



CENTER FOR
Science IN THE
Public Interest

*The nonprofit publisher of
Nutrition Action Healthletter*

January 9, 2013

VIA OVERNIGHT DELIVERY TO

Mr. W. Anthony Vernon
Chief Executive Officer
Kraft Foods Group, Inc.
Northfield, Illinois 60093-2753

Re: Kraft Foods Group, Inc.'s misleading marketing and labeling of
Crystal Light Drink Mix Products

Dear Mr. Vernon:

The Center for Science in the Public Interest (CSPI) has identified deceptive practices in the marketing¹ of several of Kraft's Crystal Light Drink Mix products ("Crystal Light"): "Natural Lemonade," "Natural Pink Lemonade," "Natural Lemon Iced Tea," and "Natural Lemon Decaffeinated Iced Tea."² This letter details CSPI's findings and offers to discuss resolution before CSPI takes further legal action. Ultimately, if litigation became necessary, CSPI would seek an injunction prohibiting Kraft Foods Group, Inc. (Kraft) from (1) expressly or implicitly making misleading "natural" claims about its Crystal Light products and (2) violating Food and Drug Administration (FDA) regulations governing flavoring³ and statements of identity.⁴ CSPI also may seek corrective advertising, restitution, damages, disgorgement, and attorneys' fees.

¹ The term "marketing" includes all forms of marketing in all forms of media and venues, including without limitation: print advertisements, television and radio commercials, websites, signage at restaurants, toys, advergames, sponsorships, product labels, magazines, use of licensed characters, use of celebrities, viral marketing, school-based marketing (such as book covers and sponsored educational materials), and kids clubs.

² Kraft manufactures and sells four lines of Crystal Light: "Crystal Light Classics," "Crystal Light Pure," "Crystal Light Mocktinis," and "Crystal Light Energy." This letter only addresses the "Crystal Light Classics" flavors listed above.

³ 21 C.F.R. §101.22.

Facts Giving Rise to Kraft's Liability

Kraft markets Crystal Light using “natural” claims, despite the presence of multiple artificial ingredients in the products. In Illustration 1, the word “NATURAL” appears in large, boldface letters at the center of the label. In Illustration 2, which depicts a print advertisement for Crystal Light, the “natural” claims are visible on the labels of the “Natural Lemonade” and “Natural Pink Lemonade” products.

Illustration 1

“Natural Lemonade” and “Natural Pink Lemonade,” Crystal Light Drink Mix Products



⁴ 21 C.F.R. § 101.3.

Illustration 2 Crystal Light Print Advertisement



I. Kraft's Crystal Light Drink Mixes are misbranded

By placing the term “natural” in bolded capital letters at the center of its Crystal Light product labels, Kraft conveys to consumers that the products have no chemically altered or man-made ingredients and are a healthier, safer, and more nutritious choice than similar products that do not bear the term “natural.” In reality, the “Natural Lemonade,” “Natural Pink Lemonade,” “Natural Lemon Iced Tea,” and “Natural Lemon Decaffeinated Iced Tea” varieties of Crystal Light contain artificial sweeteners, artificial colors, and artificial flavors that are inconsistent with the bold “natural” claims on the front of the package.

Consumers expect the term “natural” to describe products that contain no artificial or synthetic ingredients and consist entirely of ingredients that are only minimally processed.⁵ For example, while reasonable consumers might expect “Natural Lemonade” to include sugar and lemon, consumers likely would not expect “Natural Lemonade” to contain citric acid, potassium citrate, sodium citrate, aspartame, magnesium oxide, maltodextrin, unnamed natural flavor(s), acesulfame potassium, soy lecithin, artificial color, Yellow 5, and butylated hydroxyanisole (BHA). By marketing its Crystal Light products as “natural,” Kraft deceives consumers and takes advantage of their preference for foods

⁵ Nat'l Consumers League, *Naturally Misleading: Consumers' Understanding of "Natural" and "Plant Derived" Labeling Claims 4*, available at www.nclnet.org/images/PDF/naturalsreport.pdf.

made entirely with natural ingredients.⁶ Kraft's use of the term "natural" to describe Crystal Light creates consumer confusion, is deceptive, and detrimentally affects sales of competing products that are actually naturally produced or contain only ingredients that are chemically unchanged from their natural state.

FDA has stated "the agency has not objected to the use of the term if the food **does not contain added color, artificial flavors, or synthetic substances.**"⁷ FDA has used Warning Letters to enforce this definition by prohibiting "natural" claims on products containing artificial colors⁸ and preservatives.⁹

⁶ In a survey, the most popular food label among consumers was "100% natural." "All natural ingredients" was the second most popular food label among consumers. See e.g., *Consumers Prefer '100% Natural' Label Over 'Organic'*, ENVIRONMENTAL LEADER (Jul. 3, 2009), www.environmentalleader.com/2009/07/03/consumers-prefer-100-natural-label-over-organic (describing EcoPulse market report by Shelton Group) (last visit December 6, 2013). In 2009, the term "natural" was the most frequently used claim on new U.S. food products. Karlene Lukovitz, "Natural" Claims Most Common on New F&B Products, MediaPostnews (Jan. 19, 2009), available at www.mediapost.com/publications/article/98562/#axzz2YsPn6CWO. As of 2010, "natural" foods constituted roughly a 422.6 billion industry, outselling organic foods by more than four to one. Tom Pirovano, Director of Industry Insights, U.S. *Healthy Eating Trends Part 1 Commitment Trumps the Economic Pinch*, Nielsen (Jan. 26, 2010), available at www.nielsen.com/us/en/newswire/2009/%C3%A2%C2%80%C2%9Cnatural%C3%A2%C2%80%C2%9D-beats-%C3%A2%C2%80%C2%9Corganic%C3%A2%C2%80%C2%9D-in-food-sales-according-to-nielsen%C3%A2%C2%80%C2%99s-healthy-eating-report.html

⁷ Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms, 56 Fed. Reg. at 60466 (emphasis added).

⁸ E.g., FDA Warning Letter to Fresh Made Inc., Oct. 16, 2007, available at www.fda.gov/iceci/enforcementactions/warningletters/2007/ucm076542.htm (stating that the company's cheese products "are misbranded within the meaning of section 403(a)(1) of the Act 21 U.S.C. § 343(a)(1) because the labels are false or misleading in that the products are labeled as "All Natural," but in fact contain artificial coloring as defined in 21 CFR 101.22(a)(4).").

⁹ E.g., FDA Warning Letter to Alexia Foods Potatoes and Mushrooms, Nov. 16, 2011, available at www.fda.gov/iceci/enforcementactions/warningletters/2011/ucm281118.htm (stating that the company's vegetable product "contains disodium dihydrogen pyrophosphate, which is a synthetic chemical preservative. Because your products contain this synthetic ingredient, the use of

With ingredients such as aspartame, acesulfame potassium, Red 40, Yellow 5, Blue 1, maltodextrin and BHA, Crystal Light products contain artificial colors, artificial flavors, and synthetic substances. Kraft's Crystal Light products therefore fail to meet not only consumer expectations, but also FDA's standard for "natural."

Illustration 3
"Natural Lemonade" Crystal Light Drink Mix Ingredient List

INGREDIENTS: CITRIC ACID,
 POTASSIUM CITRATE, SODIUM
 CITRATE, ASPARTAME, MAGNESIUM
 OXIDE, MALTODEXTRIN, CONTAINS
 LESS THAN 2% OF NATURAL FLAVOR,
 ACESULFAME POTASSIUM, SOY
 LECITHIN, ARTIFICIAL COLOR, YELLOW 5,
 BHA (PRESERVES FRESHNESS).

A. Artificial Sweeteners

Kraft's Crystal Light products contain the artificial sweeteners aspartame and acesulfame potassium. Those are factory-made synthetic ingredients and do not occur in nature. (In addition to labeling concerns, aspartame has been found to cause cancer in laboratory animals, including leukemia, lymphoma, and mammary cancer as well as brain, liver, lung, and kidney tumors.¹⁰ Research on

the claim "All Natural" on this product label is false and misleading, and therefore your product is misbranded under section 403(a)(1) of the Act.").

¹⁰ See F. Belpoggi et al., *Results of Long-Term Carcinogenicity Bioassay on Sprague-Dawley Rats Exposed to Aspartame Administered in Feed*, 1076 ANNALS N.Y. ACAD. SCI. 559-77 (Sep 2006); M. Soffritti et al., *Life-Span Exposure to Low Doses of Aspartame Beginning During Prenatal Life Increases Cancer Effects in Rats*, 114 ENV'T

acesulfame potassium has revealed some evidence of carcinogenicity in animals, and some evidence of an increased risk of preterm birth.¹¹⁾

B. Artificial Colors

Crystal Light products contain Red 40, Yellow 5, and Blue 1. These artificial dyes are synthesized in factories from petroleum and do not occur in nature. (Food dyes increase the risk of allergic reactions and hyperactivity in children. FDA has considered several dyes to be carcinogenic or contaminated with cancer-causing contaminants.¹² In 2008, because of the link between artificial dyes and hyperactivity, CSPI petitioned FDA to ban the use of these dyes¹³ and in 2011 FDA acknowledged that dyes could impair the behavior of some children.¹⁴ The British government and European Union have already taken action to remove the use of dyes from the European food supply.)

HEALTH PERSPECTIVES. 379-85 (Sep. 2007); M. Soffritti et al., *Aspartame Administered in Feed, Beginning Prenatally Through Life Span, Induces Cancers of the Liver and Lung in Male Swiss Mice*, 53 AM. J. INDUS. MED. 1197-206 (Dec. 2010).

¹¹ See Myra L. Karstadt, *Testing Needed for Acesulfame Potassium, an Artificial Sweetener*, 114 ENVIRON. HEALTH PERSPECTIVES A516 (Sept. 2006); Morando Soffritti, *Acesulfame Potassium: Soffritti Responds*, 116 ENVIRON. HEALTH PERSPECTIVES A240 (June 2008); Thorhallur I. Halldorsson et al., *Intake of Artificially Sweetened Soft Drinks and Risk of Preterm Delivery: A Prospective Cohort Study in 59,334 Danish Pregnant Women*, 92 AM. J. CLIN. NUTR. 626 (2010).

¹² See e.g., Robin B. Kanarek, *Artificial Food Dyes and Attention Deficit Hyperactivity Disorder*, 69 NUTRITION REVIEWS 385 (July 2011); Marvin Boris et al., *Foods and Additives Are Common Causes of the Attention Deficit Hyperactive Disorder in Children*, 73 ANNALS OF ALLERGY 462 (Oct. 1994); Laura J. Stevens et al., *Dietary Sensitivities and ADHD Symptoms: Thirty-five Years of Research*, 50 CLINICAL PEDIATRICS 279 (Apr. 2011); Center for Science in the Public Interest, *Food Dyes: A Rainbow of Risks* (2010).

¹³ CSPI, *Petition to Ban the Use of Yellow 5 and Other Food Dyes, in the Interim to Require a Warning on foods Containing These Dyes, to Correct the Information the Food and Drug Administration Gives to Consumers On the Impact of These Dyes on the Behavior of Some Children, and to Require Neurotoxicity Testing of New Food Additives and Food Colors* (June 3, 2008), available at www.cspinet.org/new/pdf/petition-food-dyes.pdf.

¹⁴ FDA, *Interim Toxicology Review Memorandum* (September 1, 2010), available at www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/FoodAdvisoryCommittee/UCM248110.pdf.

C. Maltodextrin

Maltodextrin is a factory-produced texturizer that is created by complex processing and does not occur in nature. It is used in processed foods as a filler and to enhance texture and flavor.¹⁵

D. BHA

BHA is a synthetic preservative that is made in a factory and does not occur in nature.¹⁶ Studies have shown that BHA can cause tumors in rats, mice, and hamsters and liver cancer in fish.¹⁷ As a result, the National Institutes of Health's National Toxicology Program has stated that BHA is “reasonably anticipated to be a human carcinogen.”¹⁸

II. Kraft’s Crystal Light Drink Mixes violate FDA regulations governing flavoring and statements of identity

As evident in Illustration 4, Kraft manipulates font size, spacing, and word choice to create a deceptively designed front of package label that implies that all of the ingredients in its Crystal Light products are “natural” and not just some of the flavors. As a result, the labels on Kraft’s Crystal Light products are not only misleading, they are also in violation of FDA regulations governing flavoring and statements of identity.

¹⁵ CSPI website, *Chemical Cuisine*, www.cspinet.org/reports/chemcuisine.htm#malt (last visited December 6, 2013).

¹⁶ CSPI website, *Chemical Cuisine*, www.cspinet.org/reports/chemcuisine.htm#bha (last visited January 3, 2014).

¹⁷ See IARC, *Butylated hydroxyanisole (BHA) In Some Naturally Occurring and Synthetic Food Components, Furocoumarins and Ultraviolet Radiation*, 40 MONOGRAPHS ON THE EVALUATION OF CARCINOGENIC RISK OF CHEMICALS TO HUMANS, 123-159 (1986); T. Matsui et al., *Sequential Changes of the Forestomach of F344 Rats, Syrian Golden Hamsters, and B6C3F1 Mice Treated with Butylated Hydroxyanisole*, 77 JPN J CANCER RES. 1083-1090 (1986); E.H. Park et al., *Induction of Hepatic Tumors with Butylated Hydroxyanisole in the Self-Fertilizing Hermaphroditic Fish Rivulus Ocellatus Marmoratus*, 81 JPN J CANCER RES. 738-741 (1990).

¹⁸ HHS, NTP, *Report on Carcinogens, Twelfth Edition* (2011), available at www.ntp.niehs.nih.gov/ntp/roc/twelfth/profiles/ButylatedHydroxyanisole.pdf#search=bha.

Illustration 4
Close-up of Deceptive “Natural Lemonade” Crystal Light Drink Mix Label



Kraft deceptively labels its Crystal Light products by conflating flavoring and statement of identity regulations. The distinction is important: while the claim “natural” may describe some Crystal Lights *flavorings*, it does not describe any Crystal Light *products*. The regulations require that a product’s statement of identity consist of “the common or usual name of the food.”¹⁹ The “common or usual” names for lemonade and tea are lemonade and tea, respectively. “Lemonade,” “Pink Lemonade,” and “Iced Tea” are therefore not flavors, but components of the statement of identity. For example, an appropriate statement of identity would be “Lemonade Drink Mix.”

Kraft’s Violations of State Consumer Protection Laws

Under the Federal Food, Drug, and Cosmetic Act (FDCA), a food is misbranded if “its labeling is false or misleading in any particular.”²⁰ Kraft purposefully deceives consumers into believing its Crystal Light products are entirely “natural,” when, in fact, the adjective only applies to specific flavoring ingredients. Through this deception, Kraft labels its Crystal Light products as “natural” even though they contain multiple artificial ingredients. Kraft’s misrepresentations render Crystal Light misbranded in violation of the FDCA, as well as state food and drug laws, such as California’s Sherman Food, Drug, and Cosmetic Law.

In addition, Kraft’s claims violate state consumer protection laws such as Massachusetts G.L. c. 93A, Texas Business & Professions Code § 17.41 *et seq.*, District of Columbia Code § 28-3905 *et seq.*, New Jersey Statutes Ann. 56:8-1 *et seq.*, California Business & Professions Code Sections 17200 and 17500, and California Civil Code §§ 1770(a)(5) & 1770(a)(14).

As the manufacturer and distributor of Crystal Light, Kraft is responsible for the injuries caused by its actions. Consumer injury occurs each time a

¹⁹ 21 C.F.R. §101.3(b)(2).

²⁰ FDCA § 403(a)(1).

consumer sees marketing for or purchases one of these products. Each occurrence is a separate injury.²¹

Settlement Demand

In light of the foregoing, CSPI invites Kraft to resolve these instances of illegal and deceptive advertising in order to avoid further legal action. CSPI seeks to prevent Kraft from deceptively advertising Crystal Light products as “natural.” Of course, adhering to honest marketing practices will only benefit Kraft and its customers in the long term.

Should Kraft choose not to respond to CSPI’s findings, CSPI will pursue litigation to seek the following:

- Entry of a permanent injunction that prohibits Kraft from representing (either expressly or implicitly) that its “Natural Lemonade,” “Natural Pink Lemonade,” “Natural Lemon Iced Tea,” and “Natural Lemon Decaffeinated Iced Tea” Crystal Light products are “natural.”
- Disgorgement of Kraft’s profits from the sale of Crystal Light.

If Kraft is willing to discuss a settlement or requires additional information about the claims documented herein, we welcome contact from counsel.

Yours truly,

Stephen Gardner
Litigation Director

Amanda Howell
Staff Attorney

Elizabeth Valentin
Project Coordinator

By:

A handwritten signature in blue ink that reads "Stephen Gardner". The signature is written in a cursive, flowing style.

²¹ E.g., *Aspinall v. Philip Morris Companies, Inc.*, 813 N.E.2d 476 (Mass. 2004).