even the production, possession and use of instruments to forge or apply such marks to products destined for sale in the Gold Coast.

S. 1 of the Ordinance created four offences arising from marketplace abuses. The first three offences related to the forging and improper use of trade marks in the preparation and sale of goods in the Gold Coast. The fourth offence related to the more general offence committed by any person who “applies any false description to goods.”<sup>18</sup>

S. 2(3)(i) of the Ordinance set out penalty provisions for persons convicted of offences under it. Penalties included two years of imprisonment, with or without hard labour and/or a fine and forfeiture to her Majesty of “every chattel, thing, instrument or thing by means of or in relation to which the offence [was committed].”

The Ordinance contains more than one provision which demonstrates the intent of the legislation to protect products enjoying trade marks registered in the United Kingdom or bearing names or descriptions as having been produced in the United Kingdom from falsification or other fraudulent acts. For example, the Ordinance prohibits the

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<sup>16</sup> No. 4 of 1888.

<sup>17</sup> Chapter 178.

<sup>18</sup> S. 1(d).

importation into the Gold Coast of any products that bear marks of names of a place or dealer in the United Kingdom unless the mark is accompanied by a definite indication of the country in which the goods were produced.<sup>19</sup> Another provision prohibits the use of a place name in the United Kingdom on any product unless the product also is accompanied by the name of the country in which that place is situated.<sup>20</sup> Finally all references to legislation in force are to the English law of patents, designs and trade marks.

The pre-independence consolidation of the 1888 Ordinance—The Merchandise Marks Ordinance, 1951 contained some important changes from the original Ordinance. First, it contained a definitions section including ones for “false trade description”<sup>21</sup> and “trade description.”<sup>22</sup> It also contained the first explicit reference to “labels.” Pursuant to s. 4, a person was deemed to apply a trade mark or mark or trade description to goods if it was applied to the product itself or to “any covering, label, reel, or other thing in or with which the goods are sold.” “Covering” and “label” were further defined in the section with the former including “any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper” and the latter including “any band or ticket”.

Another interesting change in The Merchandise Marks Ordinance, 1951 from the 1888 Ordinance was that the ordering of the offences under the legislation changed, putting the offence of applying a false trade description to a good as the first offence under the legislation with the trade mark offences following. Perhaps this change indicates a nascent change in emphasis from a statute designed to primarily protect intellectual property to one which has a dual purpose of protecting intellectual property and of protecting sellers and consumers from fraudulent labelling practices in the marketplace.

#### **-the Merchandise Marks Act, 1964**

Shortly after independence, the democratic government of Dr. N’Krumah revised, ever so slightly, The Merchandise Marks Ordinance, 1951 and passed the result as the Merchandise Marks Act, 1964, which remains in force in Ghana today. Its specific provisions pertaining to current Ghanaian food labelling law are examined in Part II below. The 1964 Act included slightly broader definitions of “false trade description”<sup>23</sup>

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<sup>19</sup> S. 3(1).

<sup>20</sup> S. 3(4).

<sup>21</sup> S. 2(1) states that “false trade description” means “a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description whether by way of addition, effacement or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of the Ordinance.”

<sup>22</sup> S. 2(1) states that “trade description” means “any description, statement, or other indication, direct or indirect – (a) as to the number, quantity, measure, gauge, or weight or any goods; or (b) as to the place or country in which any goods were made or produced, or (c) as to the mode of manufacturing or producing any goods; or (d) as to the material of which any goods are composed; or (e) as to any goods being the subject of an existing patent, privilege, or copyright, and the use of any figure, word, or mark which according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Ordinance.”

<sup>23</sup> S. 17 states that “false trade description” means “a trade description which is false or misleading in a material respect as regards the goods to which it is applied, and includes every alteration of a trade

and “trade description.”<sup>24</sup> The Act retains its dual purpose to prevent the fraudulent use of “protected marks”<sup>25</sup> and to ensure a minimum standard amongst merchants not to misdescribe or mislabel products for sale. While the Act retains penalties of forfeiture of impugned products, all other offences under the Act are classified as misdemeanours<sup>26</sup> subject to the penalties for these offences in accordance with s. 296 of the Criminal Procedure Code.

## 2. The Trade Marks Ordinances and the Trade Marks Act, 1965

**-the Trade Marks Ordinance, 1900; the Trade Marks Ordinance, 1914;<sup>27</sup> and their consolidation in the Trade Marks Ordinance, 1951<sup>28</sup> and the Trade Marks (Amendment) Ordinance, 1951<sup>29</sup>**

The Trade Marks Ordinances promulgated at the turn of the last century set out the basic framework for protection of intellectual property in trade marks and for the use of marks in commerce. The 1914 Ordinance defined “mark”<sup>30</sup> and “trade mark.”<sup>31</sup> Trade marks would be registrable if they contained any of the following particulars: the name of a company, individual, or firm represented in a special or particular manner; the signature of the applicant for registration or some predecessor in his business; an invented word or invented words, a word or words having no direct reference to the character or quality of the goods and not being according to its ordinary signification a geographical name or a surname; any other distinctive mark. Thus the criterion of “distinctiveness” was the

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description whether by way of addition, effacement or otherwise, where that alteration makes the description false or misleading in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark shall not prevent the trade description from being a false trade description within the meaning of the Act.” (changes from the Merchandise Marks Ordinance, 1951 underlined).

<sup>24</sup> S. 17 states that “trade description” means “any description, statement, or other indication, direct or indirect – (a) as to the number, quantity, measure, gauge, or weight or any goods; or (b) as to the standard of quality of any goods, according to a classification commonly used or recognized in the trade; or (c) as to the fitness for purpose, strength, performance or behaviour of any goods, or (d) as to the place or country in which any goods were made or produced, or (e) as to the mode of manufacturing or producing any goods; or (f) as to the materials of which any goods are composed; or (g) as to any goods being the subject of an existing patent, privilege, or copyright (...).” (changes from the Merchandise Marks Ordinance, 1951 underlined with (...) meaning part of the definition has been deleted in the later legislation).

<sup>25</sup> Registered trade marks and registered certification marks.

<sup>26</sup> S. 2 of the Act sets out a number of defences to such charges including lack of intent to defraud, reasonable care exercised to not misdescribe goods and cooperation with the prosecution to provide information as to the persons on whose behalf the description was applied.

<sup>27</sup> No. 5 of 1914.

<sup>28</sup> Chapter 180.

<sup>29</sup> Chapter 181.

<sup>30</sup> The Ordinance defines “mark” as including “a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof” (s. 2 of the Trade Marks Ordinance (No. 5 of 1914). All subsequent references in this section are to this ordinance unless otherwise noted.

<sup>31</sup> The Ordinance defines “trade mark” as “a mark used or proposed to be used upon or in connection with goods for the purposes of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale” (s. 2).

touchstone of a registrable mark such that the mark had to be able to separate those products of the applicant from those of other persons.

The Ordinance did however set out some limits on what could be registered as a trade mark. Any “matter the use of which would, by reason of its being calculated to deceive or contrary to law or morality, or any scandalous design” was not registrable<sup>32</sup> as were marks that were too similar to existing registered marks. Furthermore, no word which was the commonly used in ordinary trade was permitted for registration.<sup>33</sup>

The Ordinance, in effect, protected trade marks by giving the proprietor of the registered trade mark the exclusive right to the use of the trade mark in relation to his goods. This legislation was a very early limit on the traders and sellers in the way in which they were permitted to market and label their products. It was undeniably connected to the English statutes of the same period. S. 9 of the 1914 Ordinance, for example, stated that any mark registered under the English Trade Marks Act, 1905 would be deemed to be “distinctive” for the purposes of an application under the Gold Coast Ordinance.

### **-the Trade Marks Act, 1965**

The Trade Marks Act, 1965,<sup>34</sup> still in force today in Ghana, was the post-independence embodiment of the Trade Marks Ordinance passed by the N’Krumah government. Its specific provisions pertaining to current Ghanaian food labelling law are examined in Part II below. The 1965 Act did include some new marking requirements for all products. Besides slightly redefining “trade marks”<sup>35</sup> and “marks,”<sup>36</sup> the Act in s. 57 prohibited for the first time the unauthorized use in commerce<sup>37</sup> of “any badge, seal, device, emblem or flag” reserved by law for the official use of the state and its official bodies.<sup>38</sup> It continued the prohibition that persons who were not the proprietors of particular trade marks were precluded from using the registered mark or any mark that closely resembled that mark on their product labels unless they wished to subject themselves to a possible action for trade mark infringement. Thus, the registration of a person as proprietor of a certification trade mark in respect of any goods gave that person

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<sup>32</sup> S. 12.

<sup>33</sup> S. 15(4).

<sup>34</sup> Act 270.

<sup>35</sup> The Act defines “trade mark” as “except in relation to a certification mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as a registered user to use the mark, whether with or without indication of the identity of that person, and means, in relation to a certification mark, a mark registered under section 36 of this Act.”

<sup>36</sup> The Act defines “mark” as including “a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof (s. 66(1)) and “use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in physical or other relation to, goods.” (s.66(2)).

<sup>37</sup> Including, by inference, on food product labels.

<sup>38</sup> Labels using such elements would expose the producer to a fine of 20 Ghanaian pounds or to up to 3 months imprisonment.

the exclusive right to the use of the trade mark in relation to those goods under the Act<sup>39</sup> and infringement of this right was actionable under the Act.<sup>40</sup>

In addition to providing for infringement actions, the Act also set out specific penalty provision for false representations that marks used in commerce are registered trademarks when they were not. If convicted under this provision, offenders were liable to a fine up to 20 pounds.<sup>41</sup>

The Act also took into account for the first time the necessary of provisions for the registration of trade marks already registered in foreign jurisdictions. The Act stated that where Ghana was a party to an international arrangement with any other country for the mutual protection of trade marks and the President of Ghana was satisfied that the country outside of Ghana made adequate provision for the protection of trade marks registered in Ghana,<sup>42</sup> foreign trade marks would be registered and thus protected under Ghanaian law.

## ***B. Standardizing the Marketplace - Weights and measures***

### **1. Colonial legislation**

Rudimentary labelling requirements can be gleaned from early market-regulating legislation affecting the use of weights and measures. The earliest Weights and Measures legislation in Ghana was the 1892 Towns and Public Health Ordinance.<sup>43</sup> Part VIII of the ordinance dealt with the regulation of slaughter-houses and markets. Although labelling requirements were not explicitly addressed in the legislation, s. 26 introduced an obligation on all persons selling goods in a public market which are generally sold by weight or measure to weigh or measure the goods sold if requested to do so by the prospective buyer. A refusal to do so brought liability upon the seller and a penalty, if prosecuted, of ten English shillings. Thus, if a seller wished to avoid liability under this section, he could weigh or measure the product, label it and then reweigh it should the consumer so wish. The legislation thus encouraged basic marketplace accountability and a guaranteed a minimum of consumer information.

This provision, requiring a very minimum of consumer information regarding weight or measure as requested by the purchaser, was retained in s. 34 of the first piece of legislation devoted exclusively to the issue of standardizing weights and measures, the Weights and Measures Ordinance of 1896.<sup>44</sup> This ordinance increased the penalty to five

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<sup>39</sup> S. 36(3). The condition to be met for the registration of a certification trade mark are further elaborated in the First Schedule of the Act and generally require that the applicant is competent to certify the goods in respect of which the mark is to be registered, whether the draft rules are satisfactory, and whether in all the circumstances the registration applied for would be to the public advantage (s.1(5) of the First Schedule).

<sup>40</sup> S. 36(4).

<sup>41</sup> S. 55.

<sup>42</sup> S. 61. The President must name the country and indicate that this section applies with respect to that country by way of legislative instrument.

<sup>43</sup> Ordinance No. 13 of 1892. Renumbered as sec. 27 of The Towns Ordinance (Cap. 86) and repealed by The Weights and Measures Decree, 1975 (N.R.C.D. 326).

<sup>44</sup> Ordinance No. 9 of 1896.

English pounds and as well provided an addition penalty which permitted any conviction under the Ordinance to be published as the Court saw fit. This innovation may be seen as a further element of consumer information concerning market regulation in the area of product identification.

Weights and Measures legislation was revised only two times from its 1896 incarnation before the coming into force of the present day law, the Weights and Measures Decree, 1975,<sup>45</sup> once in its consolidated form, the Weights and Measures Ordinance (Cap. 188), 1951<sup>46</sup> and once in a similar form in independent Ghana in 1964 explored below.

## **2. The Weights and Measures Act, 1964**

The Weights and Measures Act, 1964 in s. 27 continued the requirement that sellers inform their prospective purchasers of the weight or measure of a product if so requested. Fines were increased to ten pounds for each violation but the publication of conviction was removed as an additional remedy to inform consumers of market wrongdoers. No new provisions affecting labelling were added under this legislation, legislation which would be repealed by the Weights and Measures Decree, 1975,<sup>47</sup> explored in Part II below.

## ***C. Preventing Fraud, the Sale of Unwholesome Food and Undesirable Advertising through Criminal Law Provisions***

### **1. Colonial legislation**

The first Criminal Code of Ghana was Ordinance 12 of 1892.<sup>48</sup> It contained two types of provisions that affected the sale of food and food products. One type was the general provision against fraud. The Code made fraud a felony punishable upon conviction. Thus false representations made by a seller to a buyer through oral or written representations to obtain the consent of the purchaser would be caught by the general fraud provision of the Criminal Code.

The second type of offence listed in this early Criminal Code related to specific market offences relating to the sale of products, particularly food products. The 1892 Code contained two such provisions, both of which provided liability for the sale of unwholesome products, meat in s. 126 and all other products in s. 435. While s. 126 prohibited the sale of “unwholesome meat, fish, or provisions,” s. 435 was somewhat broader and prohibited the sale of food or drink that was “in such a condition, from putrefaction, adulteration, or other cause, as to be likely to be noxious to health.” The

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<sup>45</sup> N.R.C.D. 326.

<sup>46</sup> Repealed by The Weights and Measures Act, 1964 (Act 255).

<sup>47</sup> N.R.C.D. 326.

<sup>48</sup> Amended by Ordinance 16 of 1898.

former provision regarding meat subjected the offender to a fine of 25 pounds and/or three months imprisonment while the latter subjected the offender to penalties for a misdemeanor.

A third type of quasi-criminal offence arose not from the Criminal Code but from the Undesirable Advertisements Ordinance.<sup>49</sup> This Ordinance prohibited the advertising of products or treatments as prevention from, or relief from, or cures for venereal diseases or of products as aphrodisiacs. The Ordinance specifically included a prohibition of the labelling of such products which stated or would lead purchasers to believe that such products provided the proscribed properties.<sup>50</sup> Thus the Ordinance prohibited a whole host of claims from appearing on product labels, including food product labels. Penalty provisions for violation of the Ordinance included a fine of 50 pounds and/or imprisonment up to six months with or without hard labour. The Ordinance was repealed however and has not been incorporated in any other current legislation affecting food labelling.<sup>51</sup>

## **2. The Criminal Code, 1960**

The first Criminal Code promulgated in Ghana after its independence continued the two types of criminal law sanctions against persons who fraudulently sold food or who sold unwholesome food. S. 131<sup>52</sup> continued the general fraud provisions of earlier Criminal Codes, while s. 286 employed the exact language of the s. 435 of the 1892 Code explored above. The specific offence against the sale of “unwholesome meat, fish and other provisions” was, however, eliminated. A new offence was added in the 1960 Code in s. 138, which made it a criminal offence to sell products in the marketplace that fraudulently weighed or measured. This provision was however repealed in 1975 by The Weights and Measures Decree, 1975.<sup>53</sup> This latter Decree included among its provisions, one creating an offence for mandatory labelling of net and gross weight of prepackaged items and another for failing to weigh or measure a good to be sold when requested to do so by a potential purchaser.

### ***D. Marking Export Commodities for International Markets***

#### **1. Colonial legislation**

To regulate commodities destined for international trade, the British colonial government passed two important ordinances in the 1930s to monitor, inspect and

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<sup>49</sup> No. 15 of 1944. Consolidated in The Undesirable Advertisements Ordinance (Chapter 74), 1951. This Ordinance was repealed by ??? in 19??.

<sup>50</sup> S. 3(2).

<sup>51</sup> This type of prohibition is still part of existing labelling law in other jurisdictions such as Canada. See the Food and Drugs Act (R.S.C. 1985, c. F-27), s. 3(2).

<sup>52</sup> With definitional sections regarding “fraud” contained in sections 16, 132 and 133.

<sup>53</sup> N.R.C.D. 326.

ultimately guarantee for the international marketplace a minimum quality for key commodities produced in the Gold Coast, primarily cocoa, coffee, and bananas and two oil-bearing products, palm-kernels and cocoanut pulp (also known as copra). The Fruit Industry Regulation Ordinance, 1934 (consolidated as Fruit Industry Regulation Ordinance),<sup>54</sup> set out basic rules which prohibited the export of specified commodities, other than cocoa, if those commodities were not inspected, graded, marked and sealed in bags by government inspectors.<sup>55</sup> The Ordinance set out offences for persons undertaking unauthorized exports, for tampering with bags which had been marked and sealed, for obstructing an inspector in his duties and for forging or tampering with any certificate, stamp or seal approved under the Ordinance.<sup>56</sup>

Three years later the Cocoa Industry (Regulation) Ordinance, 1937 was promulgated which provided similar structures for the regulation of all gold Coast cocoa destined for export. All cocoa beans were required to be inspected, graded, marked, bagged and sealed by a government inspector before they could be exported. This Ordinance like the Fruit Ordinance set out similar offence and penalty provisions.<sup>57</sup>

These Ordinances were followed by ones for coconut (consolidated in The Coconut Industry Regulation Ordinance<sup>58</sup>), for palm-kernels (consolidated in The Palm-kernels Adulteration Ordinance<sup>59</sup>), and for bananas (consolidated in The Bananas (Control of Exportation) Ordinance<sup>60</sup>).

While regulations were foreseen under these Ordinances none appear to have been enacted until the late 1940s with the coming into force of the Fruit Industry (Palm Kernels) Regulation, 1948, of the Fruit Industry (Coffee) Regulation, 1950, Cocoa Industry (Regulation) Regulations, 1953,<sup>61</sup> and of the Coco-Nut Industry (Amendment) Regulations 1956.<sup>62</sup> Under each set of regulations, detailed provisions set out how inspectors were to grade, mark and seal the named commodities for export. Furthermore, the cocoa regulation also contained its own penalty provisions<sup>63</sup> for non-compliance with

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<sup>54</sup> (Chapter 201), 1951. This Ordinance was re-enacted under the first independent Ghanaian government as The Fruit Industry (Regulation) Act, 1958 (No. 13).

<sup>55</sup> S. 3.

<sup>56</sup> The maximum penalty was 50 English pounds and/or imprisonment with or without hard labour for up to six months. (s. 11).

<sup>57</sup> S. 3 and 4 create offences for buying or selling unfit cocoa beans; s. 5 prohibits exports that have not met the requirement of the Ordinance; s. 8 prohibits anyone other than an Inspector from grading, sealing or marking cocoa bags; s. 9 prohibits anyone from tampering with a mark or grade affixed to an inspected bag of cocoa beans; and s. 14 prohibits the obstruction of an Inspector. S. 15 creates a maximum penalty for offences of 50 pounds, or in default of payment to imprisonment for six months.

<sup>58</sup> (Chapter 197), 1951.

<sup>59</sup> (Chapter 198), 1951.

<sup>60</sup> (Chapter 200), 1951.

<sup>61</sup> Consolidated as the Cocoa Industry (Regulation) Regulations, Chapter 185, 1954.

<sup>62</sup> It is unclear from available texts as to when the original Coco-Nut Regulations were passed. One source suggests that perhaps a first version of the regulations may have been passed in 1934 (a reference from the margin of L.N. 128 The Coco-Nut Industry (Amendment) Regulations, 1954 but it is unclear as to whether this note refers to the 1934 Ordinance itself or to a set of 1934 Regulations. However, this 1934 date for Regulations appears unlikely given the much later dates for regulations for the other commodities which would suggest that the first set of coconut regulations was passed in the early 1950s.

<sup>63</sup> S. 7 (tampering with a mark or seal or having a device to do the same), s. 33 (adulterating cocoa) and s. 34 (any other offence under the Regulations including mislabelling or tampering with a grade-mark or seal).

Regulation requirements and exposed offenders to fines up to 100 pounds, or in default of payment to a term of imprisonment for a term not exceeding six months, a penalty higher than for breach of the provisions of the Ordinance itself! One wonders why these provisions evolved in this fashion but reports of widespread abuses and fraud in the cocoa industry during this period were likely in part responsible for the seemingly draconian measures with respect to cocoa labelling.<sup>64</sup>

## **Part II - The Current Legislative Framework for Food Labelling Law in Ghana (1967- present)**

This section sets out the current requirements of food labelling law in Ghana. As the historical account explored in Part I suggests, labelling requirements for food products were not, in colonial times or even during the first decade of independence, a field of intensive or even coordinated regulatory activity. During this period, several pieces of legislation sought to promote three labelling objectives: (1) the protection of private intellectual property (the Trade Marks legislation and the Merchandise Marks legislation); (2) the prevention of product mislabelling (other than intellectual property infringement) and fraud in the national market (the Weights and Measures Act, the Criminal Code, the Undesirable Advertisements Ordinance, and the Trade Marks Act);<sup>65</sup> and (3) the maintenance of quality standards for national products destined for international markets (the commodity legislation for the exportation of cocoa, coffee, coconut meal, palm-kernels and bananas).

While the scope of regulatory activities in Ghana has intensified over the past 35 years, as we shall see in this Part, there is still no coordinated regulatory control of product labelling in Ghana. This Part will explore the current requirements for food labels in Ghana using the three areas identified in the paragraph above—protecting intellectual property, preventing mislabelling, and maintaining quality standards for export products. But in addition to the three areas of regulatory activity concerning labelling that take their roots in the colonial period, this Part explores a fourth, the advent of mandatory minimum labelling requirements which began in 1967 with the Standards Decree (and its later revision in 1973) and was intensified with passing of the Food and Drugs Act, 1992.

The introduction of mandatory minimum labelling requirements is a stark departure from the three objectives of intellectual property protection, market fraud prevention, and export quality preservation. With respect to the first and third of these objectives, producer interests are primary. With the second objective—market fraud prevention, both producers and consumers directly benefit. With respect to our fourth objective, that of minimum labelling requirements, the burden falls primarily on producers and sellers and the benefit on consumers in the form of fuller product disclosure and consumer information.<sup>66</sup> However, to establish a system of mandatory labelling requirements, standards must be established, those standards made mandatory

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<sup>64</sup> T.E. Anin, *An Economic Blueprint for Ghana* (Accra: Woeli Publishing Services, 2003) at 57.

<sup>65</sup> Here the dual goals of producer/competitor fairness and consumer protection are apparent.

<sup>66</sup> Of course, there is also a clear producer/seller benefit including protection from tort liability claims from prospective consumer because of fuller disclosure of the product's characteristics as well as protection from loss of market share due to unfair or unscrupulous competitors.

through legislative degree and some sort of system of implementation and enforcement made available to the state. New legislation was, therefore, essential in this area.

Part II concludes with a brief examination of current implementation and enforcement provisions flowing from the labelling obligations contained in current labelling legislation under examination.

## ***A. Mandatory Minimum Labelling Requirements from Standards Legislation***

With the passing of the Standards Decree, 1967,<sup>67</sup> Ghana's first military government put in place legislation specifically designed to establish, monitor and enforce minimum product standards. The Standards Decree, 1973 revised the overall framework slightly so that product standards are now formulated and overseen by the Ghana Standards Board, and one of its responsibilities includes oversight of the labelling of goods.

Some 20 years later, a new act, the Food and Drugs Act, 1992 came into force which established a new supervisory body, the Food and Drugs Board, which has wide powers to take over the surveillance function for food and drugs that had formerly been within the mandate of the Ghana Standards Board. However, the transition of responsibilities from one body to the other has not been quick nor without its difficulties. The FDB was not established until 1997<sup>68</sup> with its mandate still particularly dependant on the legal provisions not from its own Act but from the legislation under the Standards Decree. A more detailed examination of the two streams of legislation is essential to understand the present state of Ghanaian labelling law, particularly with respect to mandatory minimum labelling requirements.

### **1. The Standards Decrees, 1973 and mandatory labelling**

#### **-the Standards Decree, 1967**

The Standards Decree, 1967 was a comprehensive piece of legislation that created a framework for the development and implementation of standards in commerce. S. 6 of the Decree stated that the Board had four functions:

- (a) to establish and promulgate standards with the object of ensuring high quality in goods produced in Ghana, whether for local or for export;
- (b) to promote standardization in industry and commerce;
- (c) to promote industrial efficiency and development; and
- (d) to promote public and industrial welfare, health and safety.

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<sup>67</sup> N.L.C.D. 199.

<sup>68</sup> Dr. Samuel K. Asibuo and Mr. Kingsley K.K. Ampofo, "Final Report - Review Study of Health Sector Regulation in Ghana, A Technical Assistance Report to Danish International Development Agency (DANIDA) Health Sector Support Office, Ghana and to the Ministry of Health and Regulatory Institutions in Ghana's Health Sector" (Accra, Ghana: November 2001) (on file with author) at p. 66.

Three of the four functions targeted exclusively commercial and industrial interests. Standardization would enhance efficiency and open domestic and international commercial opportunities. The fourth function had instead a double purpose. Reading the function in its largest sense, it sought to promote public welfare, public health and public safety as well as industrial welfare, industrial health and industrial safety.<sup>69</sup>

The 1967 Decree authorized the establishment of a large (11-14 members) National Standards Board. From a labelling perspective the Board was assigned several powers to regulate labelling and packaging of goods which included the ability to make rules "governing the packaging, labelling, advertising and selling of goods,"<sup>70</sup> "governing the size, dimensions, and other specifications of packages of goods,"<sup>71</sup> "governing the treatment, processing and manufacture of goods,"<sup>72</sup> "prescribing standards of composition, purity, or other property of goods,"<sup>73</sup> "regulating the importation of goods in order to ensure compliance" with the Decree<sup>74</sup> and "regulating the issue of licences for using standard marks."<sup>75</sup>

### **-the Standards Decree, 1973**

The Standards Decree 1973<sup>76</sup> revokes the Standards Decree 1967 and is today the primary piece of legislation responsible for food labelling law in Ghana. The new legislation revises the national regulatory body renaming it the Ghana Standards Board and reducing its membership from 14 members to six. The new Decree also revamps the Board's "aims", "functions and powers", and competences to promulgate regulatory instruments to permit bye-laws,<sup>77</sup> rules,<sup>78</sup> standard specifications,<sup>79</sup> and licences<sup>80</sup>.

The "functions" of the 1967 Board were renamed "aims" for the 1973 Board and remain the same four listed above with the same heavy emphasis on commercial values as compared to those of human health, safety or consumer information. The "functions and powers" of the 1973 Board remain largely unchanged from those outlined in the 1967 Decree.<sup>81</sup>

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<sup>69</sup> A more limited but possible interpretation of the section might be that the fourth aim is for public welfare and industrial welfare, public health, and public safety. In either case, though, while the fourth function puts industrial and public interests on more of an equal footing, the first three do not. From the preponderance of the functions treating commercial and industrial objectives, it is probably safe to assume that in its incarnation, the Standards Decree was primarily designed to assist commercial interests rather than those relating to consumer issues such as health, safety or consumer information in the form of labelling.

<sup>70</sup> S. 5(1)(d)(ii).

<sup>71</sup> S. 5(1)(d)(iii).

<sup>72</sup> S. 5(1)(d)(i).

<sup>73</sup> S. 5(1)(e).

<sup>74</sup> S. 5(1)(f).

<sup>75</sup> S. 5(1)(h).

<sup>76</sup> N.R.C.D. 173.

<sup>77</sup> S. 8.

<sup>78</sup> S. 9.

<sup>79</sup> S. 11.

<sup>80</sup> S. 12.

<sup>81</sup> This statement is subject to one important exception. Initially, the powers of the Board under the 1973 legislation were severely limited from those enjoyed by the 1967 Board. Rather than being able to directly

Rule-making powers under the 1973 Decree are more clearly split out into powers relating to “Bye-laws” dealing with internal operation of the Board and those relating to “Rules” applicable to persons outside the Board. Curiously though, the Board’s power to promulgate “standard specifications” remains distinct from the powers to make rules “prescribing standards of composition, purity, or other property (sic) of goods”<sup>82</sup> or to make rules “governing (i) the treatment, processing and manufacture of goods; (ii) the packaging, labelling, advertising and selling of goods; and (iii) the size, dimensions, and other specifications of packages of goods.”<sup>83</sup> This engenders, however, the unfortunate situation whereby different instruments issuing from the different powers to govern seemingly similar activities (and this is particularly true in the area of general food labelling) are promulgated, sometimes simultaneously, under current Ghanaian food labelling law.

### **-subsidiary legislation under the Standards Decree**

#### **(1) certification marks – mandatory labelling requirements for certain manufactured goods subject to a “Ghana Standard”**

The first piece of subsidiary legislation under the Standards Decree, 1967 was the Ghana Standards (Certification Mark) Rules 1970.<sup>84</sup> It remains in effect today under the grandfathering provisions of the Standards Decree, 1973.<sup>85</sup> The Ghana Standards (Certification Mark) Rules 1970 create mandatory labelling requirements for all goods, including therefore food products, manufactured by an industrial process in Ghana for which a Ghana Standard has been established.<sup>86</sup> S. 1 states that:

No person shall exhibit for sale, sell, distribute, prepare for export, export, or otherwise dispose of, goods manufactured by an industrial process in Ghana, unless

- (a) he has a valid licence to use the standard mark, to be called the Ghana Standards Certification Mark, relating to such goods;
- (b) the goods bear a facsimile of that standard mark;<sup>87</sup>
- (c) the goods bear a label indicating that the goods are “Made in Ghana”; and
- (d) the goods bear code numbers indicating the batches of production to which they belong.

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prohibit the manufacture or importation of goods that were not in the national interest, the interests of public health and safety or complying with Board standards, the Board had only the right to recommend to the Ministry of Industry or Trade for such actions. These powers were, however reinstated in part to the Board by a 1979 amendment to the Decree but not with respect to prohibitions based solely on concerns pertaining to public health and safety.

<sup>82</sup> s. 9(1)(e).

<sup>83</sup> S. 9(1)(d).

<sup>84</sup> L.I. 662.

<sup>85</sup> This regulation remains in force under the Standards Decree, 1973 as s. 26 of the 1973 Decree revokes the 1967 Decree but preserves the subsidiary legislation promulgated under it.

<sup>86</sup> The Rules contain no definition section and hence “manufactured by an industrial process in Ghana for which a Ghana Standard has been established” remains open to a variety of interpretations.

<sup>87</sup> The actual mark is set out in the Schedule to the Rules.

Provided that the provisions of this rule shall have effect only with respect to goods for which Ghana Standards have been established.

Before the licence is granted to any producers, manufacturers, distributors and sellers who will use the public mark,<sup>88</sup> personnel from the Ghana Standards Board have the right to inspect the goods and the production facilities for which the public mark will be used. Non-conformity with the rules or with maintaining the quality of the good produced with the Ghana Standard established for that product exposes the offender to revocation of his licence and to liability under the Rules' general penalty provision of a fine of up to 200 cedis per violation.<sup>89</sup>

A significant difficulty arises from the interaction of these Rules and the Standards Decree itself. It is not clear from the Rules what kind of instrument is intended by the phrase "Ghana Standard." As this definition is the linchpin of the Rules dividing those manufactured goods which are caught by the Rules from those that are not, a clear understanding of what is a "Ghana Standard" is vital. In the Rules "Ghana Standards" are always written with an uppercase letter on "Standards." Unfortunately, the Decree nowhere employs the word "standard" with an uppercase letter but with a lowercase one both under s. 9(d) and (e) rules-making powers and under s. 11 standard specification-making powers. Furthermore while the Decree defines "standard specification" and "standard mark", it never uses and thus does not define "Ghana Standard." This becomes problematic after 1990 when, for example, both Rules<sup>90</sup> and "Ghana Standards"<sup>91</sup> are promulgated establishing labelling requirements but with the two documents containing inconsistencies one with the other.

## **(2) product standards – general and the specific "Ghana Standards"**

Whatever their exact legislative pedigree, a second type of subsidiary legislation under the Standards Decree, 1967 and the Standards Decree, 1973 is the Ghana Standard (GS). As noted in the discussion above, these standards are either standards that must be promulgated as rules under s. 9 rule-making powers or as standard specifications authorized under s. 11 of the 1973 Decree.<sup>92</sup> These provisions together appear to give the Board the power to make specific product standards, to amend and revoke them if necessary and to adopt foreign standards where necessary. If the Board uses the s. 11 procedure, which has become the regular practice for the enactment of all Ghana Standards, the Board is required to declare the standard by notification published in the Government Gazette.

In 1973, a general standard on labelling was promulgated. The General Standards on Food Labelling (GS.F35: 1973) set out rudimentary general rules on product labelling. It has since been replaced with GS 46: 1992 Packaged Food - Labelling Requirements.

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<sup>88</sup> This "Ghana Standards Certification Mark" is also registered as a certification trade mark under s. 36 of the Trade Marks Act, 1965. (check)

<sup>89</sup> This penalty provides little deterrent value today with the devaluation of the cedi. The minimum wage for government employments in Ghana in 2003 is 9000 cedis per day.

<sup>90</sup> Ghana Standards Board (Food, Drugs and Other Goods) General Labelling Rules, 1992 (L.I. 1541).

<sup>91</sup> Ghana Standard GS 46: 1992 "Packaged Foods – Labelling Requirements".

<sup>92</sup> Complementary powers are contained in sec. 3(2)(a) and 9(1)(b),

This instrument sets out several definitions<sup>93</sup> and a number of mandatory labelling requirements for food including:

- (a) With respect to the content of the label:
  - (i) the name of the food (s. 3.2.1);
  - (ii) the list of ingredients (s. 3.2.2);
  - (iii) the net content of product (s. 3.2.3);
  - (iv) the name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the food (s. 3.2.4);
  - (v) the country of origin (s. 3.2.5);
  - (vi) a code to identify the production lot of the product (s. 3.2.6);
  - (vii) a date marking (s. 3.2.7); and
  - (viii) if treated with ionizing radiation, so designated (s. 5.2);
  
- (b) With respect to the form and presentation of label:
  - (i) clear, prominent and readily legible label (s. 4.1);
  - (ii) lettering in contrasting colour to the label background (s. 4.1);
  - (iii) name of food in most prominent lettering of label (s. 4.1);
  - (iv) name and net contents of the food on normal presentation side of the packaged product (s. 4.1);
  - (v) label in English unless the product is destined for export (s. 4.2).

Many other Ghana Standards have been promulgated for specific products. An early example of one such standard was the GS 50: 1973 Specifications for Canned Tomatoes.<sup>94</sup> Taking that standard as a typical example, one finds important provisions which directly impact upon labelling requirements for canned tomatoes. Section 7 of GS 50: 1973 is entitled "Labelling." It sets out mandatory, permissible product names such as when the term "tomato" can be used to describe a product and qualifying adjectives "unpeeled", "whole", "regular", "flavoured", etc. that may be used on the labels of canned tomato products. These qualifying adjectives or adjectival phrases relate to styles, types, and packing media.

### **(3) food, drug and other goods labelling "Rules"**

It is very odd to observe that the promulgation of Ghana Standard GS 46: 1992, explored above, occurred at almost the exact same moment that the Ghana Standards Board promulgated two versions of a very similar subsidiary legislation under the s. 9(1)

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<sup>93</sup> "Label" means "any tag, mark, pictorial or other descriptive matter written, printed, stenciled, marked, embossed or impressed on, or attached to a container of foods." "Labelling" means "the marking of a product by a label and any written, printed or graphic matter relating to an (sic) accompanying the product. Oddly, however, the Ghana Standard does not provide a definition for "food" or "prepackaged" although it does define "container" as "any form of packaging of food for sale as a single item, whether completely or partially enclosing the food, including wrappers." All definitions are contained in s. 2.

<sup>94</sup> Later examples, of which there are now over one hundred, include ones for specific products like GS 91: 1990 Meat and Meat Products - Specification for Dressed, Chilled and Frozen Poultry or of a specific processes like GS 151: 1992 Specification for weighing instruments to be used for trade purposes, or GS 210: 1998 Food technology - Specification for irradiated food.

rule-making powers of the Standards Decree, 1973. In 1991, the Ghana Standards Board passed the Ghana Standards Board (Food, Drugs and Other Goods) General Labelling Rules, 1991<sup>95</sup> which were almost immediately replaced by the Ghana Standards Board (Food, Drugs and Other Goods) General Labelling Rules, 1992<sup>96</sup> which remain in force today. These rules set out specific rules for labelling food, drugs and other goods and new penalty provisions for some aspects of non-compliance. The 1992 Rules differ in only two important aspects from the 1991 Rules. The 1992 Rules permit the Ghana Standards Board to appoint Inspectors to implement and enforce the labelling rules and the 1992 Rules define "food"<sup>97</sup> and "label."<sup>98</sup>

Part I of the Rules outlines the labelling requirements that apply to prepackaged food and drugs. For food products the following is mandatory information required on labels:

- (a) With respect to content of the food label:
  - (i) the name of the food;
  - (ii) the list of ingredients;
  - (iii) an indication of the minimum durability in the form of a date of manufacture and one of the expiry date, the best before date, or the use-by-date;<sup>99</sup>
  - (iv) any special storage conditions and handling precautions that may be necessary;
  - (v) instructions for use in respect of the food, if it would be difficult to make appropriate use of the food without such instructions;
  - (vi) an indication of the net contents in terms of net volume or mass;
  - (vii) code marks or numbers indicating the batches of production or packaging to which the food belongs;
  - (viii) the country of origin of the food; and
  - (ix) the name and address of the producer, manufacturer, importer, packer, distributor or of the seller of the food.<sup>100</sup>

Special provisions are provided to deal with the complex problem of the name that a product can be called. S. 2 states that a product name will be the name that prescribed by law.<sup>101</sup> If the name is not prescribed by Ghanaian legislation, then the product may bear the name that is customary for the product in the area where it is sold. If there is no prescribed or customary name exists or is used, the name used must be sufficiently precise to inform the purchaser of the nature and substance<sup>102</sup> of the food and

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<sup>95</sup> L.I. 1512.

<sup>96</sup> L.I. 1541.

<sup>97</sup> "food" means any article manufactured, sold or presented for use as food or drink for human consumption, chewing gum and water.

<sup>98</sup> "label" includes "any tag, brand, mark, pictorial or other descriptive matter, written, printed, embossed or impressed on or attached to the item or inserted in its container."

<sup>99</sup> The 1991 Rules did not require both the date of manufacture and the second element but rather only one or the other.

<sup>100</sup> S. 1.

<sup>101</sup> Although it is not stated, this appears to be a reference to names defined in Ghana Standards documents.

<sup>102</sup> The word "substance" was not specified in the 1991 Rules.

to enable the food to be distinguished from the products with which it could be confused. The name may include a description but a trademark, brand name or fancy name must be additional to the name of the food product.

Part III of the Rules<sup>103</sup> outlines the rules concerning how the label must be displayed:

- (a) With respect to the form and presentation of label:
  - (i) the label must be printed, impressed, embossed or stamped legibly in indelible ink; and
  - (ii) the label must be in English.<sup>104</sup>

An important provision of the 1992 Rules states that without prejudice to the general labelling rules contained in the 1991 and 1992 Rules, the Ghana Standards Board "may prescribe additional or specific labelling requirements for certain specified goods where it deems necessary"<sup>105</sup> as long as such requirements are published in the Government Gazette.<sup>106</sup>

The 1992 Rules contain no general penalty provisions.<sup>107</sup> The 1992 Rules contain only a specific provision for the offence of obstructing an Inspector in the performance of his functions or the offence of an Inspector assisting a person to contravene the Rules. Either action constitutes an offence and subjects the accused to a fine of 200,000 cedis or twelve months in prison. Unfortunately, the requirement that foods be properly labelled carries no sanction under the Rules except that such products are subject to seizure and forfeiture. It is unclear why the 1992 Rules have abandoned the general liability for persons who contravene the act but who do not obstruct an inspector.

The above analysis reveals that the mandatory labelling standards under the 1992 Rules and the 1992 "Ghana Standard" differ in material respects. Which takes precedence? The 1992 Rules require label elements such as an indication of the minimum durability in the form of a date of manufacture and one of the expiry date, the best before date, or the use-by-date; any special storage conditions and handling precautions that may be necessary; and instructions for use in respect of the food, if it would be difficult to make appropriate use of the food without such instructions. The Ghana Standard does not.

The Ghana Standard, on the other hand, requires that the form of the label contain lettering in contrasting colour to the label background; that the name of food is in the most prominent lettering of label; and that the name and net contents of the food on normal presentation side of the packaged product while the 1992 Rules do not.

The 1992 Rules defines "food" as any article manufactured, sold or presented for use as food or drink for human consumption, chewing gum and water while the Ghana

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<sup>103</sup> Part II deals with requirements for drugs and will not be examined in this study.

<sup>104</sup> The 1992 Rules removes the prohibition contained in the 1991 Rules which prohibits stamped or handwritten marks and labels (s. 4). The 1992 Rules also provide a saving provision for small packages such that if they cannot be conveniently marked or labelled, the outer package enclosing the small packages need meet the requirements of the Rules.

<sup>105</sup> S. 6 in the 1992 Rules; s. 5 in the 1991 rules.

<sup>106</sup> This clause is unique to the 1992 Rules.

<sup>107</sup> This is in contrast to the 1991 Rules which declared that any person who contravenes any provision of the Rules commits an offence and is liable to a fine not exceeding 500,000 cedis or 12 months in prison.

Standard leaves this key term undefined. The definitions of “label” in the two documents are not even the same!<sup>108</sup> Furthermore, neither of the definitions of "label" in the two pieces of legislation tracks the wording of the definition of the same word under the Food and Drugs Act, 1992. Finally, the Ghana Standards offers a definition for "labelling" when no other piece of Ghanaian legislation defines the term.

From a practical perspective these incongruities not only present serious challenges to the food processor/seller and the food label inspector assessing label compliance, but also to the consumer who does not enjoy a standard content and form of food labelling.

## 2. The Food and Drugs Act, 1992 and mandatory food labelling

By the mid-1980s, there was a realization within the Ghanaian government,<sup>109</sup> that the specialized work of standard setting, verification and policy development for food and drugs required its own specialized body. Thus the Food and Drugs Act, 1992 (FDA) was drafted, passed and brought into force in 1993. The Act itself is quite brief and is divided into four parts: Part I - Food; Part II - Drugs, Cosmetics, Devices and Chemical Substances; Part III - Administration; and Part IV - General Provisions. It has been amended only once<sup>110</sup> and has only one set of regulations<sup>111</sup> promulgated under it. The administration of the Act is carried out by the Food and Drugs Board, which met for the first time in 1997.<sup>112</sup>

The Act is principally concerned with protecting the safety of the food and drugs offered for sale in Ghana. It thus prohibits the manufacture and sale of tainted, toxic, or otherwise contaminated food.<sup>113</sup> Included as well in food prohibited from sale in Ghana is food that “is not of the nature, substance or quality prescribed by standards.”<sup>114</sup> Unfortunately, while the Act provides several key definitions including "food"<sup>115</sup> and "label,"<sup>116</sup> it does not define “standards.” Thus, one is left in a conundrum, as under the Standards Decree 1973, as to exactly what a standard is for the purposes of this Act. S. 4

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<sup>108</sup> Contrast the Ghana Standards definition of means “any tag, mark, pictorial or other descriptive matter written, printed, stenciled, marked, embossed or impressed on, or attached to a container of foods” with the 1992 Rules definition of “any tag, brand, mark, pictorial or other descriptive matter, written, printed, embossed or impressed on or attached to the item or inserted in its container.”

<sup>109</sup> Mrs. Fori Boateng, Legal Officer, Ghana Ministry of the Attorney General, Legal Drafting Department (interview conducted 5 March 2003), one of the principal legislative drafter of the Food and Drugs Law, 1992.

<sup>110</sup> Food and Drugs (Amendment Act, 1996 (Act 523)), an amendment relating to the mandatory iodization of salt sold into retail markets

<sup>111</sup> Breastfeeding Promotion Regulations, 2000 (L.I.1667).

<sup>112</sup> It consists of up to 16 members (sec. 29(1) of the FDA) and operates under the control and supervision of the Ministry responsible for Health (sec. 27(2) of the FDA).

<sup>113</sup> S. 1. See also s. 5 “Prohibition against sale of food not of nature, substance or quality demanded”; s. 7 “Sale of food under insanitary (sic) conditions”; and s. 8 “Food unfit for human consumption.”

<sup>114</sup> S. 1(f).

<sup>115</sup> Defined in s. 51 as including "salt and any article manufactured, sold or represented for use as food or drink for human or animal consumption, chewing gum, water and any ingredient of the food, drink, chewing gum or water."

<sup>116</sup> Defined in s. 51 as including "any legend, work or mark attached to, included in, belonging to or accompanying any food, drug, cosmetic, device or chemical substance."

of the FDA, as set out below, is instructive on this point and but appears to be over-broad in the net it casts for what will be considered a “standard” for the purposes of the Act.

Where a standard has been prescribed under any enactment for any food, any person who labels, packages, sells or advertises any food in such a manner that is likely to be mistaken for food of the prescribed standard commits an offence. (emphasis added) <sup>117</sup>

The FDA, itself does not contain any specific mandatory labelling requirements.<sup>118</sup> S. 28 sets out one of the functions of the Food and Drugs Board as “in co-operation with the Ghana Standards Board, [to] ensure adequate and effective standards for food and drugs,” which as we have seen from the discussion of standards under the Standards Decree, 1973 feeds directly into mandatory labelling requirements flowing from that legislation.

The FDA in s. 47 also empowers the Minister of Health, after consultation with the Food and Drugs Board to enact regulations:

- (b) governing—
  - (i) the treatment, processing and manufacture of food;
  - (ii) the packaging, labelling, advertising and selling of food;
  - (iii) the size, dimensions, fill and specifications of packages of food;
  - (iv) the use of any substances as an ingredient in any food; and
  - (v) the protection of the consumer or purchase (sic) of food from being deceived or misled as to its quality; character, composition, merit or safety or to prevent injury to the health of consumer or purchaser;
- (c) for the regulation of importation of food, drugs, cosmetics, devices or chemical substances in order to ensure compliance with this Law;
- ...
- (f) prescribe methods of manufacture, processing, sale, storage and transportation of food, drugs, cosmetics, devices or chemical substances:

These powers have been exercised only once but have resulted in extensive and exacting labelling requirements for infant breastfeeding substitute products.

### **-mandatory labelling requirements for breastfeeding substitute products**

The Breastfeeding Promotion Regulations, 2000<sup>119</sup> set out a comprehensive scheme for the regulation of breastfeeding substitute products. These rules grew out of

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<sup>117</sup> This section could be construed to include Ghana Standards, Foreign Standards adopted by the Ghana Standard Board but also any other foreign national or international food standard.

<sup>118</sup> One exception to this is the 1996 amendment for the iodization of salt. S. 6A of the Act now contains a provision which requires the mandatory packaging and labelling of all consumer salt sold in Ghana so as to conform to the standard for the fortification of salt as set out by the Ghana Standards Board. As well, though not a mandatory labelling requirement, the FDA does set out a general “truthfulness in labelling” obligation which will be examined below in Part II, Section C “Prevention of Product Mislabelling.”

<sup>119</sup> L.I. 1667.

international organizations' response<sup>120</sup> to the worldwide outcry against multinational corporations' trade practices in the marketing and distribution of infant formula. The Ghanaian regulations limit the sale, advertising and promotion of breastfeeding substitute product (BSP). As well, these Regulations contain very specific provisions regarding prohibited<sup>121</sup> and mandatory labelling requirements of BSPs.

With respect to its content, the label of a BSP must include:

- (i) the dates of manufacture and expiry of the BSP;
- (ii) the name and address of the manufacturer and distributor;
- (iii) the composition and contents of the product;
- (iv) the batch number;
- (v) the storage conditions for the BSP;
- (vi) the quantity of food in the containers required to feed an infant in the first six months of its life.<sup>122</sup>
- (vii) a clear, conspicuous and easily readable message that breastmilk is the best food for infants and prevents diarrhea and other illnesses;
- (viii) instructions for the proper preparation and use of the BSP;
- (ix) a warning preceded by the words "Important notice" against the health hazards of improper preparation and use; and
- (x) an indication of the health hazards of introducing the product prior to the recommended age.<sup>123</sup>

With respect to its form and presentation, the label of a BSP must be written in English.<sup>124</sup>

Other labelling provisions in the Breastfeeding Promotion Regulations require special mandatory labelling requirements for feeding bottles and teats,<sup>125</sup> for BSPs that do not satisfy all the nutritional requirements of an infant but which can be modified to do so,<sup>126</sup> and for condensed milk products.<sup>127</sup>

A breach of these Regulations is an offence exposing the perpetrator to a fine of \$5,000,000 cedis or to 12 months imprisonment (s. 15). Similar to the general penalty provisions under the current FDA, these fines are the highest for any labelling offence currently in force in Ghana.<sup>128</sup>

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<sup>120</sup> This outcry resulted in the development of an "International Code of Marketing of Breast-milk Substitutes by the World Health Organization" (Geneva: WHO, 1981) and a Codex Alimentarius standard, "Codex Standard for Infant Formula - Codex Stan 72-1981" (Rome: Codex, 1981)

<sup>121</sup> No BSP label may contain the word "materialized" or similar expression. (s. 10(2)). Furthermore, no photo, drawing or other graphic representation, other than for illustrating the method of preparation of the BSP is permitted on a BSP label (s. 10(3)(a)).

<sup>122</sup> Requirements (i) to (vi) are contained in s. 10(3)(c) of the Regulations.

<sup>123</sup> Requirements (vii) to (x) are contained in s. 10 (1) of the Regulations.

<sup>124</sup> S. 10(3)(b) of the Regulations.

<sup>125</sup> S. 11 of the Regulations.

<sup>126</sup> S. 10(4) of the Regulations.

<sup>127</sup> S. 12 of the Regulations states that "A label on a container of condensed milk shall have a clear and conspicuous warning that it shall not be used for infant feeding."

<sup>128</sup> With ongoing deflation of the cedi, this fine would now be relatively small for a corporate abuser, equivalent to about \$600 USD.

### **3. Mandatory labelling from Weights and Measures Decree, 1975**

The Weights and Measures Decree, 1975<sup>129</sup> contains only one mandatory labelling requirement for all packaged goods. S. 19 requires any seller of packaged goods to “cause both the gross and net weights and measures to be declared on the package or container.” Refusal or neglect to provide such information on the packaging exposes the seller to prosecution and a fine of up to 1000 cedis and/or imprisonment for up to two years.<sup>130</sup> This provision seems now to be unnecessary or superfluous for food products given the mandatory requirements under the Standards Decree, 1973 and its subsidiary legislation to provide net, but not gross, weights on all product labels.

### ***B. Labelling Requirements for the Protection of Intellectual Property***

The two statutes which protect intellectual property in Ghana, the Merchandise Marks Act, 1964<sup>131</sup> and the Trade Marks Act, 1965,<sup>132</sup> reviewed above, also contain certain labelling requirements for all products including food. Those relating primarily to the protection of intellectual property are presented in this section while the other provisions from these statutes relating to the general prevention of product mislabelling are explored in Section C below.

#### **-the Merchandise Marks Act, 1964**

The Merchandise Marks Act makes it an offence to mark or describe products, including food products, for sale in Ghana with a trade mark that is falsified, forged or used without permission.<sup>133</sup> Even the making or possession of an instrument to make such marks is an offence under the Act. Thus all labels containing illegitimate trade marks are prohibited.

Violations of this provision are considered misdemeanours and are subject to punishments set out in the Code of Criminal Procedure. The Act however does set out the additional penalty of forfeiture of offending products.<sup>134</sup>

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<sup>129</sup> N.R.C.D. 326.

<sup>130</sup> Although this legislation dates from 1975, no prosecutions were permitted under it until so proclaimed through legislative instrument (sec. 34(3)). This proclamation was made on 15 March 1991 by means of Legislative Instrument 1513 “Prosecution of Offences Under the Weights and Measures Decree, 1975” (N.R.C.D. 326). The author has found no prosecutions under this section in the decade following its implementation. A further violation is foreseen by the Decree if a merchant obstructs an inspector from carrying out his task to complete an examination of goods, and this presumably includes examination of the label to determine compliance with s. 19. In such a case, the accused will be guilty of an offence and could be subject to imprisonment of up to one year and/or a fine of 500 cedis.

<sup>131</sup> Act 253.

<sup>132</sup> Act 270.

<sup>133</sup> S. 1(1)(b), (c),(d), and (e).

<sup>134</sup> S. 1(3). The Merchandise Marks (Prohibited goods) Regulations, 1963 (Vol. X, P. 425) set out the technical requirements that must be followed for the detention of suspected offending products.

## **-the Trade Marks Act, 1965**

General requirements set out in the Trade Marks Act preclude the use of certain words or marks<sup>135</sup> on all products including the unauthorized use of “any badge, seal, device, emblem or flag” reserved by law for the official use of the state and its official bodies.<sup>136</sup>

The Trade Marks Act, 1965 specifically precludes the use of registered trade marks and registered certification trade marks. Use of an identical mark or one so nearly resembling it as to be likely to deceive or cause confusion with similar goods constitutes an infringement of the rights granted to the trade mark proprietor and can lead to an action for damages. The Act also sets out provisions for the registration of trade marks already registered in foreign jurisdictions.<sup>137</sup> As a practical matter, persons who are not the proprietors of particular trade marks are precluded from using any registered mark or any mark that closely resembles that mark on their product labels unless they wish to subject themselves to a possible action for trade mark infringement.

The Act further provides that the registration of a person as proprietor of a certification trade mark in respect of any goods gives that person the exclusive right to the use of the trade mark in relation to those goods under the Act<sup>138</sup> and infringement of this right is actionable under the Act.<sup>139</sup> In addition to providing for infringement actions, the Act also sets out specific penalty provision for false representations that marks used in commerce are registered trademarks when they are not.<sup>140</sup>

### ***C. Prevention of Product Mislabelling***

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<sup>135</sup> The Act defines “mark” as including “a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof (s. 66(1)) and “use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in physical or other relation to, goods.” (s.66(2)).

<sup>136</sup> Labels using such elements would expose the producer to a fine of 20 pounds or to up to 3 months imprisonment. The legislation has never been amended to convert these amounts into cedis but presumably if a Ghanaian court were to convert this amount using current exchange rates for British pounds this would result in a maximum fine of approximately 270,000 cedis.

<sup>137</sup> Under S. 61, where Ghana is a party to an international arrangement with any other country for the mutual protection of trade marks and the President of Ghana is satisfied that the country outside of Ghana makes adequate provision for the protection of trade marks registered in Ghana, such foreign trade marks can be registered under the Act. The President must name the country and indicate that this section applies with respect to that country by way of legislative instrument.

<sup>138</sup> S. 36(3). The condition to be met for the registration of a certification trade mark are further elaborated in the First Schedule of the Act and generally require that the applicant is competent to certify the goods in respect of which the mark is to be registered, whether the draft rules are satisfactory, and whether in all the circumstances the registration applied for would be to the public advantage (s.1(5) of the First Schedule).

<sup>139</sup> S. 36(4).

<sup>140</sup> If convicted under this provision, offenders are liable to a fine up to 20 Ghanaian pounds. (s. 55). However, with the change of the Ghanaian currency to cedis and its frequent devaluation, the provision for fines is now virtually meaningless.

# 1. Obligations from the Standards Decree and Food and Drugs Act

## -the Standards Decree and its subsidiary legislation

The Standards Decree 1973 contains no provision creating a general offence for false, misleading or deceptive labelling.<sup>141</sup> However, it does prohibit the mislabelling of a product through the inappropriate or unauthorized use of marks which suggest that a product conforms to a standard specification when it does not<sup>142</sup> or through the use of a standard mark<sup>143</sup> when the producer or seller is not licenced to use that mark.<sup>144</sup>

The Ghana Standard GS 46: 1992, does outline a general imperative that “Prepackaged food shall not be described or presented on any label or in any labelling in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect.”<sup>145</sup> GS 46:1992 does not, however, explicitly create offences or contain its own penalty provisions. Yet, if GS 46: 1992 can be legally construed as a “standard specification” of the kind contemplated by s. 11 and 21 of the Standards Decree 1973, then this obligation for truthful labelling becomes a binding labelling requirement for all goods, including food products caught by the Standards Decree 1973.

## - the Food and Drugs Act

The clearest legal provisions prohibiting food product mislabelling are found in the Food and Drugs Act, 1992. This Act requires that label claims on food not be false or misleading, particularly where they related to foods for which official standards exist. Sec. 3 states that

Any person who manufactures, labels, packages, sells or advertises any food in a manner that is false, misleading or deceptive as regards its character, nature, value, additives, substance, quality, composition, merit or safety commits an offence.

Sec. 4 creates an offence for the mislabelling of foods that are prescribed in a standard but which do not meet that standard:

Where a standard has been prescribed under any enactment for any food, any person who manufactures, labels, packages, sells or advertises any food in such a manner that is likely to be mistaken for food of the prescribed standard commits an offence.

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<sup>141</sup> This was also true of the Standards Decree, 1967.

<sup>142</sup> S. 21.

<sup>143</sup> One presumes that this refers to the Ghana Standards Certification Mark.

<sup>144</sup> Penalties for these offences are limited to 500 cedis or imprisonment of up to two years. S. 21(2).

<sup>145</sup> S. 3.1.1. Furthermore, s. 3.1.2 states that “Prepackaged foods shall not be described or presented on any label or in any labelling by words, pictorial or other devices which refer to or are suggestive, either directly or indirectly, of any product with which such food might be confused, or in such a manner as to lead the purchaser or consumer to suppose that the food is connected with such other product.”

Sec. 5 makes it an offence for any person to sell “to the prejudice of a purchaser any food which is not of the nature, substance or quality of the article demanded by the purchaser.”<sup>146</sup>

For offences relating to food labelling, the general penalty provisions of Part I of the Act apply. Thus the FDA provides for quasi-criminal sanctions of fines and/or imprisonment of up to 5,000,000 cedis and/or two year imprisonment,<sup>147</sup> forfeiture of offending food articles<sup>148</sup> and/or the suspension or cancellation of any licence issued to the person under the FDA or its regulations.<sup>149</sup>

## 2. Obligations from intellectual property statutes

Although the Merchandise Marks Act appears to focus primarily on the prevention of the fraudulent application of trade marks and other marks to goods exposed for sale in Ghana, it also contains important provisions relating to the obligation for truthful label descriptions of all products for sale in Ghana. The Act makes it an offence to misdescribe or mislabel products for sale. Ss. 1(1)(a) states that any person who “applies a false trade description to goods” or sells such goods is guilty of a misdemeanour.<sup>150</sup> Applying a false trade description to goods includes the application of such a description to the product itself or to “any covering, label, reel, or other thing in or with which the goods are sold or exposed.”<sup>151</sup> Furthermore the Act contains a very broad description of “false trade description”<sup>152</sup> and “trade description”<sup>153</sup> which are broad enough to create another general obligation for truthful labelling for all products sold in Ghana, including food products.

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<sup>146</sup> An additional provision of a similar nature is contained in sec. 6A(4) which reads that “No person shall label, package, sell or advertise salt in a manner that is likely to be mistaken for salt of the prescribed standard.” This section was added to the FDA in 1996 as part of the general amendment requiring the iodization of all salt sold for human consumption in Ghana.

<sup>147</sup> S. 9.

<sup>148</sup> S. 37(1).

<sup>149</sup> S. 41. Currently, however, the FDB does not issue licences.

<sup>150</sup> S. 2 of the Act sets out a number of defences to such charges including lack of intent to defraud, reasonable care exercised to not misdescribe goods and cooperation with the prosecution to provide information as to the persons on whose behalf the description was applied.

<sup>151</sup> S. 3(1).

<sup>152</sup> S. 17 states that “false trade description” means “a trade description which is false or misleading in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description whether by way of addition, effacement or otherwise, where that alteration makes the description false or misleading in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark shall not prevent the trade description from being a false trade description within the meaning of the Act.”

<sup>153</sup> S. 17 states that “trade description” means “any description, statement, or other indication, direct or indirect – (a) as to the number, quantity, measure, gauge, or weight or any goods; or (b) as to the standard of quality of any goods, according to a classification commonly used or recognized in the trade; or (c) as to the fitness for purpose, strength, performance or behaviour of any goods, or (d) as to the place or country in which any goods were made or produced, or (e) as to the mode of manufacturing or producing any goods; or (f) as to the materials of which any goods are composed; or (g) as to any goods being the subject of an existing patent, privilege, or copyright.”

Penalty provisions are not however included in the Act other than that offences under the Act are misdemeanours and will be punishable under the Code of Criminal Procedure Act. The Act does however allow for enforcement through forfeiture of offending products.<sup>154</sup>

No provision against general mislabelling exists under the Trade Marks Act, 1965.

### **3. Obligations from weights and measures legislation**

The Weights and Measures Decree, 1975<sup>155</sup> outlines a provision, present in every Weights and Measures statute since 1892, which obliges all marketplace sellers to weigh or measure a product offered for sale to a prospective buyer when so requested. In a tangible fashion, s. 20 of the 1975 Decree prevents mislabelling by providing the consumer with a right to have the product he is about to purchase weighed or measured in his presence. The Decree further provides that failure or refusal by the merchant to weigh or to measure the good is an offence punishable by a fine not exceeding 200 cedis.<sup>156</sup>

### **4. Criminal law offences**

The Criminal Code, 1960 as amended contains few provisions that can be used to protect consumers from false or misleading labelling of food products. Arguably, s.286 under the general rubric of chapter 8 – Public Nuisances, which prohibits the sale of food or drink that is “in such a condition, from putrefaction, adulteration, or other cause, as to be likely to be noxious to health” could be used to prosecute a merchant who labelled his wares as ones fit for human consumption when they were not. This offence, however, is concerned more with food safety threats than with false or misleading labelling. Given the other statutes which permit prosecutions for food mislabelling, a criminal action under s. 286 would likely prove difficult in securing a conviction for a food labelling offence.

On the other hand, the general fraud provisions of the Code (s. 131 and ss. 16, 132, and 133) might be able to be used if there were found to be serious, widespread and egregious cases of deceptive sales of foods, involving fraudulent and misleading labelling on a grand scale in Ghanaian markets.<sup>157</sup>

## ***D. Labelling Requirements from Export Commodity Legislation***

Specific labelling requirements arise for the major export commodities of Ghana--cocoa, bananas, coffee, copra (coconut meal) and palm-kernels. The Cocoa Industry

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<sup>154</sup> S. 1(3). The Merchandise Marks (Prohibited goods) Regulations, 1963 (Vol. X, P. 425) set out the technical requirements that must be followed for the detention of suspected offending products.

<sup>155</sup> N.R.C.D. 326.

<sup>156</sup> As the amount for this fine has not been amended since the implementation of this legislation, this amount is now meaningless, equivalent to approximately 2 centimes of a euro.

<sup>157</sup> The author is not aware, however, of any cases in Ghana prosecuted under this provision.

(Regulation) (Consolidation) Decree, 1968<sup>158</sup> governs the grading, marking and export of cocoa while the Fruit Industry Decree, 1969<sup>159</sup> governs the other four export commodities.

Under both of these Decrees, the five named export commodities must be inspected, bagged (or wrapped in the case of bananas), the bags stamped or stenciled with officially assigned grade and product name, and then sealed with a government seal. The regulations for each commodity set out the mandatory labelling requirements to appear on each bag (or case) of the product. Usually this will consist of the name of the product and its grade and/or grade-mark. Each set of Regulations (cocoa,<sup>160</sup> coffee,<sup>161</sup> copra,<sup>162</sup> and palm-kernels<sup>163</sup> but not for bananas) specifically sets out what information must be marked on the bag.

The two Decrees set out offences for the unauthorized or fraudulent use of grade marks and seals and for persons who remove or alter such marks and seals without authorization.<sup>164</sup> The specific commodity regulations<sup>165</sup> also contain additional prohibitions, but only the Cocoa Regulations also contains additional penalty provisions.<sup>166</sup> However, the Fruit Decree penalty provisions explicitly indicate that they apply to regulations as well as to the Decree itself. Penalties for offences under the

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<sup>158</sup> N.L.C.D. 278 and the Regulation promulgated under it, namely the Cocoa Industry Regulations, 1968 (L.I. 598).

<sup>159</sup> N.L.C.D. 356 and the Regulations promulgated under it, namely the Fruit Industry (Bananas) Regulations, 1970 (L.I. 643); the Fruit Industry (Coffee) Regulations, 1970 (L.I. 644); the Fruit Industry (Copra) Regulations, 1970 (L.I. 645); and the Fruit Industry (Palm-Kernels) Regulations, 1970 (L.I. 646).

<sup>160</sup> The Cocoa Regulation specifies, for example, the exact form and size of the grade-marks to be affixed to the bags of cocoa once the cocoa has been graded. In the case of cocoa, the markings must exactly match those set out in the Second Schedule of the Regulation, being one, two or three stools each stool being 4.4 by 3 inches in size or if the cocoa is sub-standard quality, the words "Sub-standard" in letters no less than two inches high. Oddly though there is no official requirement that each bag be marked with the word "cocoa". For the other export commodities this requirement is clearly spelled out in the Regulation. For example, bags of palm-kernels must be marked "Palm-Kernels" in letters no less than two and one-half inches high.

<sup>161</sup> S. 2(2) "Each such bag shall show the type of coffee, that is to say Liberica, Robusta or Arabica which it contains by being marked thus: ROBUSTA COFFEE, the letters to be at least 2 ½ inches high." The Regulations require this marking in addition to the grade-mark assigned by the inspector which must be in the form set out in the Regulation and which must be at least three inches high (s.9).

<sup>162</sup> S. 13 states that the grade-marking of quality must be in "letters to be at least 3 inches high."

<sup>163</sup> S. 2(1) states that "All palm-kernels intended for export shall be packed in clean dry bags of strong and unimpaired texture and each such bag shall be clearly marked "Palm-Kernels" in letters at least 2 ½ inches high." The Regulations require this marking in addition to the grade-mark assigned by the inspector which must be in the form set out in the Regulation and which must be at least three inches high (s.10).

<sup>164</sup> S. 6 and 7 of the Cocoa Industry (Regulation) (Consolidation) Decree, 1968 and s. 6 of the Fruit Industry Decree, 1969.

<sup>165</sup> See s. 8 of the banana regulation, s. 14 of the coffee regulation, s. 15 of the copra regulation, s. 12 of the palm-kernel regulation regarding the prohibition against interference with seal, marks or contents of inspected bags.

<sup>166</sup> Depending on the provision breached, the Cocoa regulations provides fines that range from 200 to 4000 cedis and/or six months to 10 years imprisonment, with marking offences subject to the intermediate range of punishment (500 cedis and/or one year of imprisonment), thus making this latter penalty the same as under the Cocoa Decree for the same offence.

Decrees and their Regulations include fines and/or imprisonment<sup>167</sup> and forfeiture of produce associated with the perpetrator's proscribed activities.

### ***E. Implementation, Monitoring and Enforcement of Labelling Obligations***

Implementation, monitoring and enforcement of labelling obligations falls primarily to the officers of the Ghana Standards Board under the Standards Decree, 1973 and its subsidiary legislation, to officers of the Food and Drugs Board under the Food and Drugs Act, 1992 and to the police and to customs officers in certain other cases such as in prosecutions for fraud and trade mark infringement cases.

Under the Standards Decree 1973 food labelling inspectors are appointed pursuant to the Ghana Standards Board (Food, Drugs and Other Goods) General Labelling Rules, 1992.<sup>168</sup> These Rules were the first piece of Ghanaian legislation to specifically outline powers to be accorded to food labelling inspectors. Inspectors may enter any premise where food is being distributed or offered for sale, examine the food for compliance to the labelling rules and seize the food which contravene any of the provisions of the rules or "which have been labelled in such a way as to be deceptive, misleading or false."<sup>169</sup> The inspectors' powers also extend to examining imports in which case if any food is imported into Ghana which is not labelled according to the Rules it is detained for a period of 28 days to be relabelled. If after this period they have not been relabelled they can be seized.<sup>170</sup> Under the Standards Decree, the next step after inspection is a request for compliance, failing which a prosecution under the Decree and its subsidiary legislation is contemplated. The offences and the penalties attached to them have been reviewed above.

Under the Food and Drugs Act, regulatory officers perform a similar function to the inspectors under the Standards Decree, but from interviews with FDA staff, only a modest amount of the officers' time and efforts are devoted to labelling issues as the mandate of food safety requires considerable staff time and resources.<sup>171</sup> Staff stressed that the FDB does not generally "to enforce" FDA provisions, particularly labelling irregularities, through the formal mechanisms mentioned in the Act. Rather, the FDB aims to educate food producers, importers and sellers as to what the rules outlining labelling obligations mean for their products, whether domestic or imported and help private industry to develop labels that comply with provisions of the FDA.<sup>172</sup> However,

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<sup>167</sup> Up to 500 cedis and/or imprisonment of up to one year under the Cocoa Decree (s. 13) and up to 200 cedis or in default of payment, imprisonment of up to six months under the Fruit Decree (s. 6).

<sup>168</sup> L.I. 1541.

<sup>169</sup> S. 8(c).

<sup>170</sup> S. 11 makes all goods seized under these Rules liable to forfeiture.

<sup>171</sup> Mr. Ben Botwe, Deputy Chief Executive, Ghana Food and Drugs Board (interview conducted 27 February 2003).

<sup>172</sup> Mrs. Yvonne Nkrumah, Legal Officer, Ghana Food and Drugs Board (interview conducted 14 March 2003). This function has however led to an interesting court action. In "The Republic vrs. The Chief Executive, Food and Drugs Board, Ex Parte Body Sense Foods - Suit No.MISC1268/2001" a food producer requested the court to review a decision of the FDB with respect to the former's application to the Board for permission to produce and test-market "slim chocolate" and "power chocolate". The case appears to have

in cases where non-compliance is found and where an offender does not attempt to comply after several requests from FDA officers, formal prosecution remains a possibility. As seen above, offences relating to food labelling can be prosecuted under the general penalty provisions of Part I of the FDA. Thus the FDA provides for quasi-criminal sanctions of fines and/or imprisonment, forfeiture of offending food articles and/or the suspension or cancellation of any licence issued to the person under the FDA.

These formal remedies may not be effective for several reasons. The lack of jurisprudence<sup>173</sup> as well as comments from GSB and FDB staff suggest that the formal remedies have rarely been used against suspected or actual violators of Ghana's food labelling law. Several reasons may account for non-enforcement through the courts. These reasons included: lack of adequate resources to pursue violators; the slowness, costliness and uncertainty of legal proceedings that are necessary to lead to a conviction; very low financial penalties for offences, the possible chilling effect that such prosecutions might have on the general activities promoting food production and marketing in Ghana; and the use of other less formal mechanisms to ensure compliance with labelling provisions.

It would appear that unless labelling problems are ones that threaten health and safety, no systematic action is taken by either GSB or FDB officers to review products as a group or particular players in the market for labelling conformity. If a monitoring activity is undertaken it is usually based on an ad hoc basis in response to a competitor or (less often) a consumer complaint of false, misleading or deceptive labelling.

Prosecutions under the remaining legislation (the Merchandise Marks Act, the Trade Marks Act, the Weights and Measures Act, the Cocoa Industry (Regulation) Consolidation Decree, the Fruit Industry Decree and the Criminal Code) also appear rare and fall to police, customs officers and the public prosecutor's office. No cases were found, however, resulting from prosecutions for labelling offences under any of these statutes.

## **Part III – An Appraisal of Food Labelling Law in Ghana**

Ghanaian food labelling laws, like those in other countries, have generally developed gradually over the last 120 years, with occasional bursts of legislative intensity. These bursts of activity have sometimes followed the numerous radical political changes and economic upheavals that Ghana has experienced, but at other times have been quite independent of them. Considering its tumultuous history, the Ghanaian food labelling regime is respectably robust. There is perhaps a far stronger emphasis in the legislative history for the protection of commercial interests over consumer ones but this

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been settled before any court decision was forthcoming as no report case has been found. For commentary on the case, see Dr. Samuel K. Asibuo and Mr. Kingsley K.K. Ampofo, "Final Report- Review Study of Health Sector Regulation in Ghana, A Technical Assistance Report to Danish International Development Agency (DANIDA) Health Sector Support Office, Ghana and to the Ministry of Health and Regulatory Institutions in Ghana's Health Sector" (Accra, Ghana: November 2001) (on file with author) at p. 81.

<sup>173</sup> The author could find no reported cases relating to convictions for food labelling offences nor could the Food and Drugs Board nor the Ghana Standards Board provide cases that they had carried to prosecutions. Nor was the author able to find or was referred to cases that were settled prior to s. 9 prosecution proceedings.

may be changing with the advent of the Food and Drugs Act and its first set of regulations regulating breastfeeding product substitutes. Certain aspects of the food labelling regime appear to be working quite well without significant concerns or legislative confusion. This is perhaps most true in the area of commercial labelling requirements relating to the protection of intellectual property and the marking requirements for export commodities. In other areas, such as those relating to the general rules of labelling consumer goods and the prevention of product mislabelling, the system is under some considerable strain. The patches that have been enacted to fix the system over the years now considerably obscure and encumber the rational and efficient operation of the system. Producers, sellers and consumers are all therefore prejudiced.

While the current body of food labelling law in Ghana contains much of the required substance to effectively promote informative and truthful labelling practices of food producers and sellers to their consumers, it has paradoxically become unduly overgrown and complex on the one hand and unduly simplistic in its limited enforcement action with monetary penalties under most statutes no longer a viable enforcement tool because of low levels of fines.

## ***A. Obstacles Arising From Current Food Labelling Law in Ghana***

Three legal obstacles threaten the effective implementation of food labelling law in Ghana: jurisdictional overlap between the Standards Decree and the Food and Drugs Act, legislative confusion surrounding "standards" under Ghanaian law, and limited enforcement actions available to supervisory bodies responsible ensure compliance with food labelling law.

### **1. The obstacle of jurisdictional overlap between the Standards Decree and the Food and Drugs Act**

A recent report states that "a peculiar problem faced by the FDB in the recent past was a conflict between itself and the Ghana Standards Board over responsibility for food and drug law enforcement... [and that that] ... conflict has now been happily resolved."<sup>174</sup> Yet there remains a significant legislative overlap in the area of food labelling which is likely to raise conflicts as new issues in the food labelling require legislative action. While a new working relationship between the two departments is laudable, several difficult issues of legislative overlap remain.

Even if the enforcement aspects of the food and drug law have been resolved, an equally important area which appears yet unresolved is how and by whom standards for food labelling are made. Both the Standards Decree and the Food and Drugs Act statutes provide rule-making powers to their respective bodies to make subsidiary legislation to

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<sup>174</sup> Dr. Samuel K. Asibuo and Mr. Kingsley K.K. Ampofo, "Final Report- Review Study of Health Sector Regulation in Ghana, A Technical Assistance Report to Danish International Development Agency (DANIDA) Health Sector Support Office, Ghana and to the Ministry of Health and Regulatory Institutions in Ghana's Health Sector" (Accra, Ghana: November 2001) (on file with author) at p. 68.

regulate labelling.<sup>175</sup> At present, the Ghana Standards Board has taken a leading role in the development of food labelling mandatory requirements with the exception of those relating to infant breastfeeding substitute products. This function therefore rests primarily with the Ghana Standards Board. Thus, while the Minister of Health, on the recommendation of the FDB, has developed one food standard under sec. 47 of the FDA, no further action has been taken to secure control of the area of food labelling as an activity of the Food and Drugs Board and the Ministry of Health.

It would seem to make good sense to empower only one rather than two bodies with the power to make and enforce food standards and therefore avoid any jurisdictional overlap. The entire role could be given to the Standards Board under the logic that it is the recognized body to make all standards in Ghana. On the other hand, the exclusive power to legislate labelling with respect to food and food products could be included in those of the Food and Drugs Board as the body that deals with all aspects of the regulation of food, including the labelling function. In this latter case, the Standards Decree would have to be amended to exclude, from its general and rule-making powers, all matters with respect to the regulation of food and drugs.

## **2. The obstacle of legislative confusion surrounding "standards" under Ghanaian law**

As the analysis in Part II suggests there is significant difficulty in the structuring of current food labelling law because of the confusion in the statutes and the subsidiary legislation surrounding the notions of "standards," "prescribed standards," "standard specifications" and "Ghana Standards." More specifically, the legal status of the whole series of "Ghana Standards" requires careful examination.

Many of the current labelling provisions hinge on the definition of a "standard" or a "prescribed standard" or a "Ghana Standard" for a particular food product. Products not meeting those "standards" will be in violation of the Food and Drugs Act, the Ghana Standards Board General Labelling Rules (1992 Rules) or the Ghana Standards (Certification Mark) Rules. As well, "standardized" products must be in conformity with their various Ghana Standards, so as not to be in violation the non-compliance provisions set out in these instruments.

While the various Ghana Standards for particular products may be valid as subsidiary legislation under the Standards Decree, any Ghana Standard focusing on general standards (such as GS: 46 1992 on Labelling) seems to be difficult to justify and to legally validate given the 1992 Labelling Rules that treat the same subject. Furthermore, the 1992 Rules have been subjected to the scrutiny of Government under the process for the coming into force of legislative instruments while the GS has not. It is highly questionable, therefore, Ghana Standard GS: 46 1992 on Labelling is a validly enabled piece of subsidiary legislation. It would appear that the solution to the issue would be to create a new labelling regulation that would consolidate rules under one piece of legislation enacted by the body given exclusive responsibility for food labelling.

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<sup>175</sup> S. 47 of the FDA gives the power to make labelling rules to the Minister of Health after consultation with the Food and Drugs Board while s. 9 of the Standards Decree gives a similar power to the Ghana Standards Board.

### **3. Enforcement obstacles and the inadequacy and inconsistency of fines under various statutes and subsidiary legislation**

Due to fact that the fines for labelling offences have been infrequently amended, they have fallen to very low levels with the devaluation of the cedi. The maximum fine under any of the statutes is 5,000,000 cedis<sup>176</sup> under the FDA with other of the statutes having outdated maximum fines as low as 200 cedis. Small Ghanaian businesses and street vendors<sup>177</sup> may find fines of 5,000,000 cedis as having real deterrent value, but for larger Ghanaian or foreign businesses operating in Ghana, these fines will not. These levels effectively make the levying of fines an ineffective tool in enforcing food labelling provisions. There is also a need to update and harmonize the level of fines under the various acts and subsidiary legislation which govern food labelling for consistent enforcement under the whole set of food labelling statutes and subsidiary legislation.

The enforcement power of the FDA might also be enhanced if the Act and Regulations under it allowed for the licencing of food producers, manufacturers, importers and sellers and for regulations. In the case of default in the proper labelling of food, such licences could be revoked as an enforcement measure. This power is already available to the Ghana Standards Board under the Standard Decree and should be extended also to the Food and Drugs Board until one or the other of these bodies is given exclusive power to enforce all food labelling laws.

#### ***B. Possible Courses of Reform***

Three possible avenues of reform would greatly improved food labelling law in Ghana. First, and the easiest reform as it would not require the amending of any statutes, would be a full review and rationalization of existing food labelling subsidiary legislation. Second, reformers should consider whether existing legislation supports the creation of "Ghana Standards" and if not then the legislation should be amended to permit such subsidiary legislation but also limit it to specific product standards not to general labelling rules as is presently the case. Finally, fines in the food labelling statutes need to be amended to make then consistent between statutes and to have some real "bite" to encourage compliance.

Still there are national and international pressures which may accelerate the need and political will to achieve some of the above suggestions for reform. At the national level, drafting changes and legislative reform is actively being considered by the Ghana Standards Board and the Food and Drugs Board.<sup>178</sup> As well at the international level,

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<sup>176</sup> 5,000,000 cedis is equivalent to about \$600 USD.

<sup>177</sup> Currently minimum wage in Ghana is 9000 cedis per day, so a maximum fine represents 555 days of minimum wage. By comparison, in Canada where minimum wage is approximately \$55 CDN per day, maximum fines of \$250,000 CDN under the Food and Drug Act equal about 455 days of minimum wage.

<sup>178</sup> Mr. Daniel Nyampong, Head, Legal Office, Ghana Standards Board (interview conducted 10 March 2003)

standards from Codex and matters presently before the WTO Dispute Settlement Body<sup>179</sup> may produce new norms for labelling that, while not binding per se on Ghana, will have persuasive value to made Ghana change its food labelling law.

In a final analysis however, there is still the problem of sufficient resources for reform.<sup>180</sup> Ghana's limited resources may make the implementation of any new standards difficult. Without new allocations of financial resources, no innovations are likely to occur quickly.

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<sup>179</sup> The case of the European moratorium on the import of genetically modified products, filed May 13, 2003 before the WTO by the United States and Canada.

<sup>180</sup> Dr. Samuel K. Asibuo and Mr. Kingsley K.K. Ampofo, "Final Report- Review Study of Health Sector Regulation in Ghana, A Technical Assistance Report to Danish International Development Agency (DANIDA) Health Sector Support Office, Ghana and to the Ministry of Health and Regulatory Institutions in Ghana's Health Sector" (Accra, Ghana: November 2001) (on file with author) at p. 70-73, 77-79 and 84-87.

## Annex of Legislation

(in chronological order from coming into force)

(**bold** indicates legislation currently in force)

(*italics* indicates subordinate legislation currently in force)

### A. GENERAL LEGISLATION AFFECTING MARKETING AND SALE OF FOOD

#### 1. Standards and Public Marks

Standards Decree, 1967 (N.L.C.D. 199)

**Standards Decree, 1973 (N.R.C.D. 173) as amended**

(amendments limited to Standards (Amendment) Decree, 1979 (A.F.R.C.D. 44))

*Ghana Standards (Certification Mark) Rules, 1970 (L.I. 662) as amended*

(amendments limited to Ghana Standards (Certification Mark)  
(Amendment) Rules, 1970 (L.I. 664))

Ghana Standards Board (Food, Drugs and Other Goods) General Labelling Rules,  
1991 (L.I. 1512)

*Ghana Standards Board (Food, Drugs and Other Goods) General Labelling  
Rules, 1992 (L.I. 1541)*

*Various Ghana Standards (over 150 GS) and Foreign Government  
Standards (over 100 FGS) including for example:*

*GS 46: 1992 Packaged Foods - Labelling requirements*

*GS 50: 1973 Specification for Canned Tomatoes*

*GS 91: 1990 Meat and Meat Products - Specification for Dressed,  
Chilled and Frozen Poultry*

*GS 151: 1992 Specification for weighing instruments to be used  
for trade purposes*

*GS 210: 1998 Food technology - Specification for irradiated food*

#### 2. Weights and Measures

Ordinance No. 13 of 1892 - Towns and Public Health, section 25

Ordinance No. 9 of 1896 - Weights and Measures (missing in part)

Weights and Measures Ordinance (Cap. 188) (missing)

Towns Ordinance (Cap. 86), Section 27 (missing)

**Criminal Code, 1960 (Act 29) (see below)**

Weights and Measures Act, 1964 (Act 225)

**Weights and Measures Decree, 1975 (N.R.C.D. 326) as amended**

(amendments limited to Weights and Measures (Amendment) Law, 1992  
P.N.D.C.L. 301)

*Custodian of Weight and Measures (Duties and Powers) Regulations, 1986 (L.I.  
1325) (missing - still in force?)*

*Prosecution of Offences under the Weights and Measures Decree (N.R.C.D. 326)*  
*Instrument, 1991 (L.I. 1513)*  
*Weights and Measures (Fees) Regulations 1992 (L.I. 1549)*  
*Weights and Measures (Permissible Errors) Regulations 1992 (L.I. 1550)*

### 3. The Criminal Code

Ordinance No. 12 of 1892 - Criminal Code

**Criminal Code, 1960 (Act 29), as amended**

**Section 16, 131, 132 and 133 - offences punishing fraud generally**

**Section 138 - offences punishing fraud as to weights and measures**

**Section 286 - offences punishing the sale of unwholesome food**

### 4. Trademarks

The Trade Marks Ordinance, 1900

The Trade Marks Ordinance, 1914 (No. 5 of 1914)

The Trade Marks Ordinance (Cap. 180)

The Trade Marks (Amendment) Ordinance (Cap. 181) (missing)

**Trade Marks Act, 1965 (Act 270)**

*Trade Marks (Fees) Regulation, 1960 (L.I. 91)*

*Trade Mark Regulation, 1970 (L.I. 667)*

### 5. Other Public Marks

Ordinance No. 4 of 1888 - Merchandise Marks

The Merchandise Marks Ordinance (Cap. 178)

*The Merchandise Marks (Prohibited Goods) Regulations, 1963 (VOL. X, p. 425)*

**The Merchandise Marks Act, 1964 (Act 253)**

Ordinance No. 15 of 1944 - Undesirable Advertisements (missing)

Undesirable Advertisements Ordinance (Cap. 74)

## B. SPECIFIC FOOD LEGISLATION

**Food and Drugs Law, 1992 (P.N.D.C.L. 305B) as amended**

(amendments limited to Food and Drugs (Amendment Act, 1996 (Act 523))

*Breastfeeding Promotion Regulations, 2000 (L.I.1667)*

## C. COMMODITY SPECIFIC LEGISLATION

### 1. Cocoa

Cocoa Industry (Regulation) Ordinance, 1937

Cocoa Industry (Regulation) Ordinance (Cap. 185)  
Cocoa Industry (Regulation) Regulations (under section 16 of Chapter 185)  
Cocoa Industry Regulation (Amendment) Ordinance, 1953 (No. 23 of 1953) (missing)  
Cocoa Industry (Amendment) Regulations, 1956  
Cocoa Industry (Control of Exportation) Ordinance (Cap. 187)  
Cocoa Industry (Regulation) Ordinance (Amendment) Decree, 1968 (N.L.C.D. 257)  
**Cocoa Industry (Regulation) (Consolidation) Decree, 1968 (N.L.C.D. 278)**  
*Cocoa Industry Regulations, 1968 (L.I. 598) as amended*  
(amendments include Cocoa Industry (Amendment) Regulations, 1968  
(L.I. 602) and Cocoa Industry (Amendment) Regulations, 1971 (L.I. 713))

## 2. Other export commodities

The Fruit Industry Regulation Ordinance, 1934  
The Palm Oil Ordinance (Cap. 166) (missing)  
The Coco-nut Industry Regulation Ordinance (Cap. 197) (missing)  
The Coco-nut Industry (Amendment) Regulations, 1956 (missing in part)  
The Palm-Kernels Adulteration Ordinance (Cap. 198) (missing)  
The Bananas (Control of Exportation) Ordinance (Cap. 200) (missing)  
The Fruit Industry Regulation Ordinance (Cap. 201)  
The Fruit Industry (Palm Kernels) Regulations, 1948  
The Fruit Industry (Palm Kernels) (Amendment) Regulations, 1956  
The Fruit Industry (Coffee) Regulation, 1950  
The Fruit Industry (Coffee) (Amendment) Regulations, 1956  
The Fruit Industry (Regulation) Act, 1958 (No. 13) (missing)  
**Fruit Industry Decree, 1969 (N.L.C.D. 356)**  
*Banana Regulations, 1970 (L.I. 643)*  
*Coffee Regulations, 1970 (L.I. 644)*  
*Copra Regulations, 1970 (L.I. 645)*  
*Palm Kernels Regulations, 1970 (L.I. 646)*  
**Fisheries Law, 1991 (P.N.D.C.L. 256)**  
**Wholesale Fish Marketing Act, 1963 (Act 165)**

# Bibliography

## I - General Works

Armah, Ayi Kwei, *The Beautiful Ones Are Not Yet Born* (Oxford: Heinemann Education Publishers, 1968)

Fitzpatrick, Mary et al., *West Africa* (Melbourne: Lonely Planet Publications, 2002)

Puy-Denis, Patrick, *Le Ghana* (Paris: Editions Karthala, 1994)

## II - Specific Monographs, Theses, and Courses

Amoah, J.E.K., *Development of Consumption, Commercial Production and Marketing - Cocoa Outline Series 1* (Accra: Jemre Enterprises Limited, 1995)

Amoah, J.E.K., *Marketing of Ghana Cocoa 1885-1992 - Cocoa Outline Series 2* (Accra: Jemre Enterprises Limited, 1998)

Amoah, J.E.K. *The Story of Cocoa, Coffee and Sheanut: Environmental Issues and Food Values-Cocoa Outline Series 3* (Accra: Jemre Enterprises Limited, 2000)

Anin, T.E., *An Economic Blueprint for Ghana* (Accra: Woeli Publishing Services, 2003)

Hutchful, Eboe, *Ghana's Adjustment Experience: The Paradox of Reform* (Geneva: United Nations Research Institute for Social Development, 2002).

La-Anyane, S., *The Agricultural Industry of Western Africa* (Accra: Ghana Universities Press, 1988)

Mensa-Bonsu, Henrietta J. A. N., *The Annotated Criminal Code of Ghana* (3d) (Accra, Black Mask, 1999)

Ministry of Trade and Industry, *Ghana Laws of Trade and Industry* (Accra, Government Press, 1995)

van Dantzig, Albert, *Forts and Castles of Ghana* (Accra: Sedco Publishing, 1980)

### **III - Articles, Reports and Conference Proceedings**

Asibuo, Samuel K. and Mr. Kingsley K.K. Ampofo, "Final Report- Review Study of Health Sector Regulation in Ghana, A Technical Assistance Report to Danish International Development Agency (DANIDA) Health Sector Support Office, Ghana and to the Ministry of Health and Regulatory Institutions in Ghana's Health Sector" (Accra, Ghana: November 2001)

### **IV - Official Documents**

#### 1) Documents of Multilateral Organizations

Codex Standard for Infant Formula - Codex Stan 72-1981 (Rome: Codex, 1981)

International Code of Marketing of Breast-milk Substitutes by the World Health Organization (Geneva: WHO, 1981)

#### 2) Documents of Regional Organizations

#### 3) Documents of National and Sub-national Governments

#### 4) Documents of Non-governmental Organizations

### **V - Legal Documents and Proposed Legislation**

#### 1) Multilateral Treaties

#### 2) Regional Legislative Instruments

#### 3) National and Sub-national Legislation and Historic Collections of Laws

*Foreign Jurisdictions Act*, [cite]

The Attorney General's Office, *Index to the Substantive Statutes of Ghana in Force on March 1, 2001* (Accra: The Attorney General's Office [2001])

Statutes and subsidiary legislation of Ghana (see Annex I above)

#### 4) Case Law

#### 5) Proposed Legislative Instruments

## VI - Interviews

- Mr. E.M. Darkey, Assistant Librarian, Law Library, Faculty of Law, University of Ghana (interview conducted 26, 27 February and 12 March 2003)
- Prof. K.K.K. Ampofo, Senior Lecturer, Faculty of Law, University of Ghana (interview conducted 26 and 27 February, 5 and 12 March 2003)
- Prof. E. Asibey-Berko, Nutrition/Biochemistry, Department of Nutrition and Food Science, University of Ghana (interview conducted 12 March 2003)
- Mr. Ben Botwe, Deputy Chief Executive, Ghana Food and Drugs Board (interview conducted 27 February 2003)
- Rev. Jonathan Martey, Head Laboratory Services, Ghana Food and Drugs Board (interview conducted 27 February and 14 March 2003)
- Mr. Emmanuel Quaye, Senior Regulatory Officer, Ghana Food and Drugs Board (interview conducted 27 February 2003)
- Mrs. Maria Djan, Regulatory Officer, Ghana Food and Drugs Board (interview conducted 14 March 2003)
- Mr. Roderick Dadey-Adjei, Regulatory Officer, Ghana Food and Drugs Board (interview conducted 14 March 2003)
- Mrs. Yvonne Nkrumah, Legal Officer, Ghana Food and Drugs Board (interview conducted 14 March 2003)
- Mr. Alex O. Ntiforo, Executive Director, Ghana Standards Board (interview conducted 3 March 2003)
- Mr. Charles Amoaka, Head, Marketing Department, Ghana Standards Board (interview conducted 3 March 2003)
- Ms. Theresa Achi, Head Librarian, Ghana Standards Board (interview conducted 3, 5 and 10 March 2003)
- Mr. Daniel Nyampong, Head, Legal Office, Ghana Standards Board (interview conducted 10 March 2003)
- Mr. Kofi Larbi, Legal Officer, Ghana Ministry of Trade and Industry, Legal Division (interview conducted 4 March 2003)
- Mrs. Fori Boateng, Legal Officer, Ghana Ministry of the Attorney General, Legal Drafting Department (interview conducted 5 March 2003)
- Mr. Justice V.C.R.A. Crabbe, Ghana Ministry of the Attorney General, Commission for Statute Law Revision (interview conducted 13 March 2003)
- Mr. Jonathan Arnold, First Secretary (Development), Canadian High Commission (interview conducted 24 and 26 February 3, 5 and 13 March 2003)