

# Good Enough To

Photos by Estelle Judah, copyright 2010.



It might look good enough to eat, but is it good enough for the law?

Intellectual property lawyer Sharon Givoni considers how much visual enhancement is acceptable in food photography and outlines some cases where the imagery was found to be either false or misleading.

## The Law Won

Let's examine some real life case studies where the photography used in labeling landed food and beverage manufacturers in court.

### Uncle Toby's 'Flattened Out'

In January 2006, after complaints from VicHealth, Diabetes Australia, The Cancer Council and ASSO, the ACCC launched an inquiry into the Uncle Toby's *Roll-Ups* fruit products. The argument was that Uncle Toby's Foods Pty Ltd used images that created an overall

**M**otor oil, super glue and shoe polish won't exactly whet your appetite. However, they can be part of a food photographer's 'artist's palette'. It seems paradoxical that an industry which aims to entice hunger enhances the look of food products with materials that no one would want to put near their mouth!

On the flipside, if celebrities are always being Photoshopped then why not food products? Of course, the big difference is that people ultimately buy food for consumption. This then leads to the question, is it legal? If you enhance the look of food, how far is too far? What about just 'adding a bit' here and there?

What we are talking about is varnished turkey and mashed potato ice cream, adding more hazelnuts on a hazelnut cake than in real life or picturing a burger on a teeny plate. There is also the more serious question of images that are misleading as to content and composition. This is illegal.

## The Fake Food Toolkit

Here's a few of the items which might be found in a food photographer's typical 'toolkit'.

Dry ice is used in the background to create water vapour for frozen products such as ice cream or as steam rising from cooked food. A blow torch can be used to create a charcoal surface on meat.

When smeared over a cold, uncooked turkey, shoe polish gives the skin a lusciously crisp, brown appearance. Hair Spray is used to give cakes and fresh fruits an extra glossy, or moist appearance. Super glue

and Vaseline are used to stick pieces of food together such as the layers of a burger or sesame seeds evenly sprinkled on top of a bun.

Aspirin is added to champagne to boost the fizz. Motor Oil is used as a substitute for maple syrup; and acrylic ice which is used instead of real ice blocks to better reflect light.

Making food look great for a photograph is a tedious task. The French expression *trompe d'oeil*, meaning 'trick of the eye', refers to an art technique for still life images which has the effect of making things appearing truer to life.

Sometimes food photographers and stylists treat their products as 'objects d' Art'. What the food industry is primarily concerned with is bottom line profit. Whatever the reason, the question that photographers need answered is, what does the law say?

There is no law against exaggerating how a product looks. All marketers do it. However, it is against the law to mislead or deceive or make *false representation*. This is a very broad statement.

In Australia, all forms of consumer advertising are regulated by the *Trade Practices Act 1974* or the State equivalent *Fair Trading Acts* (for individuals). These Acts set out a general prohibition against engaging in actual or potentially misleading or deceptive conduct. The *Food Standards Code* also prescribes rules against misleading labels.

Anyone can take legal action against you whether it be a consumer, a consumer group, a competitor or Australia's consumer watchdog, the ACCC.



Photo by Simon Watts.