

June 16, 2022

Canadian Food Inspection Agency (“CFIA”)
Complaints and Appeals Office
59 Camelot Dr., 59-1W-334
Ottawa, Ontario
K1A 0Y9

VIA EMAIL

Email: cfia.complaintsandappealsoffice-bureaudesplaintesetappels.acia@canada.ca

To the Complaints and Appeals Office of the CFIA:

RE: False “Made in Palestine” Label

We write to bring to your attention, and lodge a formal complaint, regarding two food products currently sold in retail outlets throughout the country and falsely labelled “Made in Palestine.”

Both labels are false and misleading under Canadian labelling law and under the CFIA’s recent ruling regarding proper labelling of products from the West Bank. Below, we identify the relevant products and explain why their labels are impermissible under current CFIA policy. We go on to discuss possible permissible origin labels and seek to identify those that both satisfy CFIA determinations and provide maximum flexibility to Palestinian exporters.

The complainant, Ms. Brooke Goldstein, is a Canadian citizen and founder and executive director of the Lawfare Project, a public interest organization dedicated to defending human rights around the world and, in particular, to combatting discriminatory treatment of Jews wherever they live. She has extensive litigation experience in questions related to West Bank product labelling.

The co-complainant, Professor Eugene Kontorovich, is the Director of the Center for the Middle East and International Law (CMEIL) at George Mason University’s Antonin Scalia Law School in Alexandria, Virginia. He has published several scholarly papers on the issues involved in this complaint, and his Center recently hosted an academic conference on these issues. He has advised government officials around the world on West Bank labelling issues.

Products labelled “Made in Palestine” (see photos, below)

- **Al’Ard Extra Virgin Olive Oil.** The label describes the Country of Origin (“CoO”) as “Product of Palestine/Produit de la Palestine,” with the address of the manufacturer listed as “Al’Ard Palestinian Agri-Products,” located in an industrial zone in “Nablus, Palestine.” The CoO claim is made on a sticker affixed to the tin. The product was seen in the Marché Adonis shop, 1055 Boulevard St. Laurent, Ottawa, ON, K1K 3B1.
- **Zatoun Fair Trade Extra Virgin Olive Oil (750ml).** The product was seen retailed at the Nuthouse, 1256 Bloor St. West, Toronto. The manufacturer’s website lists dozens of



retailers across numerous provinces.¹ Immediately below the product name, in large letters, the label misleadingly describes the oil as being “from Palestine” and displays the flag of the Palestinian Authority. The CoO claim is also misleading, stating in English “Product of West Bank PS.” The “West Bank” is not a recognized foreign country or customs area. “PS” is an ISO abbreviation for “State of Palestine,” which Canada does not recognize as a country. While “PS” seems to be an attempt to obscure the false claim about country of origin, it is itself in violation of the labelling rules for prepackaged fruit or vegetable products, which require that “all country names be written out in full, except for the United States,” specifically because such abbreviations are obscure.²

Al’Ard (Photo 1)



¹ *Zatoun Retailers*, ZATOUN, <https://zatoun.com/zatoun-retailers/> (last visited June 1, 2022).

² *Labeling requirements for processed food or vegetable products*, GOV’T OF CANADA, <https://inspection.canada.ca/food-label-requirements/labelling/industry/processed-fruit-or-vegetable-products/eng/1393081288925/1393081317512?chap=8> (last visited June 1, 2022).



Zatoun (Photos 2 and 3)



Legal regime

Under the *Safe Food for Canadians Act*, prepackaged processed fruit products must bear the name of a CoO in at least one official language.³ Moreover, all food products must be labelled in ways that are not “false,” “misleading,” or “likely to create an erroneous impression” with regards to its “origin.”⁴

³ Safe Food for Canadians Regulations, SOR/2018-108 (Can.). See subsection 274(1) (“The label of an imported prepackaged processed fruit or vegetable product must bear the name of the foreign state where the processed fruit or vegetable product was packaged.”) Furthermore, a foreign state is defined as including a “WTO Member,” which “Palestine” is not. See Art. 1(1).

⁴ Food and Drugs Act, R.S.C. 1985, c F-27. See subsection 5(1), which states:

No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

See also subsection 6(1), which states:

It is prohibited for a person to manufacture, prepare, package, label, sell, import or advertise a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, quality, value, quantity, composition, merit, safety or origin or the method of its manufacture or preparation.

Legal Analysis

The labelling of these olive oils is manifestly false—there simply is no “State of Palestine.” The Government of Canada does not recognize the existence of such a state and indeed voted against a United Nations General Assembly resolution that claimed there was such a state. In a formal submission to the International Criminal Court in 2020, the government stressed “Canada’s long-standing position that it does not recognize a Palestinian state.”

Rather, both these olive oil products originate from areas of the West Bank that fall under the civil administration of the “Palestinian National Authority” in accordance with the Oslo Accords. As the CFIA has recently recognized in a related context, “Canada considers that there is no recognized country where the two” olive oils are produced.⁵

As a general rule, CoO labels are not affirmations of Canada’s view on the proper territorial sovereign of the indicated territory. However, the CFIA has recently ruled, in response to a complaint regarding Israeli wines, that an indication of a CoO in the West Bank is considered “false” without additional clarifying information. The same would apply to these products, as they are also produced in an area where Canada does not recognize any territorial sovereign in the West Bank. Moreover, Canada does not recognize a “State of Palestine” for any purpose. Any additional context the two olive oil labels provide only seeks to reinforce the “erroneous impression” that the goods are produced in a non-existent State of Palestine.

The labels suffer from a second defect. Canada’s labelling regulations clearly require that the CoO be a country or a WTO member⁶—and the WTO membership includes non-sovereign customs territories (such as Hong Kong). The specific reference to membership in the WTO—primarily a tariff and trade rule organization—in Canada’s *labelling* law confirms that Canada seeks to be consistent with general international practice by having a conformity between labelling and customs designations. However, “Palestine” is neither a country nor a WTO member and thus, the term violates this additional requirement even if it were not “false” or “misleading.”

To be clear, the complaint here is not one of actual consumer confusion, which is a question of fact, not conjecture. We have not conducted the required empirical quantitative consumer behavior analysis to address this question. Anecdotally, there seems to be little reason to think such products will dupe anyone. The Palestinian olive oils in question here; Armenian wines from Nagorno-Karabakh, which is regarded as occupied Azerbaijani territory; and the Israeli wines in question in *Psagot* are all marketed primarily to niche consumers who can be described only as being already ideologically sympathetic to the CoO labelling. These are all explicitly ideological products: people buy these olive oils to show support for the Palestinian national cause, just as others buy *Psagot* wine because of, or at least consistent with, their support for Israeli control of the area.

⁵ See CFIA, Reconsideration and redetermination of a label complaint (May 13, 2022).

⁶See *Country of origin on food labels, Definition*, GOV’T OF CANADA, <https://inspection.canada.ca/food-label-requirements/labelling/industry/country-of-origin/eng/1334599362133/1334601061354#a1> (last visited May 31, 2022).

Rather, the claim here is that the designation of a CoO for these products, without additional clarifying information, is manifestly “false” under the CFIA’s ruling of May 13, 2022. Moreover, this defect cannot be cured merely by providing “clarifying information” because “Palestine” fails to meet the minimum requirements for a CoO (a sovereign foreign state or WTO member).

Proper labelling for goods originating from territory under jurisdiction of Palestinian Authority

This discussion raises the question of the proper labelling for these olive oils. As the Federal Court of Appeal has said, “‘Country of origin’ cannot be applied literally when dealing with products that do not originate in a recognized country.”⁷

One approach, apparently recently entertained by the Liquor Control Board of Ontario, would be to label them products of the “West Bank.”⁸ This approach is not legally satisfactory and indeed only compounds the problem of misleading information. The “West Bank” is neither a country, nor a customs entity, nor a governmental authority of any kind. Moreover, under the Oslo Accords (an international agreement recognized by Canada and incorporated by reference into Canadian law⁹), the geographic entity known as the West Bank is divided between the administration of Israel and the Palestinian Authority, with the former controlling a slight majority of the area. Thus, “West Bank” is perhaps the most inaccurate and misleading designation for either Palestinian or Israeli products, as it lumps two totally different governing regimes together.

A better option would be to conclude that such “Palestinian” products cannot display any CoO information, consistent with CFIA’s recent determination that, in this context, such labelling is “voluntary.” The case differs from the Israel products, where the CFIA determined “State of Israel” can be a proper label with additional clarifying information. In that context, as the CFIA observed, Canada recognizes the relevant products “were produced in an area administered by the State of Israel,” which is both a country and a WTO member. “Palestine” meets neither of those criteria, and that defect cannot be cured by “clarifying information.”

However, the best alternative would be to allow some CoO information, despite there not being a recognized country. This arrangement would respect consumers’ wishes to learn about the national *affiliation* of the exporter, so long as it is not done in a misleading way. In this model, the labelling should comport with how Canada identifies and designates the relevant administering authority. “Canada recognizes the Palestinian Authority (PA) as the governmental entity” in the relevant

⁷ *Attorney General v. Kattenburg*, 2021 FCA 86, para. 14.

⁸ Sara Jabakhanji, ‘An act of erasure’: LCBO called out for sticker covering the word ‘Palestine’ on wine bottle, CBC NEWS (Apr. 22, 2022), <https://www.cbc.ca/news/canada/toronto/lcbo-taybeh-winery-palestine-bottle-covered-with-sticker-1.6424743>.

⁹ See generally Joint Canadian-Palestinian Framework for Economic Cooperation and Trade Between Canada and the Palestine Liberation Organization on Behalf of the Palestinian Authority, Feb. 27, 1999 [hereinafter Joint Canadian-Palestinian Framework].

areas.¹⁰ Canada’s official policy also recognizes the “Palestinian Authority” as the relevant customs and trade entity.¹¹ Any labelling that uses political or geographic designations inconsistent with how Canada refers to the relevant governmental authorities would be “misleading.”

Indeed, if “Made in Israel” is “false” because it does not accord with Canada’s view of the political status of the territory, it stands to reason the primary term used in a voluntary CoO should reflect the two entities that Canada *does* recognize as administering parts of the territory—the State of Israel, or in this case, the “Palestinian Authority.” **The proper labelling of goods from PA-controlled areas of the West Bank would be either “Product of Palestinian Authority Administered Territories,” or perhaps, “Product of Palestinian Authority - West Bank.” Additional clarifying information might include terms like “Areas A & B” or “administered territory.”**

This arrangement would avoid the confusion that would result by lumping the two administrative regimes in the West Bank into one general “West Bank” labelling category, which would make neither side happy and confuse consumers of all stripes. The Joint Canadian-Palestinian Agreement makes clear that only a “major change, recognized by Canada, in the status of the West Bank and Gaza Strip” would result in any changes in Canada’s treatment of relevant products.¹² Thus, the CFIA should not go beyond its remit and authorize new labelling categories such as “West Bank;” it should draw its CoO designation from entities recognized by Canada.

We look forward to your response in this matter.

Sincerely,

“Ms. Brooke Goldstein”

“Prof. Eugene Kontorovich”

¹⁰ *Canadian policy on key issues in the Israeli-Palestinian conflict*, GOV’T OF CANADA, Canadian policy on key issues in the Israeli-Palestinian conflict (international.gc.ca (last visited June 1, 2022)).

¹¹ This is consistent with Canada’s general position of “recogniz[ing] the Palestinian Authority (PA) as the governmental entity” in the question for political as well as trade purposes. *See Canadian policy on key issues in the Israeli-Palestinian conflict*, *supra* note 11.

¹² *See Joint Canadian-Palestinian Framework*, *supra* note 10, at Par. 5.