

### **217.035 When food deemed misbranded.**

A food shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular or its labeling or packaging fails to conform with the requirements of KRS 217.037;
- (2) If it is offered for sale under the name of another food;
- (3) If it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by KRS 217.135; or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence, the word, imitation, and, immediately thereafter, the name of the food imitated;
- (4) If its container is so made, formed, or filled as to be misleading;
- (5) If in package form, unless it bears a label containing:
  - (a) The name and place of business of the manufacturer, packer, or distributor;
  - (b) An accurate statement of the net quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label; provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the secretary;
- (6) If any word, statement, or other information required by or under authority of KRS 217.005 to 217.215 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by KRS 217.135 unless:
  - (a) It conforms to such definition and standard; and
  - (b) Its label bears the name of the food specified in the definition and standard, and insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;
- (8) If it purports to be or is represented as:
  - (a) A food for which a standard of quality has been prescribed by regulations as provided by KRS 217.135 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or
  - (b) A food for which a standard or standards of fill of container have been prescribed by regulation as provided by KRS 217.135 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

- (9) If it is not subject to the provisions of subsection (7) of this section, unless it bears labeling clearly giving:
- (a) The common or usual name of the food, if any there be; and
  - (b) In case it is fabricated from two (2) or more ingredients, the common or usual name of each such ingredient, except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided that, to the extent that compliance with this subsection is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the secretary;
- (10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the secretary determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses;
- (11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the secretary;
- (12) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;
- (13) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical; provided, however, that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade;
- (14) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

**Effective:** June 17, 1978

**History:** Amended 1978 Ky. Acts ch. 292, sec. 3, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(22). -- Created 1960 Ky. Acts ch. 247, sec. 4, effective June 16, 1960.