



CODE OF PRACTICE

FOR THE

NEW ZEALAND

BEVERAGE COUNCIL

November 2014

CODE OF PRACTICE FOR THE NEW ZEALAND BEVERAGE COUNCIL

1. OBJECTIVES

1.1. The objects of the Code are:

- 1.1.1. To establish procedures within those industries involved in and associated with the manufacture, bottling, importing and distribution of fruit juice, water and other non-alcoholic beverages (excluding milk), in New Zealand with the aim of preventing unfair practices in the manufacture, packaging, labeling and marketing of such beverages in New Zealand.
- 1.1.2. To establish the industry as a responsible and law abiding industry

2. DEFINITIONS

- 2.1. "Code" means this Code of Practice and any variations thereof.
- 2.2. "Committee" means the Industry Compliance Committee.
- 2.3. "Council" means the New Zealand Beverage Council.
- 2.4. "Member" means any member of the New Zealand Beverage Council.
- 2.5. "Supplier" means a manufacturer or seller of fruit juice and other non-alcoholic cold beverage products (excluding non-flavoured milk).
- 2.6. "Signatory" means a party, including members, which has signed an agreement binding its organisation or company to the terms and conditions of the Code.

3. APPLICATION

- 3.1. This Code applies to all members of the New Zealand Beverage Council and subject to the Council's approval, any other party which registers with the Council its willingness to be a party to the Code.
- 3.2. The Code applies to all fruit juice, water and other non-alcoholic beverage products (excluding milk) sold in New Zealand.
- 3.3. All parties to the Code shall sign an agreement that its terms and conditions will bind them.
- 3.4. The terms and conditions of the Code may be varied by a general meeting of the Council held following notice of the proposed variations haven been given to all Members and Signatories of the Code. Variations approved by the Council shall be notified in writing to all Members and Signatories.
- 3.5. A person may cease to be a Signatory to the Code by serving written notice to that effect on the Executive Officer of the Council and such cessation shall take effect from the date of receipt of such notice by the Executive Officer. The Signatory shall continue to be liable in respect of its obligations and conduct to the date of the cessation and the Code may be enforced by the Council in respect of such prior obligations and conduct notwithstanding such cessation.
- 3.6. In the event that a Signatory to the Code is suspended pursuant to the provisions of the Code and notified by the Council accordingly, the following restrictions shall apply during the period of cessation:
 - 3.6.1. The Signatory shall not hold out or represent to any other Signatory or other party that it is a Signatory to the Code without also advising that it is under suspension.
 - 3.6.2. No product of the Signatory manufactured after fourteen working days from the date of notification shall be entitled to bear any certification or logo indicating that the person is a Signatory to the Code or otherwise complies with the Code.

3.6.3. The Signatory shall continue to be bound by the Code.

4. PRINCIPLES OF FAIR PRACTICE

4.1. Members and Signatories (whether manufacturers, processors, distributors or others) are expected to observe good manufacturing and marketing practices for fruit juice, water and other non-alcoholic cold beverages (excluding milk) and to observe the provisions of the Australia New Zealand Food Standards Code and related legislation and agree not to engage in conduct that is misleading or deceptive or that is likely to mislead or deceive or engage in any other conduct in breach of the Fair Trading Act 1986. Such conduct would include, but is not limited to:

4.1.1. Misrepresentation about composition, grade, contents or the like.

4.1.2. Misleading or deceptive labeling.

4.1.3. Misleading or deceptive packaging.

4.1.4. Misleading or deceptive advertising.

4.1.5. Labeling breaches.

4.2. Members and Signatories are required to observe the following rules in regards to the use of WESOS in beverages:

Reconstituted orange juice shall not contain Pulp Wash/WESOS other than that which was added at the point of mechanical extraction in line.

Pulp Wash/WESOS can be used in fruit drinks and cordials provided that it is declared in the ingredients list and is not used as part of the "fruit juice" content.

5. CERTIFICATION

5.1. The Council may from time to time develop, own and licence to Signatories, logos, insignia or other devices, which proclaim or certify a person to be a Signatory to the Code. All licence fees collected by the Council shall be applied to the administration of the Code.

5.2. Signatories shall not employ a logo, insignia or other device proclaiming or certifying a person to be a Signatory to the Code outside the Council's license system.

6. ADMINISTRATION

6.1. The Code is to be administered by the Council, the role of which is to:

6.1.1. Manage the operation of the Code.

6.1.2. Oversee the establishment and ongoing operation of the Committee.

6.1.3. Provide adequate financing for the administration of the Code.

6.1.4. Take action on recommendations made by the Committee and in its own name enforce the provisions of the Code.

6.1.5. Monitor and make amendments to the Code after consultation with relevant interest groups.

6.1.6. Promote the Code.

6.1.7. Establish operating costs and ongoing budgeting.

6.2. As manager of the Code, the Council President shall be responsible for any public communication in relation to the Code. If a conflict of interest is likely on the part of the President, the President will stand aside on the matter and the Vice-President of the Council shall be responsible for any public communication.

7. INDUSTRY COMPLIANCE COMMITTEE

- 7.1. The Council will appoint no less than five (5) and no more than seven (7) individuals to be members of the Committee consisting of:
 - 7.1.1. A Chairperson.
 - 7.1.2. The President of the Council or an appropriate delegate.
 - 7.1.3. The Chairperson of the Council's Technical Committee.
 - 7.1.4. Not less than two (2) and not more than four (4) independent members.
- 7.2. The Chairperson shall be independent of the Council.
- 7.3. The Committee shall be appointed annually.
- 7.4. A Committee member shall be ruled ineligible to sit on any matter which involves a conflict of interest, including deliberations on matters involving their employer or a related company.
- 7.5. The Committee shall receive, assess and make recommendations for appropriate action in relation to:
 - 7.5.1. Results of monitoring programme.
 - 7.5.2. Breaches of the Code.
 - 7.5.3. Public complaints and allegations.
 - 7.5.4. Any other matter referred by the Council.
- 7.6. The quorum of the Committee shall be three members including at least one non-industry representative.

8. BREACHES OF THE CODE

- 8.1. The Committee will consider any written complaint alleging a breach of the Code, providing it is accompanied with appropriate supporting data. The Committee shall inform the person or organisation lodging the complaint that they will be liable for the Committee's costs in investigating the complaint where such a complaint in the Committee's opinion is not substantiated.
- 8.2. On receipt of a complaint the Committee shall notify the complaint to the Supplier in writing. The Committee shall:
 - 8.2.1. identify the product concerned;
 - 8.2.2. quote the use by date and or batch Code of the samples;
 - 8.2.3. set out the details of the alleged breach of the Code;
 - 8.2.4. specify that the Supplier must reply in writing to the Council to the alleged breaches of the Code within 14 days providing:
 - 8.2.4.1. an explanation of the facts concerning the alleged breach;
 - 8.2.4.2. any mitigating circumstances which may have existed;
 - 8.2.4.3. any matters to be considered by the Committee in determining whether a breach has occurred;
 - 8.2.4.4. reasons why action under clause 10 of the Code should not be taken.
- 8.3. Following receipt of the Supplier's response or where no response is received, following 14 days from notification of the complaint to the Supplier, the Committee shall meet to determine the complaint. The Committee may appoint such experts and undertake such testing (in accordance with the sampling protocol set out in Appendix A) as it considers necessary to determine the complaint.
- 8.4. On determination of the complaint the Committee may recommend action deemed appropriate pursuant to clause 10 of this Code.
- 8.5. The Committee shall:
 - 8.5.1. Act fairly, in good faith and without bias;

- 8.5.2. Ensure that documents which the Committee takes into account in reaching a decision are made available to the organisation the subject of the complaint.
- 8.5.3. Give the organisation the subject of the complaint the opportunity to adequately state its case, and to correct or contradict any relevant statement prejudicial to its case.
- 8.5.4. Deal with the complaint as expeditiously as possible.

9. MONITORING AND TESTING

- 9.1. The Committee shall conduct an ongoing monitoring programme to ensure compliance with the Code. The monitoring may include testing. Where testing occurs samples are to be collected in accordance with the sampling protocol set out in Appendix A and the samples sent for analysis to an analytical laboratory approved by the Council.
- 9.2. If the results of the monitoring programme, in the opinion of the Committee, indicate a breach of the Code, then the Committee shall deal with the matter as if it had received a complaint under clause 8.

10. SANCTIONS

- 10.1. Where the Supplier involved in the breach of the Code is a Code Signatory and fails to satisfy the Committee that there is no cause for action, then the Committee may recommend to the Executive of the Council that it carry out any or all of the following actions:
 - 10.1.1. In the case of a first or less serious breach (in the Committee's opinion) of the Code:
 - 10.1.1.1. Issue a warning under the signature of the President of the Council that if the breach is not remedied the Council may take further action pursuant to clause 10.1.2.
 - 10.1.2. In the case of a subsequent or serious breach (in the Committee's opinion) of the Code:
 - 10.1.2.1. Publish the Committee's decision (including any test results and any expert scientific interpretation of the results) in any form the Committee deems fit. Before publishing the decision the Executive shall seek legal advice that such action will not put it at risk of breaching defamation laws.
 - 10.1.2.2. Inform the Commerce Commission, relevant government departments and other interested parties about the complaint.
 - 10.1.2.3. Where the matter involves an alleged breach of the Australia and New Zealand Food Code, or the Fair Trading Act the Council may institute legal proceedings for damages an injunction or other court orders aimed at preventing further breaches of the Code
 - 10.1.2.4. Suspend the Supplier from being a Signatory to the Code.
- 10.1.3. Where the Supplier involved in breach of the Code is not a Signatory to the Code and fails to satisfy the Committee that there is no cause for action then the Committee may recommend to the Executive of the Council that it take any or all of the following action:
 - 10.1.3.1. Publish the Committee's decision including any test results and any expert scientific interpretation of the results in any form the Committee deems fit. Before publishing the decision the Executive shall seek legal advice that such action will not put it at risk of breaching defamation laws.
 - 10.1.3.2. Inform the Commerce Commission, relevant government departments and other interested parties about the verified complaint.

10.1.3.3. Where the matter involves an alleged breach of the Australia and New Zealand Food Code, or the Fair Trading Act the Council may institute legal proceedings for damages and in junction or other court orders aimed at preventing further breaches of the Code.

11. PUBLICITY PROCEDURES

11.1. The Council shall publicise the existence of the Code and any alterations, to its Members and to the retail and public sectors through relevant industry Councils or other appropriate means.

12. STAFF INSTRUCTIONS

12.1. All Members and Signatories which are party to the Code shall undertake to give adequate instructions to employees or agents about the Code and any alterations when they occur.

13. RECORDS

13.1. Members and Signatories will retain all relevant purchasing, manufacturing and quality assurance records for a minimum of 7 years.

14. REPORTING PROCEDURES

14.1. The Committee shall report to the Council at least annually on its activities including the number of complaints, type of complaints, how complaints were resolved, and generally on the industry's performance in compliance with the Code. The Council shall produce an annual report on the Code and its administration and make it available to interested parties.

15. REVIEW AND EVALUATION OF THE CODE

15.1. The Code and its administration will be reviewed and evaluated by the Executive of the Council at the end of each year of its operation. Comments shall be sought from Members and other interested parties on the review and evaluation of the Code, and on any proposed amendments.

APPENDIX "A"

SAMPLING PROTOCOL

1. Sampling is to be carried out by an independent government or private agency from any retail outlet. The sampling will be random but will cover a range of products available in a category.
2. Three samples of each brand being sampled are to be purchased and sealed with a paper seal bearing the initials of the sampling officer. They are to be labeled A, B and C. The sampling officer will sign and date the seals.
3. Each of the samples is to be exactly the same with respect to size, labeling, and use by date and any other identifying features. Where the sample volume is less than 2lt, sufficient samples are to be purchased to make a total of 2 lt. for each of A B and C.
4. Samples will be stored at the independent agency in a state suitable for the purposes of testing and possible re-testing over an extended period of time. Sample A will be analyzed by the Council's official testing laboratory, Sample B will be available to the Supplier and sample C will be kept, in case of a dispute, as a reference sample subject to Court Order.
5. The sampling officer will record the following details;
 - 5.1. Name and classification of officer.
 - 5.2. Name and address of manufacturer.
 - 5.3. Brand and use by date.
 - 5.4. Place of purchase.
 - 5.5. Date of purchase.
 - 5.6. How product was stored (eg shelf, open refrigerator).
 - 5.7. Price of product (the cash register receipt should be retained).
6. Upon receipt at the Council's official testing laboratory, each sample will be given a unique official testing laboratory registration number. Before analysis is commenced, the Council's official testing laboratory food section supervisor will check that the seal is intact and sign an acknowledgement as to that fact.
7. Samples are to be packed in a chilly bin by the organisation obtaining the samples and consigned by express delivery to the Council's official testing laboratory as soon as practicable after purchase. The officer obtaining the sample shall record details and do all things required by clause 5 above.