

# MANUFACTURER ALLERGEN CASE STUDY

## Incident summary

In February 2010, a manufacturer was producing and selling a variety of foods that were found to contain undeclared walnuts and almonds. A recall of these products was actioned in early March 2010.



Later that month, officers observed and purchased further products from the company. These products also contained undeclared nuts, with labels unaltered from prior to the recall.

In August 2010, while investigating the February incident, a complaint was received that a child had suffered an allergic reaction to egg after eating the manufacturer's products. Egg was not declared on the product label. A second recall was issued for the company's products.

## Investigation summary

Investigation of these incidents found:

The Company had previously breached the *Food Act 2003* (NSW). In May 2006, the company, trading under a different name with the same director, was the subject of a similar recall, for similar issues (undeclared nuts).

Penalty notices were issued against the company for the offences of:

- Failing to comply with the Food Standards Code (sections 21(3) and 21(1) *Food Act 2003*, in respect to failing to declare the presence of walnuts (Standard 1.2.4(3) & (4)), and
- Failure to have in place a system to ensure the recall of unsafe food (Standard 3.2.2(12)).

At the time of both recalls in 2010, the company was understaffed and did not have in place a satisfactory system and plan for the recall of the products.

Despite the recall in March 2010, the company continued to sell product that was incorrectly labelled. It also delayed conducting the August recall.

The Company and its director were prosecuted for numerous breaches of the Food Act.

## Food safety implication

Food manufacturers have a responsibility to keep their customers safe by providing accurate information on the allergen status of their products, and ensuring best practice food preparation and storage procedures to avoid cross contamination.

This incident reinforces the potential dangers associated with incorrectly identifying allergens. Food allergies are very serious and can have life-threatening implications.

The Court acknowledged that the offences were serious, particularly where consumers rely on labelling, and it was well known that allergic reactions can sometimes prove fatal. General deterrence was therefore a significant component of any penalty.

The Court found that the August 2010 offences were more serious than those in March 2010. The delay in implementing the August recall was particularly serious.



The Court rejected the Company's argument that they did not realise the seriousness of their actions because by August 2010 the company and its director were well aware of their obligations.

The Court also did not accept the argument that as a small company the effects of their actions would be minimal. The foods were sold at a wide number of stores.

The Company and its Director were convicted and fined a combined sum of \$48,000 plus ordered to pay \$21,000 in professional costs.

### What should businesses do

No matter the size of your business take ownership of the risks as well as the profits

Get organised and put a system in place to manage allergen risk.

Know what your responsibilities regarding allergen management are, and meet them.

### More information

Food labelling

<http://www.foodauthority.nsw.gov.au/foodsafetyandyou/food-labelling>

Allergen management

<http://www.foodauthority.nsw.gov.au/foodsafetyandyou/food-labelling/stay-safe/allergen-management>

Be prepared. Be allergy aware.

[http://www.foodauthority.nsw.gov.au/Documents/retail/be\\_prepared\\_be\\_allergy\\_aware.pdf](http://www.foodauthority.nsw.gov.au/Documents/retail/be_prepared_be_allergy_aware.pdf)

Allergy aware checklist

[http://www.foodauthority.nsw.gov.au/Documents/retail/allergy\\_aware\\_checklist.pdf](http://www.foodauthority.nsw.gov.au/Documents/retail/allergy_aware_checklist.pdf)

About the NSW Food Authority: The NSW Food Authority is the government organisation that helps ensure NSW food is safe and correctly labelled. It works with consumers, industry and other government organisations to minimise food poisoning by providing information about and regulating the safe production, storage, transport, promotion and preparation of food.

Note: This information is a general summary and cannot cover all situations. Food businesses are required to comply with all of the provisions of the Food Standards Code and the *Food Act 2003* (NSW).