

January 4, 2006

Via Certified Mail No. 7004 2890 0000 7840 9334 to
PepsiCo, Inc.
700 Anderson Hill Road
Purchase NY 10577

Via Certified Mail No. 7004 2890 0000 7840 9341 to
Frito-Lay North America, Inc.
7701 Legacy Drive
Plano TX 75024

Via Certified Mail No. 7004 2890 0000 7840 9358 to
Frito-Lay, Inc.
7701 Legacy Drive
Plano TX 75024

Re: *Lori Perlow, Individually and on Behalf of All Similarly Situated Individuals v. PepsiCo, Inc., Frito-Lay North America, Inc., and Frito-Lay, Inc.*
Demand for Relief Pursuant to Massachusetts G.L. c. 93A, Section 9

To the Companies:

This office represents Lori Perlow, individually and on behalf of persons similarly situated, with respect to claims against a division of PepsiCo, Inc., Frito-Lay North America, Inc. (a.k.a. Frito-Lay, Inc.) (herein collectively called "Frito-Lay"), under the Massachusetts Consumer Protection Act, G.L. c. 93A, arising out of their purchases of Frito-Lay Light snack products containing the fat substitute olestra ("products"), also known under the trade name Olean. The products include the Lays' Light, Ruffles Light, Doritos Light, and Tostitos Light product lines. This letter constitutes a demand for relief pursuant to section 9 of G.L. c. 93A.

As you know, we have been attempting to convince your companies for several months to disclose the potential harmful side effects of olestra to consumers, but thus far you have not indicated a willingness to make what we believe to be an eminently reasonable, and simple, change to your business practices. Because our attempts to negotiate a resolution to this matter have not been



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successful, Ms. Perlow hereby makes this demand for relief under Massachusetts General Laws Chapter 93A

On or about June 15, 2005, Ms. Perlow purchased a package of Ruffles Light brand cheddar potato chips. Within a short time after consuming the chips, she experienced cramping in her abdominal area and became severely gaseous. This disrupted a significant portion of her day, as the conditions persisted for several hours.

At the time she consumed the chips, Ms. Perlow was already aware of the risks of eating foods containing olestra and in fact had deliberately avoided eating WOW! chips for that reason, but she did not know that olestra was an ingredient in the Light product which was just WOW! chips under a new name. Upon discovering this fact, she realized that the olestra likely was responsible for her symptoms. At the time she experienced the symptoms, Ms. Perlow was not suffering from any illness or condition that would have caused them.

As you know, in 1996 olestra was approved by the Food and Drug Administration ("FDA") for use in certain consumer snack products, but with the requirement that the packaging contain a warning label notice concerning possible side-effects.¹ Even though the FDA withdrew the label warning requirement in 2003 at the request of Procter & Gamble (with the support of Frito-Lay), this does not change the fact that since 1996 more than 20,000 consumers submitted complaints (via Frito-Lay, Procter & Gamble, or the Center for Science in the Public Interest [CSPI]) to the FDA about olestra. The symptoms suffered by consumers included, but were not limited to, abdominal cramping, nausea, loose stools, and diarrhea.

Even though Frito-Lay has been aware of the volume and nature of complaints, it has nonetheless chosen to hide these potential consequences of ingesting products containing olestra.

This demand for relief pursuant to Section 9 of G.L. c. 93A is made on behalf of Ms. Perlow and a class of all Massachusetts consumers who purchased any Frito-Lay Light snack product. Ms. Perlow demands that Frito-Lay agree to include accurate, prominently displayed warnings on products and in advertising regarding the possible adverse effects of consuming olestra.

Ms. Perlow contends that (1) Frito-Lay's knowing and intentional failure to inform her of the possible side-effects of ingesting olestra, (2) Frito-Lay's act of changing the product name from WOW! to Lights with the intent of misleading consumers about the presence of olestra, and (3) Frito-Lay's knowing and intentional failure to clearly and conspicuously advise warn consumers that the products contain olestra constitute deceptive acts or practices in violation of Massachusetts General Laws Chapter 93A, section 2. Clearly, proper disclosure might have influenced her, a reasonable consumer, not to purchase the product.

¹ The label was required to state: "This product contains olestra. Olestra may cause abdominal cramping and loose stools. Olestra inhibits the absorption of some vitamins and other nutrients. Vitamins A, D, E, and K have been added."

Moreover, Ms. Perlow contends that Frito-Lay's conduct violates regulations promulgated by the Attorney General pursuant to G.L. c. 93A, section 2: (1) 940 CMR 3.05, which declares it an unlawful trade practice to fail to adequately disclose relevant information, when that failure has the capacity or tendency or effect of deceiving buyers or prospective buyers of a product in any material respect, including safety; and (2) 940 CMR 6.03, which declares it an unlawful trade practice for advertisements concerning retail products to omit or obscure a material fact. Ms. Perlow alleges that Frito-Lay engaged in these unlawful practices both to avoid the lost sales and profits that would result if the public were made aware of the true facts surrounding olestra, and to avoid the expense associated with proper and full disclosure.

In addition to her demand for warnings, Ms. Perlow demands monetary relief totaling the greater of: (1) the difference between the amounts paid for the products and their true market value (*i.e.*, if there had been proper disclosure); and (2) statutory damages in the amount of \$25.00 for each unit of the products sold. The statute of limitations under Massachusetts law is four years, but since the Frito-Lay Light snack products were launched under the new name only last year this demand covers the entire period the products have been on the market. Ms. Perlow does not seek any damages for personal injuries suffered by her or any other class member.

Under the statute, Frito-Lay has 30 days from receipt of this letter to make a reasonable written tender of settlement. Should Frito-Lay fail to make a reasonable written tender in a timely fashion, and Ms. Perlow establishes in court that Frito-Lay's conduct violated G.L. c. 93A, section 2, she and class members will be entitled to recover their actual damages or \$25.00 for each violation, whichever is greater, plus their costs and reasonable attorney's fees.

In the event that Ms. Perlow further establishes that Frito-Lay's conduct was willful or knowing in nature, or that Frito-Lay's failure to make a reasonable tender of settlement was in bad faith with knowledge or reason to know that Frito-Lay's conduct violated G.L. c. 93A, section 2, she and class members must be awarded at least two, but no more than three, times their actual damages or \$25.00 per violation, whichever is greater, plus their costs and reasonable attorney's fees.

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Stephen Gardner", with a horizontal line extending to the right.

Stephen Gardner

Cc: Lori Perlow
Ken Quat
Robert Biggart