Help Stop FDA’s Plan to Put ‘Mystery Milk’ in Ice Cream

Help derail proposed changes by FDA that would put “mystery milk” in our ice cream.

The federal Food and Drug Administration (FDA) is soliciting comments from consumers until December 27, 2005, on proposed changes in U.S. ice cream standards. The International Ice Cream Assn. (IICA, the trade lobby) wants to dramatically change standards for dairy ingredients that would “dumb down” the quality and safety of ice cream.

How “dumb”? FDA wants to allow use of what The Milkweed labels “mystery milk” from goats, sheep, … and other undefined species (yaks, water buffalo) in consumer ice cream products. FDA blithely imagines that including little notices on the ingredients label, such as “made with goat milk,” will adequately warn consumers. FDA’s proposed changes in ice cream standards were published in the September 27, 2005 issue of the Federal Register. The entire text of those proposals is available on The Milkweed’s Web site: www.themilkweed.com

Our ice cream quality will be harmed if imported “mystery milk” products sneak into our ice cream. Only small quantities of goat or sheep milk are produced in the U.S.—at far higher prices than what U.S. dairy farmers receive for cow’s milk. “Milk from source animals other than cows” is a purposefully indefinite code phrase for dairy ingredients made from water buffalo milk from India’s dairy industry. (See Pete Hardin’s blistering comments, page 11.) Protect ice cream quality should contact FDA and voice their opinions. Speak to specific issues!

Jonestown without Jim Jones

The future for DFA? Imagine the federal court’s ruling that allowed DFA’s half-ownership in just a half state’s Attorneys General have joined federal officials in this biggest-ever Antitrust probe of major victory in its ongoing battle involving Anti-trust issues.

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On October 24, the U.S. Court of Appeals for the Sixth Circuit reversed the lower court’s decision in favor of DFA. The Appeals Court ruled that DOJ did have valid antitrust concerns about DFA’s half-ownership in the only two competing fluid processors in the region. The Appeals Court sent back the issue for trial at the federal court in London, Kentucky.

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DOJ Beats DFA on Southern Belle Appeal

by Pete Hardin

The U.S. Department of Justice’s Antitrust Di-
vision has won a key Appellate Court victory against Dairy Farmers of America (DFA), reversing a lower federal court’s ruling that allowed DFA’s half-own-
ership in Southern Belle, a fluid processing business based in Somerset, Kentucky.

DFA had contested DFA’s half-ownership in Southern Belle back in 2003, claiming that half-own-
ership in the only competing fluid processor would cause anti-competitive conditions in the bidding of school milk contracts over a wide region of southern Kentucky and parts of adjoining Tennessee.

Hilariously, the federal appeals court repeated some of the sordid details involving the astronomi-
cal profits of DFA’s partners Bob Allen and Allen Meyer. (See related article, page 2 this issue.)

In mid-2004, a federal judge in London, Ken- tucky had ruled that revised ownership structure of Southern Belle pre-empted any competition concerns voiced by DOJ’s Antitrust Division. DFA had por-
trayed its Southern Belle “victory” last summer as a major victory in its ongoing battle involving Anti-trust issues.

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Fight ‘Mystery Milk’

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This language is a front for using imported Milk Protein Concentrates (MPCs) in ice cream. Use of MPCs in processed food products in the U.S. is rampant, but FDA repeatedly fails to require that MPCs be subjected to mandatory safety tests under FDA’s “Generally Recognized as Safe” (GRAS) rules. “Safe and suitable” is a bad phrase because:

1) Any milk-derived ingredient developed after 1958 should be specifically tested under the GRAS rules, or products containing such ingredients should be considered adulterated. It is wrong to assume that just because a product is derived from milk, that it is both safe and nutritionally equivalent.

2) FDA does not specify either how or by whom “safe and suitable” are determined.

OBJECTION #3: NOT ALL DAIRY INGREDIENTS ARE THE SAME!

FDA’s proposed ice cream standards assume a lot, and are in fact, contradictory. FDA states in the Federal Register, “IlCAA asserts that the milk-derived ingredients in the proposed categories are nutritionally and functionally equivalent when used in frozen desserts.”

In truth, not all dairy ingredients—particularly proteins—are the same. The same FDA document states, “IlCAA asserts that whey proteins have a higher nutritional value than other milk proteins and higher protein digestibility than milk.” Thus, by IlCAA’s own words, not all dairy proteins are nutritionally the same. But IlCAA wants FDA to treat various categories of milk-derived ingredients as if they are the same.

1) Not all milk-derived proteins have the same biological availability. For example, products containing MPCs probably have less biologically-available protein than other forms of dairy products, such as fresh milk and whey. Dairy protein sources that have been dried may have an annealing (hardening) of the proteins, which reduces nutritional availability.

2) A study has shown that MPCs, for example, do not have 100% solubility in cheese manufacture. That suggests that MPCs would not have the same solubility as certain other dairy ingredients in ice cream manufacture. The result could be varying taste, texture and nutritional value.

OBJECTION #4: PUTTING GOATS & SHEEP MILK IN ICE CREAM IS FRAUD!

FDA’s proposed ice cream regulations make the following statement:

“The basic nature of the food is directly related to consumer expectations and beliefs about the food.”

U.S. consumers hold the historic image that ice cream is made from cow’s milk.

Register Your Comments with FDA

Upset with the proposed changes in ice cream regulations? Contact FDA before December 27, 2005 and let them know your opinion on some or all of these proposed changes that would “dumb down” the quality, taste and safety of our ice cream.

Comments may be submitted via e-mail through: http://www.fda.gov/dockets/comments.

Mail comments to:
Division of Dockets Management (HFA-305),
Food and Drug Administration,
5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

1) A proposal to substitute other species’ milks—such as from goats, sheep, water buffalo and yaks—is pure consumer fraud. Many instances of ice cream consumption—such as away from home—have no way to provide consumers with specific information about whether their ice cream contains ingredients which they would find objectionable. Thus, if consumers were dining out and wanted ice cream, they would have no way to determine of other species’ milk was contained in their dessert.

2) Consumers’ expectations and beliefs about ice cream would be shattered if FDA allowed other species’ milks to be used in ice cream manufacture.

OBJECTION #5: REGS WOULD SUBVERT ASPARTAME/NUTRASWEET LABELING

FDA’s proposed ice cream regulations would apparently do away with rules that now require notice to consumers on the front panel of a food product that the product contains Aspartame/NutraSweet. That artificial sweetener, a neurological toxin, is one of the most controversial food additive issues in the history of U.S. food safety regulations. A growing number of consumers avoid products with Aspartame/NutraSweet. Consumption of ice cream and other frozen desserts could be harmed, if current Aspartame labeling rules are disregarded.

FDA states in the Federal Register: “If the food is subject to the requirements of paragraph (c)(2)(ii) of this section or if it contains an artificial flavor not simulating the characterizing flavor, the label shall also bear the words, “artificial flavor added…”

1) BEWARE! This language opens the door for disguising the presence of Aspartame/NutraSweet. FDA lists Aspartame as an artificial flavor. This language would take away current rules that require listing of Aspartame on the front panel of ice cream packag- ing. Aspartame is a dangerous neurotoxin with many recognized negative health effects!

DFA’s Partners Netted $91.7 Million!!!

by Pete Hardin

The Milkweed is a monthly dairy marketing report for dairy farmers and other people with an interest in the dairy industry. The Milkweed is owned by The Milkweed, Inc. Peter Louis Hardin is the editor and publisher. All material is copyrighted 2005 by The Milkweed, Inc. Written permission is required before articles can be reprinted.

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Dean Foods Preparing to Sell Some Dairy Plants?

by Pete Hardin

Word in the industry is that Dean Foods is preparing to sell some of its dairy processing holdings. Dean Foods, the largest fluid milk processor in the U.S., has achieved meteoric growth in the past decade. But concerns exist—both inside the company and out in the industry—that the growth mania (and subsequent consolidations, i.e., plant closings) leaves Dean spread too thin.

Further concerns: Dean Foods’ profits in its dairy lines have been modest. Higher energy costs, from natural gas to diesel fuel, are negatively impacting profits. Notable milk price decreases have been problematic over the past couple years, also. Dean Foods is projecting fourth-quarter losses of about $45 million, due to higher energy costs.

Thus, Dean Foods is apparently preparing to cut back on its dairy holdings. Specifically, look for a potential buyer for Dean Foods plants up and down the East Coast, from the Atlanta market to northern New Jersey. Sources say that this same potential buyer could also be looking to acquire the single remaining big private fluid processor in northern New Jersey.

A potential buyer for Dean Foods’ dairy plants in the Atlanta to northern New Jersey patch of real estate is an investment group called “Strategic Food Capital Partners.” This group includes former employees of the Dutch-based Rabobank, as well as a bevy of former top-level executives from various food corporations.

Dean Foods has bitten off more than it can, or wants to chew, in dairy processing. Dean Foods’ “growth mania” can only go so far in dairy. “Yuppie” attitudes and a lack of basic dairy industry expertise characterize the firm, which would be wise to pare back its indebtedness.

Dean Foods is projecting fourth-quarter losses of about $45 million, due to higher energy costs.

Court Rules for DOJ in Southern Belle Case

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The Appeals Court found that DFA’s control of regional fluid milk processors was sufficient that the acquisition of Southern Belle could yield anti-competitive results. Serious legal questions in DFA’s Southern Belle purchase were established, in the opinion of the Appeals Court.

The DOJ’s Antitrust division had raised genuine issues of material fact in regard to whether DFA’s acquisition of Southern Belle violated Section 7 of the Clayton Act.

The Appeals Court determined that such lucrative deals for Alan Meyer and Robert Allen rendered those two beholden to DFA. $70 million net to Allen Meyer in a single deal with DFA! $21.7 million net to Bob Allen for a single deal! $91.7 million net! Those two deals combined netted those individuals more money than DFA has ever reported as profits in any single fiscal year.

For the benefit of readers who have forgotten, what was the original deal that the DOJ investigated? Those two deals combined netted those individuals more money than DFA has ever reported as profits in any single fiscal year.

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