

# Adulterated & Misbranded: Numerous “Yogurt” Products

## 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.

\* Milk Protein Concentrate (MPC – our old bugaboo – never approved under FDA’s “Generally Recognized as Safe” (GRAS) food ingredient safety protocols, and certainly not listed by FDA as an ingredient allowed for use in yogurt.) What scurrilous firms would put MPCs in yogurt? Dannon (again in certain “Activia” products), Yoplait, Emmi Swiss Premium (Swiss owned), and Cabot Farms (owned by the New England-based dairy cooperative, Agri-Mark).

\* “Nonfat Milk Solids.” We put quote marks around “Nonfat Milk Solids” because that ingredient must be listed in the “What in Sam Hill is this ‘stuff’ category,” where the word “stuff” substitutes for a four-letter descriptor. No such ingredient definition exists in FDA’s rules and regulations. Such a nondescript ingredient is clearly not listed as an allowable yogurt dairy ingredient by FDA. And certainly, lacking FDA definition as an ingredient, “Nonfat Milk Solids” have not passed FDA’s GRAS ingredient safety standards that have been in place since the late 1950s. It is clearly illegal to put 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?



\*\* Dannon Activia (Vanilla) Low Fat Yogurt – The Dannon Company, White Plains, NY 10603. 888-228-4842 or [www.activia.com](http://www.activia.com)

Ingredients: Cultured Grade A Reduced Fat Milk, Sugar, **Water**, Fructose, Modified Food Starch, Contains Less Than 1% of **Milk Protein Concentrate**, Modified Corn Starch, Natural Vanilla Flavor, Kosher Gelatin, Agar Agar, Lactic Acid, Calcium Lactate, Vitamin D3, Sodium Citrate.



\*\* Yoplait Greek Plain Fat Free Yogurt – Yoplait USA, Inc., Box 200YC, MPLS, MN 55440 USA 800-967-5248.

Ingredients: Cultured Pasteurized Grade A Nonfat Milk, **Milk Protein Concentrate**. Contains less than 1% of: kosher gelatin, Vitamin A acetate, Vitamin D3.

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 understand how to thicken milk and form therefrom an acrid 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 “Danone,” 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. Beginning on page 66, Dr. Kosokowski describes yogurt as essentially made up of milk and two predominant cultures *Lactobacillus bulgaricus* and *Streptococcus Thermophilus*.

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:

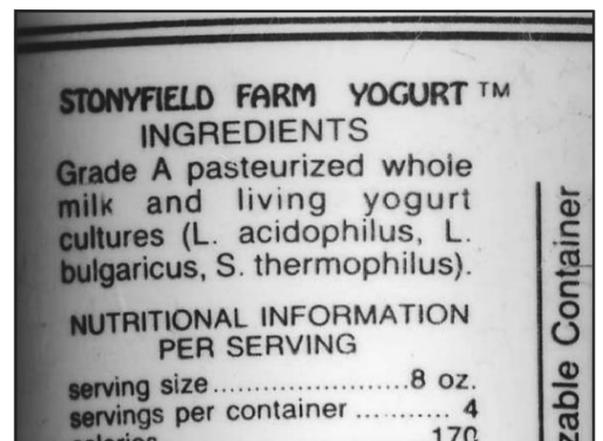
“Yogurt is the food produced by culturing one or more of the optional dairy ingredient specified in paragraph (c) of this section with the characterizing bacterial culture that contains the lactic acid producing bacteria, *Lactobacillus Bulgaricus* and *Streptococcus thermophilus*. One or more of the other optional ingredient specified in paragraphs (b) and (d) of this section may also be added.”

Paragraph “b” of that section refers to the addition of vitamins.

Meanwhile, Paragraph “c” reads: “Optional dairy ingredients. Cream, milk, partially skimmed milk, or skim milk, used alone or in combination.”

Finally, Paragraph “d” details other optional ingredients:

“Other optional ingredients. (1) Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, to increase the nonfat solids content of the food:”



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.

So, a product sold as “Yogurt” in the U.S., in accordance with FDA’s standard of identity and rules, is simply milk with cultures which contain the two essential yogurt cultures.

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

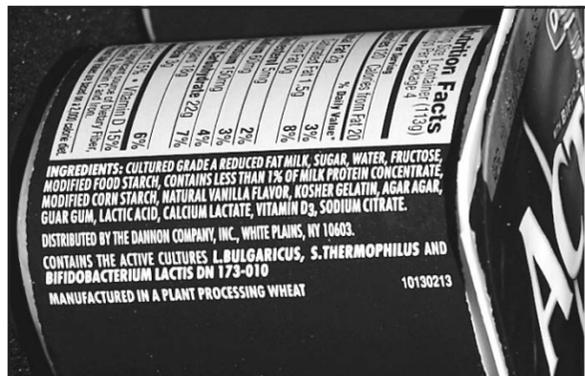
Dannon is investing tens of millions of advertising dollars on “Activia” yogurt products. Actress Jamie Lee Curtis is the company’s spokesperson in television and print advertising.

Activia is a high-end line of yogurt and yogurt-

Continued on page 9

Continued from page 8

based products. Except the “high-end” terminates when it comes to both Dannon’s history of misleading health claims ... and now clearly illegal ingredients. 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 above picture shows the ingredients list for Dannon’s Vanilla Low Fat Activia yogurt. Water and Milk Protein Concentrate are NOT legal ingredients in yogurt, according to FDA rules. Dannon has already got into hot water on both sides of the Atlantic for unsubstantiated health claims for Activia.

“[T]hrough its commercials, advertisements, websites and/or labels, Dannon states, among other things, that Activia is ‘proven’ to improve one’s ‘intestinal rhythm,’ ‘regulate your digestive system’ and that ‘Activia low-fat yogurt, and Activia Light nonfat yogurt are made with Bifidus Regularis, a natural probiotic culture that can help regulate your digestive system by helping with slow intestinal transit. Activia and Activia Light are the only yogurt products that contain this specific probiotic strain.”

That complaint further 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, “Dannon’s own studies do not support Dannon’s claims that its probiotic bacteria provide any unique health benefit to consumers who purchase the Yogurt Products.”

Dannon did not admit any wrongdoing in the settlement of that U.S. consumers’ class action lawsuit, but Dannon will create a \$35 million fund to reimburse qualified consumers up to \$100 for products purchased.

**“Milk protein concentrate is not listed in FDA’s regulations. To be lawful, milk protein concentrate must meet GRAS criteria.”**

—Judith Kidwell, Center for Food Safety and Applied Nutrition, FDA. 12/29/00

**“FDA holds broad authority over most foods, including dairy products, sold in the U.S. ... It has two principal authorities: prohibition of food products that are adulterated (something in the product that should not be there, or is missing, that creates a safety or quality concern) or misbranded (contains a statement on the food label that is false or misleading.)”**

Source: Chapter 1, Food Labeling Resource Guide, 2nd edition, 2000© Dairy Council of Wisconsin and Wisconsin Milk Marketing Board.

**Not all “Activia” products are legally yogurt**

Lawyers for the U.S. class action lawsuit completely missed the fact that the use of certain ingredients listed on certain “Activia” yogurt products **ILLEGAL**. For example, Activia’s “four-pack” of four-ounce, vanilla-flavored, lowfat yogurt containers list ingredients as: “cultured grade AA reduced fat milk, sugar, water, fructose, modified cornstarch, contains less than 1% of milk protein concentrate, modified cornstarch, natural vanilla, flavor kosher gelatin, agar agar, guar gum, lactic acid, calcium lactate, vitamin D3, sodium citrate.” In other words, the product is not legally yogurt, according to the Code of Federal Regulations. Here’s why:

\* Water is only allowed with milk reconstitution or cheese milk but there is no provision for milk products “water addition back,” therefore adding water to yogurt is not allowed.

\* Milk protein concentrate (MPC) has no definition at FDA and therefore should not be allowed as an ingredient, particularly in foods with standards of identity. (In late 2002, FDA limply slapped Kraft Foods’ wrist for use of MPC in Pasteurized Processed Cheese Food – which has a standard of identity) Otherwise, both USDA and FDA turn their backs on dealing with their own rules regarding use of MPCs in human foods.

**MPC pollutes Cabot’s “Greek” yogurt**

Agri-Mark Cooperative, the predominant New England dairy farmer-owned cooperative, produces Cabot “Greek” yogurt that lists MPC on the list of ingredients. Cabot Creamery Cooperative has followed the trend with a new product, Greek Yogurt. So-called Greek yogurt is gaining in popularity. Traditionally, Greek yogurt is made by draining some of the whey, or liquid, from the yogurt. The final product is thereby made thicker.

Thickeners such as modified cornstarch would end up not draining properly and result in an inferior product. Cabot’s solution to the “thick” problem is to add MPC. Try as hard as you might like to find one, there is no standard of identity for MPCs. Therefore, MPC (whatever it is) cannot be considered GRAS.

“GRAS” is an acronym for the phrase Generally Recognized As Safe. Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act. Some manufacturers are claiming the MPC is now made in the U.S. and, presumably, is legal. Logic, would suggest we should be importing significantly less of the stuff – we are not. Regardless of where MPC may be made, it is not a legal ingredient: no standard of identity, no GRAS status. And therefore, MPC is not a legal ingredient for yogurt.



Note the presence of Milk Protein Concentrate on the ingredients list for Cabot Creamery Cooperative. This Vermont-based processor is owned by Agri-Mark, a dairy farmers cooperative. Milk Protein Concentrate is not a legal ingredient in yogurt.

“Greek Yogurt is a thick, creamy, decadent yogurt that is equally enjoyable by itself, as a rub, or as an ingredient in rich, creamy sauces, dips or main dishes,” according to the Cabot Web site.

Agri-Mark dairy producers ought to “rub” a little Cabot Greek yogurt on the noggins of their directors and senior management.

Continued on page 10



\*\* La Crème Yogurt (Strawberry Flavored) – LALA-USA, PO Box 27569, Omaha, NE 68127. 866-506-2072.

Ingredients: Cultured Grade A milk, cream, **nonfat milk solids**, sugar, fructose, contains less than 1% of (whey protein concentrate, corn starch, modified corn starch, kosher gelatin, natural flavors, carmine and annatto extract (for color), malic acid, potassium sorbate (to maintain freshness), sodium citrate)

# Many “Yogurt” Products Sold in U.S. Contain Illegal Ingredients, con’t

Continued from page 9

## **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 minimum content of 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 recommended standard establishes a modernized, flexible standard of identity for yogurt to take into account current industry practices and recognizes the need to allow for the use of future technologies.”

## **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 manufacturers such as Dannon and Yoplait have “jumped the gun” – including such ingredients as water, MPCs 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



**\*\* La Yogurt Plain Nonfat Yogurt – Johanna Foods, Inc. Flemington, NJ 08822.**

Ingredients: Cultured Pasteurized Grade A Lowfat Milk and **Nonfat Milk Solids**. Contains Active Yogurt with L. Bulgaricus, S. Theromphilus, Bifidobacterium, L. Acidophilus and L. Casei Cultures.

## **“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 thereafter, 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**

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 Alimentarius is Latin for “food book.” Many people think Codex is Newspeak for anything the large multinational 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 provided they are added only in amounts functionally necessary as governed by Good Manufacturing Practice, 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 corporations have come to the conclusion, perhaps correctly, that FDA’s standards of identity rules are useless and may be ignored with complete impunity.

## **Quality Yogurts Lead Category’s Sales Growth**

by Pete Hardin

Spurred 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 manufacturers and retailers. Take that 6.5-ounce cup of yogurt in the store, retailing for \$.69 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 association, 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 previously, the single fastest-growing yogurt company is



**\* Chobani Greek Yogurt Plain Non-fat – Agro Farma, Inc. 669 County Road 25, New Berlin, NY 13411 877-847-6181.**

Ingredients: Cultured Pasteurized Nonfat Milk, Contains Five Live Active Cultures Including S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus, and L. Casei.

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 industry “dumb down” the quality of yogurt? Don’t they remember the fable about killing the goose that laid the golden egg?