

Primary Authority determination summary

Date of determination: 13 December 2019

Applicant (enforcing authority): London Borough of Lambeth Council (Lambeth)

Primary Authority: Portsmouth City Council (Portsmouth)

Business: TY UK Ltd (TY)

Summary

Lambeth proposed enforcement action for alleged breaches of the Food Imitations (Safety) Regulations 1989 in relation to Iwako branded 'donuts & pastry' erasers imported by TY.

Portsmouth blocked the enforcement action on the basis that it considered it to be inconsistent with its assured advice provided to TY.

Lambeth disagreed with the assertion and subsequently made an application to the Office for Product Safety and Standards for consent to reference for determination by the Secretary of State (SoS).

The reference was granted and the SoS determined on 13 December 2019 that the Primary Authority advice was incorrect and Portsmouth's direction to Lambeth not to enforce was therefore revoked.

Background

Portsmouth had issued assured advice to TY stating that "It is established that suitable documents have been provided by TY UK limited to show compliance with The Food Imitations (Safety) Regulations 1989." TY believed the assured advice from Portsmouth was correct.

Lambeth was of the view the documentation supplied did not show compliance with The Food Imitations (Safety) Regulations 1989.

The National Regulator was consulted and expressed the view that the assured advice from Portsmouth was not correct.

Decision

The SoS found that Portsmouth's Primary Authority Advice was not correct. The PA Advice given does not state that the products complied with the Food Imitations (Safety) Regulations 1989 nor that TY actually had a due diligence defence under the Consumer Protection Act 1987.

Lambeth's application was therefore allowed and the direction of the Primary Authority not to enforce was revoked in accordance with RESA section 25C(4).