Who’s Watching Yogurt in the Dairy Case? Not FDA!

by Pete Hardin

Marketers may not legally label food products as “yogurt” without full compliance with the specific list of ingredients dictated by the federal government. Failure to comply with standards of identity for yogurt result in such “yogurt” products considered both adulterated and mislabeled.

Shockingly, numerous yogurt products facing this nation’s consumers in the dairy case contain illegal ingredients, according to federal Food and Drug Administration (FDA) standards of identity for yogurt. And some of the world’s biggest yogurt firms — global giants Dannon and Yoplait — are manufacturing and marketing what appears to be adulterated and misbranded yogurt products. Dannon and Yoplait — whose parent firms are based in France — comprise a “French Connection” purveying illegal yogurt products in this country. (General Mills last month began negotiations with the French owners to purchase a 50% interest in the Yoplait brand in the U.S.)

French yogurt giant Danone, which operates as “Dannon” in the U.S., has been caught breaking a lot of rules, and looks more and more like a habitual violator. In Europe, the United Nations’ Food and Agricultural Organization smacked Danone for unsubstantiated health claims for its “Activia” products. And in the U.S., a private lawsuit recently concluded with Dannon agreeing to set up $35 million fund to compensate consumers, due to challenges levied against unsubstantiated health food claims. Dannon admitted no wrongdoing in that matter.

Illegal ingredients widely used in yogurt sold in the U.S. include items such as:

* Water (cheap, but a no-no). Dannon includes “WATER” as an ingredient in some of its expensive, fancy-pants “Activia” yogurts.

Yogurt has been made for a very long time. Pliny the Elder, a Roman living in the first century A.D. wrote: “It is a remarkable circumstance, that the barbarous nations which subsist on milk have been for so many ages either ignorant of the merits of cheese, or else have totally disregarded it, and yet they never understand how to thicken milk and therfore from an acid kind of milk with a pleasant flavour.” (Pliny was describing yogurt.)

Yogurt has a long and “honest” history. In more modern times, Isaac Carasso established a small yogurt factory in Barcelona, Spain in 1919. Carasso named the business “Danno,” which means “little Daniel” after his son Daniel. The son later moved the business to France where it is known as Groupe Danone. In the U.S. the name was changed to Dannon.

Yogurt was not widely available in the U.S. until the 1970’s. The late Frank Kosokowski, professor of Food Science at Cornell University, published “Cheese and Fermented Milk Foods” in 1977.

Ah ... the good old days! Pictured above: the ingredients list from a long, long-ago Stonyfield Farm plain yogurt container, before Dannon bought into the business and the ingredients list started “growing.” Note the simple ingredients’ list.

In 1981, the U.S. Food and Drug Administration (FDA) initiated a series of regulations for yogurt, which culminated with the present Code of Federal Regulations (CFR) 21 CFR 131.200. The description for yogurt’s standard of identity begins:

“Yogurt is the food produced by culturing one or more of the optional dairy ingredient specified in paragraph (c) of this section with the characterizing bacterial culture that contains the lactic acid producing bacteria, Lactobacillus Bulgaricus and Streptococcus Thermophilus.”

Yogurt result in such “yogurt” products considered both adulterated and misbranded by FDA’s standards of identity for yogurt. By use of various unapproved ingredients, these firms market their product to a child population and the product is industrially processed. It is a major public health issue, especially in this era of food globalization. It is clearly illegal to put unrecognized, unrecognized ingredients in human foods, let alone in yogurt, whose integrity is supposedly protected by FDA’s standards of identity rules.

Firms using “Nonfat Milk Solids” in their yogurt products include yogurts marketed by LALA-USA (the U.S. operating branch of Mexico’s dairy giant, Grupo LALA), and many of the “La Yogurt” products produced and marketed by Johanna Farms (based in Flemington, New Jersey).

Who’s watching the dairy case??

Clearly, major firms in the yogurt business are violating FDA’s standards of identity for yogurt, by use of various unapproved ingredients. Where’s FDA?

Ah ... the good old days! Pictured above: the ingredients list from a long, long-ago Stonyfield Farm plain yogurt container, before Dannon bought into the business and the ingredients list started “growing.” Note the simple ingredients’ list.

When Stonyfield Farm started making yogurt from a few Jersey cows’ milk in Wilton, New Hampshire in 1983, there was no mention of a “family recipe” for their product. In 2001, Groupe Danone purchased an initial 40% of the shares of Stonyfield Farm. Dannon now reportedly owns in excess of 80% of Stonyfield.

Long ago Stonyfield Farm’s production moved from a back road farm to an industrial site in Londonderry, New Hampshire. At some point the containers leaving the industrial building began to refer to “our family recipe.” The ingredients also were “upgraded” to contain pectin. Pectin is a natural ingredient generally obtained from apples and can technically be considered a stabilizer which is legal under the present Code of Federal Regulations standard of identity for yogurt.

Dannon a bad actor in yogurt

Dannon is investing tens of millions of advertising dollars on “Activia” yogurt products. Actress Jamie Lee Curtis in the company’s spokesperson in television and print advertising. Activia is a high-end line of yogurt and yogurt-
Based on its history of misleading consumers, Dannon recently settled a class action lawsuit, alleging false advertising claims. The case, James Gemelas of Avon, Ohio v. The Dannon Company, White Plains, New York, was filed January 29, 2008 in the United States District Court Northern District of Ohio Eastern division (case 1:08-cv-00236-DAP). The plaintiffs’ original complaint stated: “The fact is, there is no current scientific substantiation for the claims made by Dannon regarding the beneficial health effects of the Yogurt Products. See Report of a Joint FAO/WHO Working Group on Drafting Guidelines for the Evaluation of Probiotics in Food (FAO Food and nutrition, 2002): “Probiotics for human use will require substantiation of efficacy with human trials. . . . The principal outcome of efficacy studies on probiotics should be proven in human trials, such as statistically and biologically significant improvement in addition, symptoms, signs, well-being or quality of life; reduce risk of disease or longer time to the next occurrence; or faster recovery from illness. . . . Dannon claimed health benefits from the consumption of Activia. On page 7 of the complaint, ‘The truth is, there is no current scientific substantiation for the claims made by Dannon regarding the beneficial health effects of the Yogurt Products. See Report of a Joint FAO/WHO Working Group on Drafting Guidelines for the Evaluation of Probiotics in Food (FAO Food and nutrition, 2002): “Probiotics for human use will require substantiation of efficacy with human trials. . . . The principal outcome of efficacy studies on probiotics should be proven in human trials, such as statistically and biologically significant improvement in addition, symptoms, signs, well-being or quality of life; reduce risk of disease or longer time to the next occurrence; or faster recovery from illness. . . . Dannon claimed health benefits from the consumption of Activia. On page 7 of the complaint, ‘The truth is, there is no current scientific substantiation for the claims made by Dannon regarding the beneficial health effects of the Yogurt Products. See Report of a Joint FAO/WHO Working Group on Drafting Guidelines for the Evaluation of Probiotics in Food (FAO Food and nutrition, 2002): “Probiotics for human use will require substantiation of efficacy with human trials. . . . The principal outcome of efficacy studies on probiotics should be proven in human trials, such as statistically and biologically significant improvement in addition, symptoms, signs, well-being or quality of life; reduce risk of disease or longer time to the next occurrence; or faster recovery from illness. . . . Dannon claimed health benefits from the consumption of Activia. On page 7 of the complaint, ‘The truth is, there is no current scientific substantiation for the claims made by Dannon regarding the beneficial health effects of the Yogurt Products. See Report of a Joint FAO/WHO Working Group on Drafting Guidelines for the Evaluation of Probiotics in Food (FAO Food and nutrition, 2002): “Probiotics for human use will require substantiation of efficacy with human trials. . . . The principal outcome of efficacy studies on probiotics should be proven in human trials, such as statistically and biologically significant improvement in addition, symptoms, signs, well-being or quality of life; reduce risk of disease or longer time to the next occurrence; or faster recovery from illness. . . . Dannon claimed health benefits from the consumption of Activia. On page 7 of the complaint, ‘The truth is, there is no current scientific substantiation for the claims made by Dannon regarding the beneficial health effects of the Yogurt Products. See Report of a Joint FAO/WHO Working Group on Drafting Guidelines for the Evaluation of Probiotics in Food (FAO Food and nutrition, 2002): “Probiotics for human use will require substantiation of efficacy with human trials. . . . The principal outcome of efficacy studies on probiotics should be proven in human trials, such as statistically and biologically significant improvement in addition, symptoms, signs, well-being or quality of life; reduce risk of disease or longer time to the next occurrence; or faster recovery from illness. . . .
NYA dumbing down yogurt for decade-plus

A look through any supermarket will find a long list of ingredients which do not meet the existing Code of Federal Regulations for yogurt standards. In 2000 the National Yogurt Association (NYA) petitioned the FDA to change the standards for yogurt. In the Federal Register/Vol. 74, No. 10/ Thursday, January 15, 2009/Proposed Rules, FDA published a proposed rule to change the yogurt standards to accommodate NYA’s request. That proposed rule has not been finalized.

FDA stated, “FDA tentatively concludes that this action will promote honesty and fair dealings in the interest of consumers and, to the extent practicable, will achieve consistency with existing international standards of identity for yogurt.” Among the changes requested by NYA is to, “require a minimum level of total dairy ingredients of 51%.” Actually, we know yogurt has been made for literally thousands of years with a total of 100% dairy ingredients.

NYA also wants to “provide for the use of any new derived ingredients as ‘optional dairy ingredients.’” This proposal sounds very much like MPCs. According to NYA, “yogurt has been characterized for centuries by its alive and active cultures and, thus a more current content on live and active cultures is crucial to the yogurt standard of identity to promote honesty and fair dealings in the interest of consumers.” What about 100% milk?

FDA’s January 15, 2009 notice stated:

“Additionally, NYA noted that food technology has advanced and industry practices related to yogurt manufacturing have changed since the yogurt standards have been in place. Consequently, NYA asserted that the current yogurt standards impede the yogurt industry and do not allow manufacturers to implement advances in food technology. NYA stated that its proposed rule changes changes printed in January 2009. It is clear that the yogurt manufacturer and “nonfat milk solids” before NYA’s sought-after changes were in fact finalized by FDA.

Proposed rules not final, but …

The FDA has not printed final rules on these proposed rules changes changes printed in January 2009. It is clear that the yogurt manufacturer and “nonfat milk solids” before NYA’s sought-after changes were in fact finalized by FDA.

What the yogurt industry is basically asking for: total deregulation, so yogurt may be legally dumbed down with low-cost ingredient, without regard for consumer wants and perceptions of yogurt as a nutritional food.

When NYA is calling for “consistency with existing international standards of identity for yogurt,” they are talking about Codex Alimentarius or World Trade Organization rules. Codex Alimen-tarius is Latin for “food book.” Many people think Codex is Newspeak for anything the large multination-al corporations want in the sector of global food safety regulations.

The Codex rule for yogurt, Codex Standard 243-2003, under “raw materials” calls for “Milk and/or products obtained from milk. Potable water for the use in reconstitution or recombination.” Remember Dannon’s Activia has “water” as an ingredient.

Codex also allows, “Gelatine and starch pro-voked changes are added only in amounts functionally necessary as governed by Good Manufacturing Prac-tice, taking into account any use of the stabilizers/thickeners listed in section 4.” What exactly “Good Manufacturing Practice” might be is any-one’s guess.

Under “Flavor Enhancers” Codex has a list which includes Monosodium L-glutamate or MSG. Listed under “Stabilizers and Thickeners” Codex has a list of 87 approved ingredients. There is a simple reason why the United States has Code of Federal Regulations standards of identity for food products: Not all manufacturers of food products are honest. There was a time when even fluid milk was regularly watered down.

The WTO and the Codex rules are simply undermining of the sovereignty of the U.S. and its citizens to expect good government. In case after case, all of which is enforced by the recent Japanese nuclear disaster, “Good Manufacturing Practices” cannot be depended upon for the safety and well-being of the individual or society as a whole.

Both domestic and multinational food corpora-tions have come to the conclusion, perhaps correct-ly, that FDA’s standards of identity rules are useless and may be ignored with complete impunity.

“Misbranded” – FDA’s Definition

Sec. 402. [343]. Misbranded Food

A food shall be deemed to be misbranded – (a) If (1) in its labeling is false or misleading in any particular, … (b) It is offered for sale under the name of another food. (c) If it is an imitation of another food unless its label bears, in type of uniform size and prominence, the word ‘imitation’ and, immediately there-after, the name of the food imitated …

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 401, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard and, insofar as may be required by regulations, the common names of the optional ingredients (other than spices, flavoring, and coloring) present in food.

Source: Federal Food, Drug and Cosmetic Act, 21 CFR, Section 343

Quality Yoghurts Lead Category’s Sales Growth

by Pete Hardin

S purred by strong consumer demand, U.S. yogurt production grew by 8.9% last year, compared to 2009’s volume. Without comparison, yogurt enjoys the greatest growth of any consumer dairy product in the U.S. In 2010, U.S. consumers enjoyed about 13 pounds of yogurt on a per capita basis.

Yogurt’s sales growth enjoys several solid trends. Yogurt is increasingly perceived as a “beneficial food” — i.e., encouraging health. Beyond any health benefits, yogurt and yogurt products come in many forms that kids enjoy. Further: yogurt fits in well with modern, on-the-go lifestyles.

Beyond spectacular sales growth, yogurt is THE MOST PROFITABLE dairy product, for manu-facturers and retailers. Take that 6.5-ounce cup of yogurt in the store, retailing for $6.96 per cup, for example. In terms of farm milk prices, that 6.5-oz. cup of yogurt translates into roughly $180 per hundredweight at retail.

Given all the positive trends in consumer yogurt sales, why are major players in the yogurt industry “dumbing down” their products with illegal ingredients? And why has the industry’s trade asso-ciation, the National Yogurt Assn. (NYA) sought since 2000 to enact FDA changes for ingredients that would allow just about anything in the world that came out of a cow’s teat to be put into yogurt? Why would NYA seek FDA approval for reducing the dairy ingredients to only 51% of product and still allow the “stuff” to be called “yogurt?”

Ironically, as we’ve noted in these pages previ-ously, the single fastest-growing yogurt company is the Chobani brand of Greek-style yogurts. Chobani’s sales grew by 225% in the past year (late January 2010 through late January 2011). Chobani’s products are high-quality, expensive (relative to the competition), and contain only the most basic of ingredients: Milk and cultures.

Why, would all the positive trends in yogurt sales, would some of the biggest firms in the indus-try “dumb down” the quality of yogurt? Don’t they remember the Fable about killing the goose that laid the golden egg?