

MEAT LABELLING AND THE PROTECTION OF RELIGIOUS CONSUMERS: A CRITICAL AND COMPARATIVE STUDY BETWEEN SOUTH AFRICA AND THE UNITED KINGDOM

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1 Introduction

During the first quarter of this year a horsemeat scandal severely compromised the reputation of a well-known supermarket chain in the United Kingdom (“UK”).¹ Shortly thereafter a similar scandal came to the fore in South Africa (“SA”).² After testing several meat products which were labelled as ‘100% pure beef mince’ and ‘beef biltong’, traces of pork, donkey, water buffalo and in rare instances even giraffe, were found in products sold by several local supermarkets.³ Despite food labelling legislation and regulations in both the UK and SA which attempt to afford consumers adequate protection, compliance therewith remains a problem in practice. The incorrect labelling of meat products in actual fact appears to have become an illicit trade for financial gain on a global level.⁴ Simultaneously, consumers continue to be disappointed and their interests continue to be violated by means of fraudulent procedures.

Apart from the moral and ethical concerns some consumers might have with incorrectly labelled meat products, religious consumers are arguably those mostly affected. Both South Africa and the United Kingdom have large populations of Muslim

¹ R Hutton “Horsemeat Swap May Be Criminal – UK Minister” *Cape Times* (2013-02-11) 7.

² B Ndenze “Donkey Sausages Meat Industry in SA Faces Urgent Probe” *Cape Times* (2013-03-01) 6.

³ Anonymous “DNA Reveals Pattern of False Products” *Cape Times* (2013-03-01); D Cawthorn, HA Steinman & LC Hoffman “A High Incidence of Species Substitution and Mislabeling Detected in Meat Products Sold in South Africa” (2013) *Department of Animal Sciences, University of Stellenbosch* in conjunction with the *Food & Allergy Consulting & Testing Services (F.A.C.T.S)* 9 1-14.

⁴ Cawthorn *et al* (2013) *US Department of Animal Sciences & F.A.C.T.S* 1-14; M van der Spiegel, HJ van der Fels-Klerx, P Sterrenburg, SM van Ruth, IMJ Scholtens-Toma & EJ Kok “Halal Assurance in Food Supply Chains: Verification of Halal Certificates using Audits and Laboratory Analysis” (2012) 27 *Trends in Food Science & Technology* 109 109-119.

and Jewish consumers. In both religions the consumption of pork is forbidden.⁵ In the Muslim religion particularly, meat products in specific are the strictest regulated food products, primarily because the Quran expressly prohibits the consumption of the flesh of swine. Furthermore, according to both the Muslim and Jewish religion, the consumption of pork is generally viewed as an act of impurity.⁶ The incorrect labelling of meat products, which do not adhere to Islamic slaughtering procedures or contain traces of pork, is accordingly of great concern, as it essentially amounts to the breach of a fundamental religious commandment.

Despite the implicit duty there is on modern day societies to protect marginalised groups, religious consumers are also becoming of pivotal importance to manufacturers, traders and suppliers. Research has indicated that the Halal food market was in 2012 already worth 16% of the global food industry.⁷ Arguably, ensuring greater transparency, improving enforcement mechanisms in terms of food labelling legislation and regulations, as well as securing a higher form of redress in cases of non-compliance are therefore becoming an imminent need for religious consumers in order to regain their faith in the meat industry as a whole.

The objectives of this paper are twofold: firstly, a comparative analysis of the applicable food labelling legislation and regulations in both the UK and SA will be provided. Secondly, the question of whether the mislabelling of meat products can be viewed as a constitutional infringement upon the right to freedom of religion and human dignity will be explored.

⁵ K Lasson "Sacred Cows, Holy Wars: Exploring the Limits of Law in the Regulation of Raw Milk and Kosher Meat" (2012) available at http://works.bepress.com/kenneth_lasson/10; SM Sigman "Kosher Without Law: The Role of Nonlegal Sanctions Overcoming Fraud within the Kosher Food Industry" (2004) 31 *Florida State University Law Review* 509 509-601; Anonymous "Islam and Pork" (2007) *South African National Halal Authority* (online) <http://www.sanha.co.za/a/index2.php?option=com_content&task=view&id=1735> (accessed 4-5-2013).

⁶ Spiegel *et al* (2012) *Trends in Food Science & Technology* 109-119.

⁷ 109-119.

2 Consumer protection and meat labelling in South Africa

2.1 The Consumer Protection Act

Section 3(1)(d)(ii) of the Consumer Protection Act 68 of 2008 (the “CPA”), states that the purpose of this Act is to protect consumers from deceptive, misleading, unfair or fraudulent conduct. In addition thereto, the right to honest and fair dealing is one of the consumer’s fundamental rights in terms of Part F of the CPA. It is clear that the mislabelling of meat products amounts to an infringement on all of the above grounds, particularly the consumer’s right to honest and fair dealing, and as such, it is also directly in contrast with the purpose of the CPA. Consequently, the acting Consumer Commissioner recently encouraged South African consumers to seek redress under the CPA.⁸

Section 41 of the CPA expressly prohibits any false, misleading or deceptive representations that are made by means of an incorrect description of a product or trade.⁹ Portraying incorrect ingredients on the labels of meat products as well as failing to disclose the entire contents of the meat product, which contains traces of pork for instance, would amount to a false, misleading or deceptive representation. Section 24 deals specifically with product labelling and trade descriptions. Section 24(2) provides that a supplier is not allowed to knowingly apply labelling which could have the potential of misleading a consumer. The burden of proof is heavier on retailers who deal with consumers directly. Should they reasonably have known or reasonably suspect that the supplier may have provided a product which is labelled incorrectly, they are prohibited from distributing such a product to consumers.¹⁰ Charter makes a valid point when he argues that prior to all of the widespread media reports, a retailer could have alleged that he was not or could not have been reasonably aware of the pandemic of

⁸ Anonymous “The Consumer Protection Act and the Correct Labeling of Meat Products – What Retailers and Consumers Must Know” (2013) *DLA Cliffe Dekker Hofmeyr* <<http://www.cliffedekkerhofmeyr.com/en/news/press-releases/2013>> (accessed 4-5-2013).

⁹ Consumer Protection Act 68 of 2008.

¹⁰ Anonymous “The Consumer Protection Act and the correct Labeling of Meat Products – What Retailers and Consumers Must Know” *DLA Cliffe Dekker Hofmeyr*; J Luterek “Relevance of the Consumer Protection Act of 2008 to the Snack Food Industry” (no date) *Hahn&Hahn Attorneys* available at <<http://www.hahnlaw.co.za/consumer-protection-act-snack-foods.htm>> (accessed 20-3-2013); E Stern “100% pure misleading” (2012) *Consumer Law Review* (1-4-2013) *Juta & Co Consumer Law Review* <<http://www.jutalaw.co.za/newsletter/newsletter/consumer-law-review-april-2012-1/>> (accessed 20-3-2013).

mislabeled meat products. Now, however, a retailer would be required to take reasonable steps that would ensure that all labels are accurate and do not mislead consumers in any way.¹¹

There are several provisions in terms of the Act that provide consumers with a remedy, should one of their fundamental consumer rights be breached. In terms of section 52 a court order can be issued to compel the manufacturer or trader to discontinue the misleading practice and refund the consumer with his or her purchase price for the product.¹² Section 76 confers a more general power upon the courts, in terms of which a supplier may be ordered to take positive steps to ensure the correct labelling of the products in future.¹³ In addition, the courts can also award a damages claim to those consumers who have suffered emotional trauma from accidentally consuming mislabeled meat products. Despite the possibility of such a damages claim, Charter correctly argues that the prospects of success of such a claim would be highly unlikely for two reasons. In the first instance, it is hard to prove emotional trauma as a result of consuming mislabeled meat products. Secondly, the consumption of mixed meat products is fairly safe in general as it does not pose any harmful health hazards, unless fatal allergens have been added thereto.¹⁴

Although Charter makes a valid point from the perspective of the ordinary consumer,¹⁵ his argument fails to provide for religious consumers in particular. Arguably, when a man, who has practiced his religion diligently for most of his life, consumes pork against his will, an element of emotional trauma will undoubtedly be experienced. Therefore, in principle, a damages claim should also be awarded to such a religious consumer provided there is sufficient and substantial evidence of the emotional trauma suffered. Apart from a damages claim being available, Charter argues that the best possible redress available to consumers whose rights have been violated by means of mislabeled products is to approach the National Consumer Commission

¹¹ C Charter, Director in the Competition and Regulatory practice at Cliffe Dekker Hofmeyr as referred to in Anonymous "The Consumer Protection Act and the Correct Labeling of Meat Products – What Retailers, Suppliers and Consumers Must Know" (7 March 2013) *DLA Cliffe Dekker Hofmeyr* available at <http://www.cliffedekkerhofmeyr.com/en/news/press-releases/2013/Competition/the-cpa-and-the-correct-labelling-of-meat-products.html> (accessed 5-4-2013).

¹² Act 68 of 2008.

¹³ Act 68 of 2008.

¹⁴ <<http://www.meatsafety.org/ht/d/sp/i/26025/pid/26025>> (accessed 15-10-2013).

¹⁵ Charter as referred to in Anonymous (7-3-2013) *DLA Cliffe Dekker Hofmeyr*.

(“NCC”). A request can be launched at this Commission to conduct an investigation in order to establish whether suppliers or retailers have attempted to mislead consumers with intent. Upon such an investigation being successful, a settlement can be reached in terms of which safeguards can be put into place by the retailers to prevent these fraudulent practices from re-occurring in future.

Alternative options are for the matter to be prosecuted by the Consumer Tribunal or the issuing of a compliance notice, in terms of which the suppliers will be forced to guarantee the proper disclosure and labelling of products. Failing to adhere to such a notice, they can be ordered to pay an administrative fine. Charter adds that the focus of the CPA is not on imposing harsh punishments on retailers and suppliers; instead it is aimed at allowing consumers to feel more protected and regain their lost faith and trust in manufacturers, traders, suppliers and retailers.¹⁶ Although the CPA provides rights to consumers, consumers should also be more pro-active in enforcing their own rights. They can do this by for instance only supporting long trusted local retailers that go to great lengths to ensure the quality of their products and who provide adequate and accurate information on their labels.

2.2 The Foodstuffs, Cosmetics and Disinfectants Act and the R146 Regulations Relating to the Labelling and Advertising of Foodstuffs

The Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 (the “Foodstuffs Act”) provides the necessary framework for the regulation of food products. Section 2 of the Foodstuffs Act is the most relevant provision for the arguments presented in this paper. This section provides that it is a criminal offence to sell or distribute any foods that are unfit for consumption or which have a foreign object inside the packaging. Arguably, ‘unfit for consumption’ could be widely interpreted as also being unfit in terms of religious commandments. However, as this is not stated as such in plain language in these regulations, protection of religious consumers can only be inferred in this regard. The Foodstuffs Act furthermore authorises the Minister of Health, in terms of subsection 15(7)(b), to amend the regulations which are set out in the schedule attached to the Act. In 2010, the Minister decided it necessary to affect such an amendment relating

¹⁶ Charter as referred to in Anonymous (7-3-2013) *DLA Cliffe Dekker Hofmeyr*.

specifically to the labelling and advertising of foodstuffs, as the provisions within the Foodstuffs Act were deemed to be inadequate.

The R146 regulations, effective since 1 March 2012,¹⁷ now deal specifically with the labelling and advertising of foodstuffs. Regulation 47(1) deals with misleading descriptions and provides a list of descriptions, which include amongst others, descriptions such as ‘Karoo lamb’, ‘pure’, and ‘organic’ which may not appear on the label, unless the product complies with the Agricultural Products Standards Act of 1990 or the National Regulator for Compulsory Specifications Act of 2008. In addition to the aforementioned, there are also several guidelines. Guideline 4 deals with product information and ingredient or additives traceability. It specifically provides that a supplier certifies his products to comply with all relevant South African legislation, along with acknowledging that everyone in the supply chain, including the consumer, will rely on the accuracy of the product information for food quality, safety and labelling purposes. Furthermore, the supplier certifies that the information stated on the product is “*unconditionally true and accurate in relation to all other substances and processes*”.¹⁸ The phrase emphasised here is of pivotal importance to ensure adequate consumer protection, especially for religious consumers. However, it is clear from the recent meat scandal that it is exactly this phrase which is not complied with by local suppliers and retailers.

2.3 Opinions from the Consumer Goods Council of SA and FoodstuffSA on the R146 regulations

A recent food safety initiative hosted by the Consumer Goods Council of SA (“CGCSA”) provided some clearer insights on the R146 regulations.¹⁹ According to their research, the primary rationale behind the new labelling regulations was to reform the outdated regulations and add regulations and guidelines which relate more specifically to the labelling and advertisement of foodstuffs. This had to be done in order to bring SA in conformity with international standards. The intention behind these new regulations was to breach all obstacles in the older regulations which still had the potential of

¹⁷ GN R146 in GG 9422 of 19-11-2010.

¹⁸ Own emphasis. Guideline 4 of GN R146 in GG 9422 of 19-11-2010.

¹⁹ Y van der Riet “Blowing the Lid off SA Food Labeling” (2012) *Consumer Goods Council of South Africa* <<http://www.cgcsa.co.za/> redirection to www.foodsafetyinitiative.co.za> (accessed 11-5-2013).

misleading consumers. CGCSA reminded stakeholders that, in terms of the new R146 regulations, they should be able to substantiate any labelling information within 48 hours after an enquiry has been lodged. Furthermore, labels on products are required to be of real value to consumers and should at all times strive to be legal and ethical.

According to FoodstuffSA, the implementation of these new regulations meant that several companies had to incur burdensome financial costs in order to ensure their compliance therewith.²⁰ This left many begging the question whether it was truly worth the additional financial implications? Nigel Sunley, 'a labelling expert in South Africa' gave his opinion on this question.²¹ He argues that the existing regulations were outdated to such a grave extent that an update was of absolute necessity. He also argues that the R146 regulations were merely the first phase of the Department of Health's initiative to upgrade existing regulations. The second phase, dealing with more contentious issues such as human health and nutrition, is yet to follow. Like Charter, Sunley also fails to mention the specific importance of these new regulations to religious consumers.

3 Consumer protection with regards to meat labelling in the United Kingdom

When comparing the two systems of regulation it becomes clear that, the food regulations in the UK are much broader and detailed than their South African counterparts. As such, authors have argued that a problem of so-called 'over-regulation' exists in the UK.²² The reason for this is the vast number of amendments that have been made since the UK Food Labelling Regulations were enacted in 1996.²³ In addition, different statutory mechanisms, which are excessively detailed, have been imposed in each country: England, Wales, Scotland and the Northern Ireland. Consequently, over-regulation has had a severe impact on ensuring effective enforcement of food labelling regulations by food agencies. More profoundly, over-

²⁰ Anonymous "Food Labeling Regulations: What Comes Now?" (2013) *FoodstuffSA* <<http://foodstuffsa.co.za/news-stuff/new-food-labelling-regulations-mainmenu-140/2710>> (accessed 20-3-2013).

²¹ N Sunley as referred to in Anonymous "Food Labeling Regulations: What Comes Now?" *FoodstuffSA*.

²² J Pointing, Y Teinaz & S Shafi "Illegal Labeling and Sales of Halal Meat and Food Products" (2008) 72 *The Journal of Criminal Law* 208 206-213.

²³ Pointing *et al* (2008) 72 *JCL* 208.

regulation has led consumers to lack precise knowledge of their extensive rights, as such rights are widely spread over several different regulations and amendments.

3.1 The Consumer Protection from Unfair Trading Regulations 2008

In the UK, regulations 5 and 6 of the Consumer Protection from Unfair Trading Regulations of 2008, states that any commercial practice amounts to a misleading practice if it contains false information or is presented in a manner which deceives or is likely to deceive the average consumer. This would include any information which is listed on a label, but not included in the product or an unlisted ingredient which is nevertheless in the product. Guidance on how to use these regulations was made available by the Department for Business Enterprise and Regulatory Reform in the UK. Chapter 7 of this guide deals with the regulations relating to misleading practices. This guide divides the regulations into more manageable sections and explains the regulations with reference to examples, making it more transparent, as well as more accessible for consumers to read and understand. However, neither the regulations nor the guidance provide any specific protection to religious consumers.

3.2 Regulation (EC) 178 of 2002: principles relating to the General Food Law of the European Union

In addition to the Food Safety and Food Standards Act, Regulation (EC) 178 of 2002 deals with the principles relating to the General Food Law of the EU and it provides the necessary framework and requirements to be met by all food laws across the EU. The preamble states that it is necessary for consumers, stakeholders and trading partners to have confidence during all decision-making processes which relate to food law.²⁴ This regulation also establishes the European Food Safety Authority (EFSA), an independent scientific body aimed at securing risk assessment and assisting consumers to make informed decisions when purchasing foodstuffs. In section 6 the risk analysis process which is laid down, includes risk assessment, risk management and risk communication which would assist consumers with achieving a higher level of protection.

²⁴ Regulation (EC) 178 of 2002, Principles Relating to the General Food Law of the European Union.

Article 8 deals with the protection of consumer interests.²⁵ It enables consumers to make more informed decisions by providing that food law should attempt to prevent misleading and fraudulent practices. It states that food laws shall prevent: a) fraudulent and deceptive practices, b) the adulteration of food; and c) any other practices which may mislead the consumer.²⁶ Section 2 in turn deals with the issue of greater transparency and article 4 lays down the general requirements for food law. Although this regulation is well drafted and aimed at regulating food laws in general, it has a very narrow scope which focuses solely on food products which can have an impact on human *health* and regulations aimed at assuring that human *health* is not affected.²⁷ It is debatable whether a person's religion can form part of his or her general health. However, as religion is a fundamental part of a human being's mental, spiritual and emotional well-being, a persons' religion certainly ought to be included in their general health.

3.3 The Food Safety Act 1990 and the Food Standards Act 1999

According to commentators, when the Food Safety Act of 1990 was enacted, a "due diligence defence" was introduced for the very first time.²⁸ In terms of this, retailers are required to take reasonable steps to ensure that the food they receive from suppliers is safe. Section 15 states that any person who attaches a label to food that is likely to provide either a false description or a misrepresentation of the food, or misleads a consumer as to the true nature, substance or quality of the food product, will be guilty of an offence.

Section 16 deals in more depth with food safety and the protection of consumers by means of regulations relating to food or food sources. In particular, section 16(f)(ii) provides that the Secretary of State may by means of regulation make any provision with respect to food or food sources as appears necessary "for the purpose of protecting or promoting the interests of consumers". In addition, section 17 provides that the Secretary of State may also make any regulations pertaining to the enforcement of community provisions. Accordingly, one can only hope that the interests of religious

²⁵ Regulation (EC) 178 of 2002.

²⁶ Article 8 Regulation (EC) 178 of 2002.

²⁷ Article 4 Regulation (EC) 178 of 2002.

²⁸ J E Hobbs, A Fearn, J Spriggs "Incentive Structures For Food Safety and Quality Assurance: an International Comparison" (2002) 13 *Food Control* 77-81.

consumers would also be taken into account by the Secretary of State under these provisions.

The Food Standards Act of 1999 was promulgated with two primary purposes: firstly, to establish the Food Standards Agency and lay down its functions.²⁹ Secondly, it aimed to amend the laws relating to food safety in order to provide for better implementation of food regulations in the UK to provide better protection to consumers. In terms of section 6(1) of the Food Standards Act, the Food Standards Agency firstly has the function of developing policies in relation to food safety and secondly, it has to provide advice on food safety and all other interests which consumers might have relating to food products. In terms of section 12(1) of the Food Standards Act the Agency has the duty of monitoring the performance of enforcement authorities as they enforce relevant legislation relating to food safety.

3.4 The UK Food Standards Agency (FSA)

The FSA was created in terms of the Food Safety Act of 1999 and subsequently formed in 2000 by food policy experts in the UK.³⁰ The idea was to create an agency serving as an independent watchdog and acting in favour of consumer's interests to ensure the proper enforcement of food safety and labelling legislation and regulations. The FSA tests thousands of food products each year for contamination. However, the FSA has recently been criticised for giving up most of its responsibilities to the government and thereby defeating the purpose of their initial independence. In England, the Department of Health and Department for Environment, Food and Rural Affairs took over the duties of the FSA. As a result, the FSA now only operates in Wales, Scotland and Northern Ireland. As a result, the recent horsemeat scandal left consumers criticising the FSA for not being pro-active and efficient, which accordingly led to a "downplaying [of] the risk"³¹ for consumers.

4 The Codex Alimentarius: international standards for food and agricultural products applicable to South Africa and the UK

²⁹ Preamble of the Food Standards Act of 1999.

³⁰ Anonymous "What is the Food Standards Agency?" (15-2-2013) *BBC News UK* <<http://www.bbc.co.uk/news/uk-21476813>> (accessed 8-5-2013).

³¹ Anonymous "What is the Food Standards Agency?" *BBC News UK*.

The Codex Alimentarius Commission (“Codex”) was established by the World Health Organisation (“WHO”) and the Food and Agricultural Organisation of the United Nations (“FAO”) in 1963.³² The Codex is a global food code which aims to provide the codes of practice necessary to ensure fair trade and consumer protection. The Codex has 186 member states and the UK has been a member since its advent. South Africa, however, only became a member at liberation in 1994. The Codex Committee on Food Labelling (“CCFL”) is situated in Canada and drafts standards and guidelines pertaining to food labelling specifically.

In 1997 the Codex Commission drafted the ‘General Guidelines for the use of the term Halal’.³³ From the outset, the guidelines assert and accept that there are minor differences amongst the Halal community regarding what amounts to lawful meat slaughtering under the Islamic religion. In the definitions clause Halal food is defined as any food permitted under the Islamic religion. Furthermore, the guidelines provide that Halal food may be processed or stored in the same facilities where non-Halal foods are processed or stored provided that the necessary measures have been taken to prevent any contact between the two counterparts, as well as that the proper cleaning procedures as required by the Islamic religion have been followed.³⁴

In the criteria for the use of the term ‘Halal’, the unlawful products are extensively listed. These include, as a pivotal first listing, pigs and boars. With regards to the labelling requirements, it is required that the word ‘Halal’ appears on the label when a claim is made that a food is Halal in origin, essence and nature. However, it is not permissible to promote ‘Halal’ foods as being any healthier or better than any other foods. Despite these guidelines providing some consolation to religious consumers of Halal products internationally, they nevertheless fail to adequately eliminate the risk of Halal consumers consuming non-Halal foods. The reason for this is that the guidelines nevertheless provide that Halal foods may be processed or stored in the same facilities where non-Halal foods are processed or stored. Arguably, if due diligence is not exercised by manufacturers or traders, which is often the case in practice, as can be

³²Codex Alimentarius “Codex Alimentarius International Food Standards” (28-8-2013) *Codex Alimentarius* available at <<http://www.codexalimentarius.org/>> (accessed 7-10-2013).

³³ *Codex Alimentarius* <<http://www.codexalimentarius.org/>> (accessed 7-10-2013).

³⁴ *Codex Alimentarius* <<http://www.codexalimentarius.org/>> (accessed 7-10-2013).

noted from the recent meat scandals, it is possible that Halal and non-Halal food products could still be mixed.

5 The likelihood that the incorrect labelling of meat products could be a constitutional infringement on the right to freedom of religion

“[F]or Muslims, *Halal* is not merely a brand element – instead it is part of a belief system and moral code of conduct, integral in daily living”.³⁵

In this section of the paper the question of whether incorrectly labelled meat can be regarded as a constitutional infringement on the right to human dignity and freedom of religion will be explored. First and foremost, it should be noted that the Constitution of the Republic of South Africa, 1996 (the “Constitution”) is the supreme law of South Africa. As opposed thereto, the UK as a jurisdiction has no codified constitution. However, the Human Rights Act of 1998 serves to provide similar protection to religious consumers in the UK as the Constitution in South Africa would.

5 1 The Constitution of the Republic of South Africa

The Constitution being the supreme law of South Africa means that all laws and regulations are sub-ordinate thereto. Section 39(2) states that: “when interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.” One of the founding values of the Constitution is the right to human dignity. Section 10 provides that “everyone has inherent dignity and the right to have their dignity respected and protected.” In addition, section 15(1) of the Bill of Rights affords everyone the right to freedom of religion, belief and opinion. Although the two rights are separate, there is undoubtedly a profound interaction between the right to human dignity and the right to religious freedom.

According to Currie & De Waal,³⁶ as inferred from their analysis of the court’s judgment in *S v Lawrence*,³⁷ the concept of freedom of religion includes, amongst

³⁵ JAJ Wilson & J Liu, “Shaping the Halal Into a Brand?” (2010) 1 *Journal of Islamic Marketing* 108 107-123.

³⁶ I Currie & J de Waal *The Bill of Rights Handbook* 5 ed (2005) 339.

others, the idea that no one is allowed to place a prohibition that will either force or constrain a person to act, or refrain from acting in a manner contrary to their religious beliefs. Arguably, the incorrect labelling of meat products which has the potential of assisting consumers of Kosher and Halal products to consume pork against their knowledge, amounting to an involuntary contravention of their religious beliefs, is an example of how their freedom of religion, interlinked with their right to human dignity, could *prima facie* be infringed. In terms of section 36(1) of the Bill of Rights all food legislation and regulations will be viewed as “law(s) of general application”. Accordingly, it will be possible to limit the rights afforded to religious consumers in terms of this limitations clause.

5.2 The Human Rights Act of 1998 in the UK

The Human Rights Act of 1998 assists in giving effect to those rights and freedoms already guaranteed under the European Convention on Human Rights. Article 9 of the Act provides the right to freedom of thought, conscience and religion. It allows for a person to manifest his or her religion or belief through worship, teaching, practice and observance. In section 9(2) however, the Human Rights Act states that the right to manifest religion will be subject to certain limitations, but only in cases where it is fair in terms of legislation promulgated in a democratic society, as well as in the interests of public safety and the protection of public order. It is therefore clear that religious consumers will be protected under this section, should they choose to exercise the practice of not consuming food products which contain pork.

5.3 Criticism relating to viewing incorrect meat labelling as a constitutional infringement of the right to freedom of religion and human dignity

Regardless of the provision made in both jurisdictions for the protection of religious consumers, there is criticism on viewing incorrect meat labelling as a constitutional infringement of the right to human dignity and freedom of religion. The first problem is that there remains uncertainty amongst Muslims internationally as to what exactly ‘Halal’ methods of slaughtering and production encompass in its entirety.³⁸ The second

³⁷ 1997 4 SA 1176 (CC).

³⁸ Wilson & Liu (2010) *Journal of Islamic Marketing* 107-123; Spiegel *et al* (2012) *Trends in Food Science & Technology* 109-119.

problem is that Halal is, “an invisible and intangible quality characteristic”³⁹ of the product which must take place during the slaughtering and manufacturing stages. Accordingly, should Islamic laws not be adhered to and meat products be incorrectly labelled, it cannot be easily detected by religious consumers. As Daly correctly points out:

“Legislative regulation of religious products illuminates various normative dilemmas surrounding protective state intervention in religious life and ambiguities within the concept of religious freedom itself... [and] ...constitutional jurisprudence on this point illuminates competing concepts of religious freedom.”⁴⁰

Thus unfortunately, the correct labelling of meat products, without engaging in any fraudulent practices, for now still essentially amounts to an issue of mutual trust between suppliers and retailers and eventually also retailers and consumers. Restoring lost consumer confidence in the meat industry as a whole does not only take time, but it can also have tremendous cost implications. A recent study has explored whether Muslim consumers would be willing to incur extra costs for a label certifying that Halal requirements have been diligently met.⁴¹ Although the study was conducted primarily in Belgium, it was found that there was a great willingness amongst the average Muslim consumer to pay more for meats that have been labelled and certified to be Halal. The same conclusion was reached among Muslim consumers in the UK.⁴² It is therefore clear that religious consumers urgently seek some form of surety with regards to the meat products they purchase and that they are willing to incur additional costs in this regard.

6 Conclusion

³⁹ W Verbeke, P Rutsaert, K Bonne & I Vermeir “Credence Quality Coordination and Consumers’ Willingness-To-Pay for Certified Halal Labeled Meat” (2013) 3 *Meat Science* 1 1-26.

⁴⁰ E Daly “Competing Concepts of Religious Freedom Through the Lens of Religious Product Authentication Laws” (2011) 13 *Ecclesiastical Law Journal* 298 298-332.

⁴¹ Verbeke *et al* (2013) *Meat Science* 1-26.

⁴² Verbeke *et al* (2013) *Meat Science* 17.

Notwithstanding the good intentions of the legislatures in both South Africa and the UK, major practical problems continue to persist with providing adequate and valuable protection to religious consumers in particular. The first problem relates to the implementation of food labelling legislation and regulations. Poor implementation of regulations leaves scope for large scale fraudulent practices, as was recently illustrated in both jurisdictions. In defence of those responsible for the implementation, legislation and regulations are difficult to implement when they are neither specific nor detailed. Should it be specific and detailed, the alternative problem which arises is that of over-regulation. Over-regulation is a problem that not only knowledgeable professionals grapple with; it also directly affects the grassroots consumers by hardening their task of understanding which of their rights are protected and which are not.

The second major problem relates to the penalties and sanctions for non-compliance with legislation and food labelling regulations. In both jurisdictions there are minimal penalties and sanctions which can be imposed in cases of breach. This leaves consumers without true and adequate protection. In the case where a religious consumer does by any chance consume pork, a mere damages claim is gravely inadequate to compensate for the infringement of a religious right. Consumers have both the right to freedom of religion and human dignity and this includes the right to know what exactly is contained in meat products before purchasing it. As it is clear that adequate protection of religious consumers specifically is not afforded in practice, it begs the question whether a higher form of redress could be available to such religious consumers, such as viewing incorrect meat labelling as a constitutional infringement to the right to freedom of religion and human dignity.

As indicated earlier, in South Africa it is more likely than in the UK that the incorrect labelling of meat products would amount to a constitutional infringement on the right to freedom of religion interlinked with the right to human dignity. The primary reason is South Africa's progressive Constitution. The rights protected in the Bill of Rights are entrenched and form the cornerstone of South Africa's liberal constitutional democracy. However, even if the Constitutional Court would consider granting an order stating that there was a constitutional infringement on the right to freedom of religion or human dignity by consuming mislabelled food products, the implementation of such an order in practice, to serve as a method of deterrence to other manufacturers, traders and

retailers, would lead to grave difficulties. In addition, it will unfortunately also amount to an *ex post facto* attempt to ratify the breach of a religious commandment which as a matter of fact and faith cannot be ratified. For once a religious commandment is breached, such a breach cannot simply be undone or compensated for merely by means of enforcing a hefty penalty.

Finally, the over-arching problem remains to be the large scale uncertainty amongst the Halal community of what exactly 'Halal' in its entirety encompasses. This uncertainty makes it very difficult for legislatures to pin down the exact issues to be addressed in order to be able to afford more protection to religious consumers specifically. After all of the aforesaid problems, which remain persistent in practice, it is unfortunate but true that "[food labelling] laws are like sausages it is better not to see them being made."⁴³ The primary reason is that they are great and extensive on paper, but sadly continue to offer poor protection in practice, especially to religious consumers.

⁴³ Lason (2012) available at <http://works.bepress.com/kenneth_lason/10> 56.