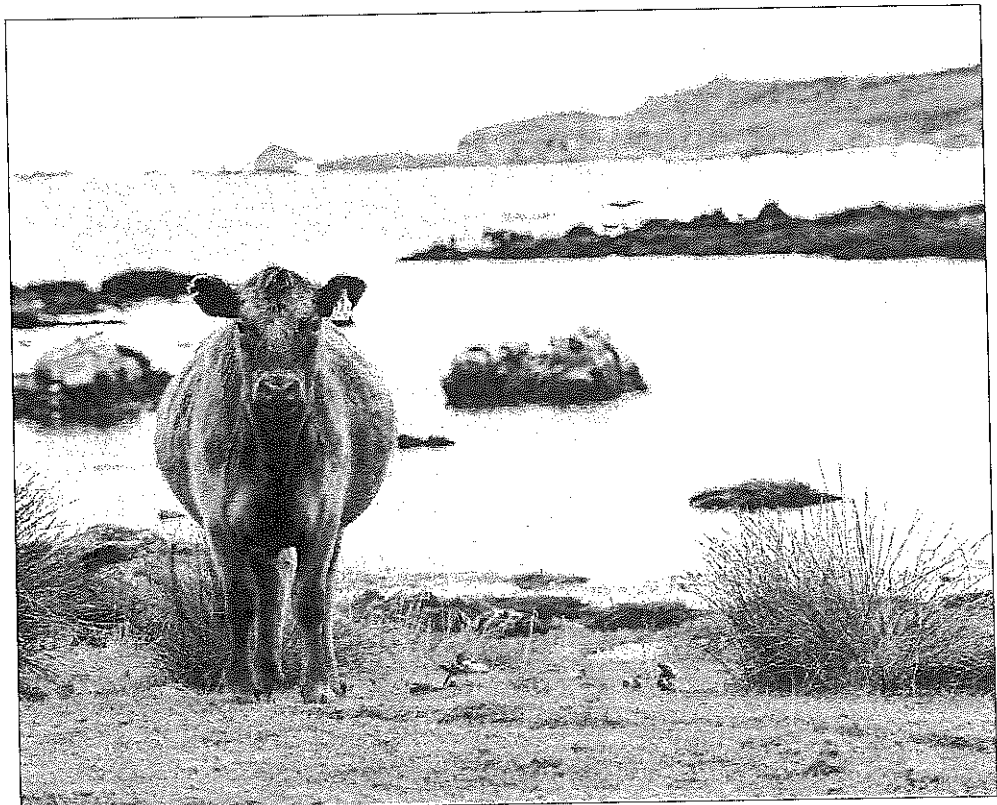




Claims on the origin of food products are under the microscope, writes **BEN HAMILTON**



Meaty issue: The ACCC has started a case against two Victorian retailers using King Island labelling.

Lessons from King Island

sell products that have very little or tenuous association with the region will be caught under the Act.

However, where there is a substantial — but not necessarily complete — connection, it is less clear-cut.

The guiding principle when making claims or representations in regard to regions is to consider what the consumer may conclude in all situations.

The difficulty with this is that place-of-origin indicators can mean different things to different consumers.

For instance, if a region is specified on packaging or marketing material, does this signify that all steps in the production cycle — such as growing, processing and manufacture of the item — took place there?

Or does it signify that significant ingredients or components are from that region?

The second factor worth considering is whether trademark protection could assist with protecting a brand associated with a region. While it can be very difficult to trademark a name associated with a region, particularly when the region is associated with the products will be covered by the trademark registration, it is certainly possible to trademark distinctive devices and logos which contain regional names.

Good examples include the trademarked logos of Coffin Bay Oyster Farm and Mount Zero olive oil.

If trademark protection for these types of logos is obtained there is an opportunity to build brand awareness and protection around these distinctive logos.

However, even if trademark registration for these logos is obtained, it is still up to the trademark user to ensure any

place-of-origin claim embedded in the trademark is not used in a misleading way.

In other words, while you may own the trademark, its use may still be misleading, depending on the circumstances in which it is used.

Recently appointed ACCC chairman Rod Sims has publicly acknowledged that the commission's 100 per cent success rate in first-instance litigation is too high.

Mr Sims said the ACCC perhaps had been too risk-averse when deciding whether or not to prosecute.

We therefore can expect more activity from the competition and consumer regulator, even where there are shades of grey with respect to the result.

● **Ben Hamilton is lead partner of the Hall & Wilcox Intellectual Property practice.**

KING Island — and more specifically its beef — has hit the national headlines again.

The Australian Competition and Consumer Commission recently started legal proceedings against two Victorian meat retailers for using the words King Island in relation to the supply of meat and related advertising.

The ACCC said the use of the well-known "King Island" geographic indicator constituted a false and misleading representation that the meat sold in association with this term originated from there.

There are specific sections in the *Competition and Consumer Act 2010* which make it an offence to falsely represent that goods are made in a particular place.

More broadly, there is a prohibition on conduct likely to be misleading or deceptive.

While there are specific provisions to assist with interpreting whether representations relating to country-of-origin claims are misleading, there are no such provisions relating to regions within Australia.

A stroll through the supermarket aisles suggests place-of-origin claims are increasingly used to market foods — such as King Island Dairy and Gippsland Dairy ranges.

This is understandable as these claims can add value to these products — certain regions have, in the eyes of the purchasing public, a reputation for producing quality produce.

Two factors are worth considering when choosing to adopt place-of-origin claims on packaging and marketing material.

Firstly, does the claim have the potential to mislead consumers?

Using place-of-origin claims can carry some risk.

It is fairly clear that blatantly false place-of-origin claims to