

# HOW NATURAL IS 'NATURAL'?

05 July 2018 | Australia

Legal Briefings - By **Philippa Bergin-Fisher and Vanessa Jiang**

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Brand owners like to distinguish their products by marketing them as 'natural'. What is required to substantiate such a claim? Recent decisions illustrate that context is key.

## RANGE OF PRODUCTS, RANGE OF OUTCOMES

### HAIR PRODUCTS

In *Aldi v Moroccanoil*,<sup>1</sup> Aldi had released Moroccan argan oil hair products under the brand PROTANE NATURALS. The products contained argan oil as well as synthetic ingredients. The Appeal Court held that an ordinary consumer would not think the products were made substantially from natural ingredients. The Court considered it relevant that the word NATURALS was in smaller font than the word PROTANE, was plural, the products were low cost and were mostly sold in discount bins at Aldi. The word NATURALS would be understood as 'a sub-line of the PROTANE products and not a statement about the quantity of natural ingredients in the products'.



Source: *Aldi Foods Pty Ltd v Moroccanoil Israel Ltd* [2018] FCAFC 93 at [25].

### INSECTICIDE

In an earlier Federal Court decision,<sup>2</sup> the packaging of 'MORTEIN NaturGard' insecticide products was alleged to be misleading. Relevantly, the Court considered the NaturGard insecticide system, a first refill product and a second refill product. All products were branded NaturGard, used a leaf motif, stated 'over 90% natural ingredients' on the front of the packaging and referred to synthetic ingredients on the back. The main product and second refill also stated '1.4% synthetic actives' on the front of the packaging, in small font underneath the words 'over 90% natural ingredients'. The packaging of the main product and second refill were held not to be misleading. However the first refill, without the words '1.4% synthetic actives', was misleading because the packaging would lead the ordinary consumer to understand that at least some part of the insecticide (that is, the active ingredients) was 'natural'.



## Descriptions

1. OVER 90% NATURAL INGREDIENTS  
1.4% SYNTHETIC ACTIVES
2. OVER 90% NATURAL INGREDIENTS
3. OVER 90% NATURAL INGREDIENTS  
1.4% SYNTHETIC ACTIVES

From left to right: main Naturgard product; first refill; second refill

Source: SC Johnson & Son Pty Ltd v Reckitt Benckiser (Australia) Pty Ltd (2012) 298 ALR 215 at Schedules G, H & I.

## BABY PRODUCTS

The ACCC recently issued three infringement notices in relation to GAIA baby products because it considered there was a reasonable basis that the description of 'Pure ★ Natural ★ Organic' was misleading. While the products contained natural ingredients, to which two synthetic chemical preservatives were added to prevent the growth of bacteria, the ACCC maintained that GAIA may have misled consumers into thinking that its products were free from synthetic chemicals. As a result, GAIA paid \$37,800 in penalties.<sup>3</sup>



Source: <https://www.accc.gov.au/media-release/accc-targets-misleading-organic-claims>

## HOW 'NATURAL' WILL YOU NEED TO BE?

The MoroccanOil and NaturGard cases may be reconciled on the basis that they both indicate a 'natural' product does not need to contain wholly natural ingredients, although some or all of its active ingredient(s) should be natural. The ACCC's position in the GAIA matter appears different, in that the ACCC appears to have considered that having substantially natural ingredients is not sufficient to substantiate a 'natural' claim in those circumstances.

In the absence of standards which define what is required to substantiate a 'natural' claim, businesses must look at regulatory activity and legal decisions. The fact that these are not perfectly consistent means there will remain legal risk describing a product as 'natural' if it is not made of 100% natural ingredients. To assess the risk level, weight should be given to contextual factors which will influence a consumer's understanding of the word, such as:

- the nature of the product;
- the overall packaging; and
- where the product is sold.

The ACCC considers that a premium claim (one which suggests a product is of higher quality to others in its class, such as 'natural') requires extra care and thought.

Sanctions for making unsubstantiated 'natural' claims may include paying penalties, amending product names and packaging, offering refunds to customers, amending representations made online, publishing corrective notices and undertaking compliance programs.

See related article: ["Like Brands. Only Cheaper" - ALDI gets up on copying and falls on natural claim](#) (8 September 2017).

## ENDNOTES

1. *Aldi Foods Pty Ltd v Moroccanoil Israel Ltd* [2018] FCAFC 93.
2. *SC Johnson & Son Pty Ltd v Reckitt Benckiser (Australia) Pty Ltd* (2012) 298 ALR 215.
3. ["ACCC targets misleading organic claim"](#) (ACCC media release, 20 June 2018).

## LEGAL NOTICE

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