

Labels and liability: Until the law is laid down, food companies cry "natural" at their own risk

June 17 2014, by Justin J. Prochnow



“Until regulators or legislators define the issue . . . consumers must perform their own evaluation about what ‘natural’ means to them,” writes Justin J. Prochnow.

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In 2002, the Center for Science in the Public Interest (CSPI), an advocacy group that routinely challenges food companies on their labeling claims, asked the FDA to take action against that upbeat ice cream maker Ben & Jerry's for calling some of its products "all natural." The CSPI argued that the products, including the aptly titled flavor

"Everything But The..." contained artificial flavors, hydrogenated oils and other ingredients that are made in factories, not by nature.

But scrutinizing the naturalness of a chocolate-and-vanilla ice cream concoction of peanut butter cups, Heath bar pieces, white chocolaty chunks and fudge-covered almonds was not at the top of the FDA's to-do list. The FDA responded that "natural" was "not among the FDA's current enforcement priorities."

In fact, despite repeated requests from a variety of sources, the FDA has expressly declined to define "natural" in any regulation or formal policy statement. In 2006, the Sugar Association, hoping to gain an edge on competitor high-fructose corn syrup (HFCS), petitioned the FDA to define natural, to no avail. In 2010, a handful of federal judges stayed pending litigation over the use of "natural" for beverages containing HFCS, with the expectation that the FDA would formally define natural, yet no definition was forthcoming.

When the FDA has addressed questions of "natural," it has relied on a more informal policy it issued in 1993. It allows use of the term "natural" when "nothing artificial or synthetic . . . has been included in, or has been added to, a food that would not normally be expected to be in the food."

With only this informal statement to work from, the FDA has taken little regulatory action about use of the word "natural," other than a handful of warning letters. In 2011, it issued a quartet of letters to companies saying they had improperly used the term "natural," because they use chemical preservatives.

In 2013, the FDA issued two more letters. One went to a company for using "natural" to describe an artificial crab meat product containing artificial flavors, preservatives and dough conditioners. The other letter

took issue with an "all-natural" claim for a product containing artificial rye flavor.

The lack of a formal definition for "natural" has been a major reason lawsuits over food-labeling claims (typically, consumers bringing a class-action suit against a manufacturer) have reached an all-time high. The range of products under attack has expanded to include such common ingredients as alkalized cocoa and ascorbic and citric acids.

More recently, "natural" litigation has focused on genetically modified organisms (GMOs) in such products as granola bars, snack crackers and tortilla chips. The debate has led to attempts to pass laws requiring labels on foods with genetically modified ingredients. Earlier this year, Connecticut was the first state to pass such a law, although the legislation won't kick in unless at least four other states, including one bordering Connecticut, pass similar bills.

Several high-profile ballot initiatives on GMO labeling have failed to pass, including a provision in California's Proposition 37 in November 2012, and a recent initiative in the state of Washington. Despite those defeats, similar bills are in the works in other states, and a proposal for federal legislation on the issue was submitted earlier this year. Will the continued drive for state initiatives force the FDA to adopt a uniform definition to apply nationwide? Possibly, if more of the state efforts are successful or enough groups clamor for a national standard. Only time will tell.

So, while the FDA took steps last summer to clarify certain claims ("gluten free," for example, now has a standard), the meaning of "natural" is still a subject of fierce debate. Consumer advocacy groups rail that manufacturers are using the term "natural" with impunity, while marketers argue that such groups overreach their needs. Until regulators or legislators define the issue, companies are left to make "natural"

claims at their own peril, and consumers must perform their own evaluation about what "[natural](#)" means to them.

Provided by Tufts University

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