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Legal Sidebar

"Just Mayo" Just Isn't Warns FDA

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On August 12, 2015, the Food and Drug Administration (FDA) sent a warning letter to Hampton Creek Foods, the manufacturer, of "Just Mayo" and "Just Mayo Siracha," stating that these particular products were marketed in violation of the Federal Food, Drug, and Cosmetic Act (FFDCA) and FDA regulations. A warning letter is generally the first step in an enforcement action against an industry participant that has violated specific sections of the FFDCA. The letter to Hampton Creek outlined four different violations, including misbranding and inappropriate health claims.

First, FDA stated that "Just Mayo" and "Just Mayo Siracha" are misbranded under Section 403(r)(1)(A) of the FFDCA because the labeling contains nutrient content claims, but the products do not meet the regulatory requirements to make such claims. The Just Mayo label claims that the product is "cholesterol free." Under FDA regulations, the labeling of a product that makes such a claim must disclose the total amount of fat in a serving close to the cholesterol claim printed on the label. The Just Mayo label fails to make such a disclosure, leading to the misbranding of the product under the FFDCA, according to the agency.

Similarly, FDA accuses Hampton Creek of making unauthorized health claims, in violation of Section 403(r)(1)(B), on its website, the address of which is printed on the products' labels. The statement "Your Heart Matters" on the website implies, according to FDA, that the purported absence of cholesterol in the products can reduce the risk of heart disease. However, the agency states that these products cannot make such a statement due to the amount of fat per serving in each product. FDA regulations disqualify foods that contain more than 13 grams of fat per serving (Just Mayo contains 36 grams of fat per 50 gram-serving) from making such health claims.

For the third violation, FDA claims that the Just Mayo products are misbranded under Section 403(a)(1) because the products purport to be mayonnaise, but do not qualify as mayonnaise under FDA regulations. Specifically, the name ("Just *Mayo"*) and the image of an egg on the label are false and misleading because consumers may believe that the products are mayonnaise due to such labeling. However, despite the image on the label, the product is missing a key ingredient, eggs, which FDA has deemed to be a requisite ingredient in mayonnaise. Thus, "Just Mayo" is not mayonnaise at all, according to FDA.

Finally, FDA states that the products are misbranded under FFDCA Section 403(g) because the products fail to conform to a standard of identity, which the agency has established through regulation, for mayonnaise. The FFDCA directs FDA to establish standards for particular foods that set out the ingredients a product must contain, requirements for manufacturing, and official common names. According to the standard of identity for mayonnaise, a product that purports itself to be mayonnaise must contain vinegar, lemon juice, and egg. Just Mayo not only fails to contain egg, but also contains other ingredients that are not allowed under the standard, such as pea protein and beta-carotene. Therefore, according to the agency, the misbranding violates the FFDCA.

The letter directs the company, Hampton Creek Foods, to respond to the agency within 15 business days. Such a response, according to the warning letter, should detail the steps Hampton Creek Foods intends to take to correct and prevent such violations. If Hampton Creek refuses to correct the violations, then the agency warns that it will have to take further enforcement action such as a seizure or an injunction. FDA generally relies upon these two enforcement methods in cases of misbranding in order to remove the good from interstate commerce, and thus reduce consumer accessibility to those goods. As Just Mayo's misbranding does not seem to cause serious health consequences at this time, it is likely that FDA would conclude that recall enforcement action is inappropriate in this case. For more

information about FDA enforcement, including injunction and seizure, see CRS Report R43927, *Food Safety Issues: FDA Judicial Enforcement Actions*, by Emily M. Lanza.

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