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An "All Natural" Dilemma:

As the Market for "All Natural" Foods Continues to Grow, So Do the Risks for the Unwary

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A FREEBORN & PETERS FOOD INDUSTRY TEAM WHITE PAPER

ABOUT THIS WHITE PAPER:

While demand for "natural food" grows, the precise legal definition of food in this category remains unclear, and it is unlikely that the regulators will offer better guidance in the near-term. This white paper explains the risks that food companies face when labeling foods as "natural" and outlines several precautionary measures to avoid falling foul of consumers or regulators.

For food companies capitalizing on the ever-growing market for natural food products, the meaning of "all natural" or "100% natural" on food and beverage labels remains a perplexing and evolving question. Use of this term succinctly conveys the idea of a more nutritious or wholesome product,[1] but consumers interpret this term in a variety of ways and it is often applied to products with ingredients or other attributes that many claim are not "natural." The FDA is unwilling, however, to provide clarity on what specific attributes are being described by this term. Instead, the FDA has an informal policy that only addresses long-resolved questions rather than the issues of most confusion to consumers and the industry. The resulting uncertainty has triggered a battle in the marketplace and in courtrooms over the real meaning of "natural," with food companies facing substantial risks that plaintiffs' attorneys, consumer groups and/or competitors will accuse their products of being deceptively labeled as "natural" – a risk most dramatically evidenced by a recent wave of class action lawsuits.

Significantly, the FDA is unlikely to alleviate this problem by crafting a regulatory definition of "natural" because it is stuck in a Catch-22. "Natural" is an imprecise and non-scientific term in widespread and varying use, so there is confusion as to what specific attributes this term conveys. For the same reasons, though, alleviating that confusion by creating a fair and comprehensive definition would be an imprecise, resource-intensive and contentious task. Moreover, since resolving this conundrum is not necessary for protecting the public health, the FDA does not have an incentive to allocate its scarce resources to undertake such an endeavor with the accompanying political pressures and scrutiny.

The regulatory landscape is thus unlikely to change and food companies must therefore implement prudent and cost-effective measures to navigate these uncertain waters. In this regard, it is critical that food companies understand the main issues in the current debate so they can promote "natural" food products while avoiding the ire of the FDA, consumer groups and plaintiffs' attorneys.

The Market for "All Natural" Foods Continues to Grow

The importance of "all natural" products to the food industry is only increasing. According to *Food Technology* magazine:

- Sales of foods/drinks formulated without preservatives topped $14.5 billion in 2009; sales of products with a natural claim reached $22 billion. The number of shoppers who say a no additives/preservatives claim is very important rose 10% over the past two years.

- Natural ingredients rank third on the list of most looked for items on the ingredient label, after type of fat/oil and sweeteners. … Beverage developers say that "natural" is the No. 1 need/interest state for 2011; only 7% of drink developers will not be using at least some natural flavors/colors this year.

- Natural claims now have greater appeal than organic. While consumers define them in a similar manner, natural claims are more strongly associated with no artificial flavors/colors/preservatives.[2]

Food companies thus have a powerful incentive to market "all natural" products and reformulate existing products as "natural." Frito-Lay's announcement in early 2011 "that approximately 50 percent of its product portfolio [would] be made with all natural ingredients by the end of 2011," is just one example of this trend. According to Frito-Lay, its "all natural" products do "not have any artificial or synthetic ingredients, and [would] not contain any artificial flavors or artificial preservatives, or ingredients such as monosodium glutamate (MSG)." This endeavor represents the largest product transformation in the company's history.[3]

100% Natural

NO Artificial Flavors

NO Preservatives

NO ? ? ? ?

FDA'S Unofficial Stance on "Natural" Claims Addresses Only Basic Points and Does Not Provide Guidance On the Most Challenging Questions

Although a formal and uniform definition of "natural" would shape consumer expectations and provide the industry with clear guidance on the use and meaning of this term, the FDA has not exercised its rule-making authority to craft such a definition. This sets "natural" apart from terms, such as "free," "lean," "light," "fresh" and "organic" (which has a robust definition under the USDA's National Organic Program.)

The FDA's last effort in this regard began in 1989, when it solicited public comment for crafting a regulatory definition of "natural" because "[d]ata suggested that uses of 'natural' claims are confusing and misleading to consumers and frequently breach the public's legitimate expectations about their meaning."[4] This effort proved unsuccessful because the FDA could not "carefully consider" the "many facets of this issue" in light of "resource limitations and other agency priorities."[5]

Instead, the FDA announced in 1993 that it would maintain its informal policy "not to restrict the use of the term 'natural' except for added color, synthetic substances, and flavors" and that, for enforcement purposes, "natural" means "that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food."[6] Although regulatory definitions exist for artificial and natural flavors and colors,[7] the distinction between "artificial" or "synthetic" and "natural" is otherwise far from clear.

In other words, the FDA's informal policy only addresses the broad contours of what it means to be "all natural" and leaves the complex and controversial details of such a definition open to continued speculation, including whether genetically modified organisms, high-fructose corn syrup or foods that have been heavily processed can be used in "natural" products.[8]

Notably, meat and poultry are subject to the USDA's more robust definition of "natural" and its formal enforcement policy,[9] which is also not without controversy.[10] The USDA Food Safety and Inspection Service has a simpler task because the FDA must deal with the more complicated issues raised by "natural" claims in connection with shelf-stable foods and beverages.[11]

"[D]uring a recent stroll through the fruit juice department of my nearest grocery store… [I saw a] citrus drink whose label all but shouted out the word "natural" listed, among its ingredients, caffeine, aspartame, magnesium oxide, potassium bicarbonate, calcium carbonate, and artificial yellow coloring #5.

Is that natural artificial yellow coloring?

Yet, only a few shelves down, I came across another drink bearing a "natural" label, which did seem to be made from ingredients like lemons, sugar, and water. Same claim, very different beverages. Very, very confusing."

– Barry Estabrook, Politics of the Plate: "Natural Lies"[13]

Under its informal policy, the FDA's enforcement of "natural" claims is limited to products that squarely violate its narrow definition and can therefore be deemed as having a false or misleading label under section 403(a)(1) of the primary body of laws enforced by the FDA, the Federal Food, Drug and Cosmetic Act.[12] For example, the FDA issued the following warning letters in 2011 with regard to allegedly "false and misleading" natural claims:

- March 11, 2010, to Shemshad Food Products, for a host of serious violations along with the less serious concern that its "natural" lime juice included "the synthetic chemical preservative 'sodium benzoate 1%' [sic]" and its use of "natural" in association with this product was thus "false and misleading."

- July 22, 2011, to Bagels Forever, Inc., stating that its "Bluebarry" bagels were "manufactured with infused wild dry blueberries that contain potassium sorbate, which is listed in 21 CFR 182.3640 as a chemical preservative; therefore, your product may not make the claims 'All Natural' and 'No Preservatives.'"

- November 16, 2011, to gourmet frozen food manufacturer Alexia Foods Inc., with regard to its use of "all natural" on a frozen red potato and mushroom product that contained "disodium dihydrogen pyrophosphate, which is a synthetic chemical preservative."

Although these warning letters are not a sign that "natural" claims will receive the same attention from the FDA as problems relating to adulterated food, illegal drug residue and unapproved drugs, they demonstrate that the FDA is not shy about enforcing what it perceives as clear-cut violations of its informal policy.

A Regulatory Definition of "All Natural" by the FDA Remains Unlikely

In light of the growing battle over allegedly misleading and deceptive "natural" claims, some commentators speculate that the FDA may revisit the issue and take a formal stance on a definition of this term. That is unlikely. As the FDA concedes, "[f]rom a food science perspective, it is difficult to define a food product that is 'natural' because the food has probably been processed and is no longer the product of the earth."[14] In other words, the term's inherent vagueness (especially when applied to shelf-stable products and beverages) opens up a can of worms for the FDA because any attempt at crafting a regulatory definition invites a battle between competing interests over the term's real definition and close scrutiny from the food industry, consumer groups and, as an extension of both, Congress. In addition, enforcement of a robust definition for "natural" would be complex and a drain on the FDA's scarce resources, which are needed for higher-priority issues, including enforcement of the Food Safety Modernization Act. To be sure, the debate over "natural" claims does not fit within the FDA's main priorities of food safety and public health. There is thus far more incentive for the FDA to focus on labeling issues that directly impact public health (such as health and nutrient claims) than be dragged into a troublesome, non-scientific debate on "natural" claims, which fall under the lowest priority of the FDA's mandate – mislabeling and combating economic deception.

The FDA's wariness to revisit this issue is exemplified in its December 12, 2005, response to a petition requesting that it define "all natural" and "100% natural." The FDA simply cited the fact that the petitioner did not provide "any information that wasn't considered in issuing our final rule in 1993 that would assist us in developing a definition regarding the use of the term 'natural,' thereby allowing us to move away from our current policy."[15] It is, of course, difficult to imagine what data could be provided to define a term that lacks an objective or scientific meaning. Similar petitions by The Sugar Association, Inc. in 2006 and Sara Lee Corporation in 2007 have not received any formal response and there is no indication that the FDA will do anything other than ignore or rejects these petitions.[16]

"The term 'natural,' in many instances, constitutes meaningless marketing hype promoted by corporate interests seeking to cash in on the consumer's desire for food produced in a genuinely healthy and sustainable manner."

– The Cornucopia Institute[18]

The Battle Over "Natural" Claims

Because there is no formal regulatory definition for "natural," mere compliance with FDA's informal policy does not provide a safe harbor for food companies making natural claims. Indeed, 2011 saw a dramatic rise in the number of consumer boycotts, online protests and lawsuits contending that one company or another has misbranded its product as "natural" or otherwise confused consumers with regard to its use of this term. These outcries are generally premised on the view that: (1) consumers expect "natural" to apply to foods that are healthy, minimally processed (or "whole") and with a short list of recognizable (or "real") ingredients, and (2) food companies are cashing in on this expectation by charging health-conscious consumers a premium for "natural" foods that are not as pure or wholesome as advertised. Similarly, some critics assert that food companies are exploiting consumer confusion between "organic" and "natural" products (which have complementary qualities) in a sort of bait-and-switch by using deceptively-packaged and overly-priced "natural" foods that are not "eco-friendly," that have ingredients produced using pesticides and GMOs, and that include "inferior" non-organic ingredients.[17]

Notably, natural claims may include obvious declarations, like "All Natural" and "100% Natural," but can also be implied by associated brand names and slogans, such as "Annie's Naturals," "Natural Bliss," "great taste … naturally" and "the natural taste of quality."

Regardless of a company's view on the meaning of "natural" or its intent in marketing "all natural" products, valuable goodwill can be lost if consumers perceive that a company is mislabeling its products, with potential economic ramifications across a company's entire product line.

Attacks against the alleged abuse by companies of "natural" claims has most notably emerged in a wave of class action lawsuits charging food companies with "fraudulent" advertisements and business practices, most of which are brought under California's broad unfair competition and false advertising laws. These suits are not preempted by federal law precisely because the FDA has declined to exercise its rule-making authority and adopt a formal definition of "natural."[19]

A Regulatory Definition of "All Natural" by the FDA Remains Unlikely

The focus of California law is not to protect the public health. Rather, as the California Supreme Court declared in 2011, "labels matter" and consumers who pay more for an allegedly misrepresented product, or competing companies that were deprived of a sale due to allegedly false advertising, have suffered an economic injury that confers standing to sue.[20] And it is irrelevant that consumers may have received a competitively-priced and perfectly good product. Further, the FDA-mandated ingredient list does not "provide a shield for liability" for front-of-package labeling that is misleading to a reasonable consumer.[21]

Generally, these suits allege that reasonable consumers were misled into paying a premium for "all natural" products that included non-natural ingredients or were processed in a manner that rendered them non-natural. The most recent flood of cases include the following:

- **Frito-Lay** (filed January 30, 2012, in New York and December 14, 2011, in California): Frito-Lay is accused in two separate suits of marketing products as "all natural" when they included corn and vegetable oils made from genetically modified plants and organisms ("GMOs"). According to plaintiffs, "[t]he reasonable consumer assumes that seeds created by swapping genetic material across species to exhibit traits not naturally theirs are not 'all natural.'"[22]

- **Tropicana Products, Inc.** (filed January 6, 2012, in California): Suit claims that Tropicana's not-from-concentrate orange juice is misleadingly labeled as "100% pure and natural" because it "undergoes extensive processing which includes the addition of aromas and flavors," which "changes the essential nature" of the juice into a product "engineered in laboratories" with a "shelf-life of more than two months."

- **King Arthur Flour** (filed November 14, 2011): Alleges that King Arthur Flour markets at least 64 products with "All Natural" claims that include "several synthetic ingredients…including ascorbic acid, disodium phosphate, potassium carbonate and sodium acid pyrophosphate."[23]

- **ConAgra** (filed November 8, 2011): ConAgra is accused of "engaging in a misleading advertising campaign in an effort to deceive customers into purchasing … [Wesson Canola Oil, Vegetable Oil, Corn Oil, and Best Blend] labeled and advertised as '100% Natural'" when they allegedly contain genetically modified ingredients.

- **Kashi** (multiple suits filed in August and September of 2011): Alleges that a number of Kashi products were "falsely represented" as "all natural" and containing "nothing artificial" when they actually included "synthetic and unnaturally processed ingredients, including sodium molybdate, phytonadione, sodium selenite, magnesium phosphate, niacinamide, calcium carbonate, calcium phosphate, calcium pantothenate, pyridoxine … and other substances that have been declared to be synthetic substances by federal regulations."[24]

- **General Mills** (filed October 28, 2011): Reference to Kix cereal as including "all-natural whole grain corn" alleged to be false and misleading because it allegedly included genetically modified corn.

- **Ben & Jerry's Homemade, Inc.** (filed on September 29, 2010): Alleges that consumers were misled who purchased certain Ben & Jerry's "all natural" ice cream products containing "alkalized cocoa processed with potassium carbonate, a man made, synthetic ingredient."[25] The lawsuit continues even though Ben & Jerry's agreed to remove the "all natural" labeling from all of its ice cream and frozen yogurt products.

- **AriZona Beverages** (filed on March 3, 2010): Alleges that several AriZona-brand beverages were marketed as "100% Natural" and "100% All Natural" but contained high fructose corn syrup and citric acid, which were alleged to be non-natural substances. Consumers complained that because of the labeling used on AriZona drinks, they "received something less than and different from what was promised and bargained for—a product that was not, in fact, all natural."[26]

Besides lawsuits, allegedly misleading "natural" claims are frequent targets for bloggers and consumer "watchdog" groups, with the Center for Science in the Public Interest ("CSPI") leading the charge. In 2007, CSPI threatened lawsuits against Cadbury Schweppes and Kraft for allegedly misleading "natural" claims with regard to, respectively, 7-Up and Capri-Sun, because both were sweetened with high fructose corn syrup ("HFCS"). To avoid the looming legal battle, both companies agreed to drop "natural" from their labels, with Kraft switching to "no artificial colors, flavors or preservatives."[27] And in 2010, CSPI issued a report titled Food Labeling Chaos: The Case for Reform, which named an array of foods accused of either violating the FDA's informal policy relating to "natural" claims or as otherwise being mislabeled

and deceptive to consumers. The battle over "all natural" claims can even become political, as exemplified by Log Cabin's "all natural" table syrup which is sold in plastic jugs commonly used for pure maple syrup. Vermont's Secretary of Agriculture and Vermont Congressman Peter Welch accused the product as being misleading and asked the FDA to investigate because, they contended, this was an "artificial syrup product [made from an amalgam of ingredients] masquerading as 'natural' [and thus] confuses consumers..."[28]

As this demonstrates, use of "all natural" on front-of-package labeling is often one facet of the broader and more complex issue of whether a particular product can reasonably be accused of misleading or deceiving consumers due to its labeling, packaging and placement on supermarket shelves. The question of whether using HFCS disqualifies a product from being described as "all natural" underscores the complexities and disputes that permeate the overall debate. Corn syrup is made from cornstarch and HFCS, in turn, is produced using an enzymatic process that converts glucose in corn syrup into fructose in order to produce a desired sweetness. The Corn Refiners Association has consistently maintained that HFCS is "natural" because, even though it is several processing steps removed from corn, it is derived from corn and contains nothing artificial or synthetic. Not surprisingly, the Sugar Association (and CSPI) assert that HFCS is not natural because it is "manufactured" in a manner that fundamentally changes its organic chemical state and HFCS is entirely absent from natural corn.

In April 2008, the FDA responded to an inquiry from FoodNavigator - USA.com by stating that it would object to "natural" claims for HFCS - containing products because they are produced using synthetic fixing agents in the enzyme preparation, which "would not be consistent with [FDA's] policy regarding the use of the term 'natural.'"[29] A scant two months later, however, this view was revised based on a presentation made to the FDA by Archer Daniels Midland Company ("AMD").

> When HFCS is made using the process presented by [AMD] it can be considered "natural." This process sees the enzymes for making HFCS being fixed to a column by the use of a synthetic fixing agent called glutaraldehyde. However, this agent does not come into contact with the high dextrose equivalent cornstarch hydrolysate and so it is not considered to be included or added to the HFCS. We would, however, object to the use of the term "natural" on a product containing HFCS that has a synthetic substance, such as a synthetic fixing agent included

> in or added to it. We would also object to the use of the term 'natural' on a product containing HFCS if the acids used to obtain the starch hydrolysate do not fit within our policy on "natural."[30]

Significantly, the FDA's letter went on to underscore the problems inherent with its informal and non-uniform policy on "natural":

> Consistent with our policy on the use of the term "natural," … the determination on whether an ingredient would qualify for the use of the term "natural" is done on a case-by-case basis. Further, ingredients with the same common or usual name may be formulated in different ways, where a food containing the ingredient formulated one way may qualify for the use of the term "natural" and another food containing the ingredient with the same common or usual name, which has been formulated in a different way, may not be eligible for the use of the term "natural."[31]

The FDA thus added to the confusion by recognizing that its informal policy might result in peculiar distinctions between naturally-made HFCS and synthetically-made HFCS – a distinction that potentially exists for many other additives, preservatives and sweeteners. Moreover, these informal pronouncements are not owed any deference by the courts on the question of whether a reasonable consumer would be deceived by the use of HFCS in "natural" products. That said, the FDA's analysis may be instructive, especially since courts are leery of delving into matters that the FDA is better equipped to resolve.

The latest chapter in this battle involves a petition to the FDA by the Corn Refiners Association to have the name HFCS changed to "corn sugar," with the Sugar Association and various consumer groups lined up against it. And so it goes.

Conclusion

By all indications, the battle over "natural" claims, including consumer class action lawsuits, will continue for the foreseeable future. For more risk-adverse companies, a current trend is avoiding broad "all natural" claims and replacing them with more specific front-label claims, such as "No Artificial Colors or Flavors," "Natural Chocolate Flavor," "No Added Sugar," "100% Whole Wheat," "No Trans Fats," etc. This approach can potentially create a similar commercial impression, while also providing a more specific picture of a product's nutritional value on front-of-label packaging. On the other hand, detailing an array of positive attributes: (1) can be overwhelming to consumers, (2) has also been accused as being a misleading tactic,[32] and (3) lacks the proven marketability of succinct "all natural" claims. Indeed, "natural topped the list of descriptors consumers looked for when purchasing foods/drinks at retail in 2010" and "100% natural was preferable to other descriptors..."[33] Alternatively, some companies are avoiding technical verbiage and using a "clean-label" concept to convey a wholesome and minimally-processed product by stressing a limited number of "simple" and "pure" ingredients.

Ultimately, the question of whether an "all natural" product creates an overall commercial impression that is susceptible to a claim that it is "false and misleading" must be considered on a case-by-case basis. Accordingly, food companies must carefully review all claims, especially "natural" claims, in light of consumer expectations and against a backdrop of evolving risks and applicable law. This shifting mosaic must also be viewed with regard to a product's overall packaging and with an understanding of other health-focused marketing terms.

1 *See Beyond Organic & Natural 2010: Resolving Confusion in Marketing Food and Beverages: Report Overview,* The Hartman Group, Inc.

2 http://www.ift.org/food-technology/past-issues/2011/april/features/food-trends.aspx?page=viewall (Citations Omitted)

3 *See* http://www.fritolay.com/about-us/press-release-20110411.html and http://www.fritolay.com/your-health/naturally-delicious.html

4 54 Fed. Reg. 32,610 (Aug. 8, 1989) (Advanced Notice of Proposed Rulemaking, noting that "FDA is aware of public interest … in regulatory definitions for such terms as 'lite,' 'fresh,' and 'natural.'"); 56 Fed Reg. 60,421 at 60,466 (Nov. 27, 1991 (Proposed Rule)

5 58 Fed. Reg. 2302 at 2407 (Jan. 6, 1993) (Final Rule providing formal regulatory "definitions for specific nutrient content claims using" terms such as "free," "low," "lean" and "lite" but for "natural.").

6 *Id.*

7 "Artificial flavor" is defined, in relevant part, as "any substance the function of which is to impart flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf, or similar plant material…." 21 C.F.R. § 101.22(a)(1). Consistent with this view "natural flavor" is defined as the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf, or similar plant material…" 21 C.F.R. § 101.22(a)(3). Finally, "added color" may include coloring agents derived from natural sources, such as beet juice because "'natural' may be erroneously interpreted to mean the color is a naturally occurring constituent in the food" and "all added colors result in an artificially colored food." 7 C.F.R. § 205.2; 21 C.F.R. § 101.22(a)(4).

8 FDA Compliance Policy Guide ("CPG") § 587.100, "Label Declaration of Certification-Exempt Color Additives." *See* also 21 CFR §§ 70.3(f) and 101.22.

9 *See* http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/meat-and-poultry-labeling-terms/meat-and-poultry-labeling-terms ("A product containing no artificial ingredient or added color and is only minimally processed. Minimal processing means that the product was processed in a manner that does not fundamentally alter the product. The label must include a statement explaining the meaning of the term natural (such as 'no artificial ingredients; minimally processed')."").

10 *See* Bruce Silverglad and Ilene Ringel Heller, *Food Labeling Chaos: The Case For Reform*, Center for Science in the Public Interest (2010) (criticizing USDA's allowance of "100% Natural" for certain processed meats and for poultry and other meat products that include various additives).

11 USDA's task is also made easier because of its premarket label approval authority for labels for which it can insist on supporting documentation regarding any "natural" claim.

12 *See* 403(a)(1) of the FD&C and 21 U.S.C. 343(a)(1)).

13 *See* http://www.gourmet.com/foodpolitics/2008/08/politics-of-the-plate-natural-labeling.

14 *See* http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm.

15 *See* Docket No. 2004P-0009.

16 *See* Docket Nos. 2006P-0094 and 2007P-0147.

17 *See* The Cornucopia Institute, *Cereal Crimes: How "Natural" Claims Deceive Consumers and Undermine the Organic Label – A Look Down the Cereal and Granola Aisle*, October 2011 (available at www.cornucopia.org).

18 *See* The Cornucopia Institute, *Cereal Crimes: How "Natural" Claims Deceive Consumers and Undermine the Organic Label – A Look Down the Cereal and Granola Aisle*, October 2011 (available at www.cornucopia.org).

19 *See Holk v. Snapple Beverage Corp.*, 575 F.3d 329 (3d Cir. 2009).

20 *Kwikset v. Superior Court of Orange County,* 51 Cal.4th 310, 330, 246 P.3d 877 (2011).

21 *Williams v. Gerber Products Co.*, 523 F.3d 934, 939 (9th Cir. 2008) (Reversing the district court's finding that Gerber's statements were not likely to deceive a reasonable consumer based, in part, on fact that ingredient list was printed on the side of the box: "We do not think that the FDA requires an ingredient list so that manufacturers can mislead consumers and then rely on the ingredient list to correct those misinterpretations and provide a shield for liability for the deception.").

22 *See Shake et al v. Frito-Lay North America Inc.,* Case No. 12-cv-408, U.S. District Court for the Eastern District of New York and Gengo v. Frito-Lay North America, Inc., Case No. 11-cv-10322, U.S. District Court, Central District of California.

23 *Larsen v. King Arthur Flour Co., Inc.*, Case No. 11-cv-5495, U.S. District Court, Northern District of California.

24 *Consolidated as Michael Bates v. Kashi Company, Kellogg Company et al,* Case No. 11-cv-1967 U.S. District Court, Southern District of California.

25 *Astania v. Ben & Jerry's Homemade, Inc.,* Case No. 10-cv- 04387, U.S. District Court, Northern District of California.

26 *Ries et al. v. Hornell Brewing Co. Inc. et al.,* Case No. 10-cv-1139, U.S. District Court, Northern District of California.

27 *See* http://www.cspinet.org/new/200701121.html and http://www.cspinet.org/new/200701081.html.

28 *See* http://welch.house.gov/index.php?option=com_content&view=article&id=1169 and http://articles.sfgate.com/2010-09-10/business/23996694_1_maple-syrup-maple-product-vermont-officials.

29 http://www.foodnavigator-usa.com/Business/HFCS-is-not-natural-says-FDA. The FDA employee added that "the corn starch hydrolysate, which is the substrate used in the production of HFCS, may be obtained through the use of safe and suitable acids or enzymes" and might not qualify as "natural" depending "on the type of acid(s) used to obtain the corn starch hydrolysate."

30 *See* Geraldine June letter of July 3, 2008 at http://www.corn.org/wp-content/uploads/2008/07/FDAdecision7-7-08.pdf.

31 *Id.*

32 *See* Bruce Silverglad and Ilene Ringel Heller, *Food Labeling Chaos: The Case For Reform*, Center for Science in the Public Interest (2010) (criticizing descriptors such as "0 grams trans fats" and "made with whole grains" as potentially misleading as to presence of saturated fats, overall percentage of whole grains, and total nutritional value of a product).

33 A. Elizabeth Sloan, *Navigating The Natural Marketplace*, Food Technology Magazine, November 2011 (Vol. 65, No. 7) at p. 26.

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