



August 1, 2007

Mary K. Engle
Associate Director, Division of Advertising Practices
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Labeling of Milk from Cows Not Treated with rBST

Dear Ms. Engle,

On behalf of the Center for Food Safety (“CFS”), we write to respond to a letter sent from the Monsanto Company on February 22, 2007, signed by Brian Robert Lowry.¹ Monsanto requested an agency investigation in regard to milk labels, alleging that dairy labels are misleading consumers. We urge you to deny Monsanto’s request.

CFS is a non-profit, membership organization that works to protect human health and the environment by curbing the proliferation of harmful food production technologies and by promoting organic and other forms of sustainable agriculture.²

We strongly disagree with the assertion that there is a crisis in milk labeling. Monsanto’s position, that labels implying health claims deceive consumers into paying more for an equivalent product and present an economic threat to dairy farmers, is misguided. We disagree that current labels imply deceptive claims. Many scientific studies have raised valid health issues, substantiating concerns about rBST, the synthetic bovine growth hormone also known as rBGH. Consumers have strong opinions on the issue, and for good reason. Their concerns are more likely due to valid, informed opinions than labeling statements. Moreover, Monsanto’s allegations of harm to the consumer and the industry are simply false and unfounded.

We also note that Monsanto does not object to rBST labeling *per se*. Indeed, Mr. Lowry pointed out that “milk processors and retailers certainly have the right to inform customers about the use or non-use of rBST.”³

¹ Letter from Brian Robert Lowry, Associate General Counsel, Office of Policy, Stewardship, Regulation and Government, Monsanto Company, to Ms. Mary K. Engle, Associate Director, Division of Advertising

Health Claims About rBST Are Substantiated.

Recent science associates serious health risks with rBST and ample evidence supports health claims about rBST-free milk. It is appropriate for businesses to make reasonable statements explaining the basis for their decisions to use or not to use rBST. Such statements are substantiated if they are reasonably based on current scientific studies.⁴ Although Monsanto may not like opposition to its product, it has failed to show that claims on labels are actually unsubstantiated or misleading.

There have been a number of scientific studies documenting valid health concerns associated with rBST, particularly since the Food and Drug Administration's (FDA) 1993 approval and subsequent 1999 review of the product. Many studies, including Monsanto's own studies, show rBST raises levels of insulin-like growth factor 1 (IGF-1) in milk.⁵ IGF-1 is associated with several cancers⁶ including breast,⁷ colon,⁸ and prostate cancers.⁹ In the 1990s FDA approved rBST and subsequently in 1999 noted that there was no science showing that the IGF-1 could be absorbed into the bloodstream, and that the amounts of IGF-1 in milk were insignificant.¹⁰ However, recent studies show that IGF-1 in milk does survive digestion,¹¹ and that the amount of IGF-1 in milk is enough to affect human health.¹² Moreover, cancer is just one of the many health risks that have been raised; others include risks to reproductive health¹³ and the creation of antibiotic resistant bacteria.¹⁴

³ Monsanto's February 22, 2007 letter to FTC at p. 1.

⁴ See, e.g., *In re Cliffdale Assoc., Inc*

Regardless of whether the FDA approves or bans rBST, scientific studies published in peer reviewed journals substantiate serious health risks and show that consumers' concerns are legitimate. Governing bodies around the world, including the United Nations,¹⁵ all countries of the European Union,¹⁶ Japan, Australia and New Zealand¹⁷ have declined to declare that rBST is safe. The potential for cancer risk is valid and pertinent to consumers. Health risks should not be dismissed across the board simply based on the FDA's 1993 approval of rBST.¹⁸

Additionally, Monsanto's assertion that milk products with or without rBST are equivalent is misleading. The products are clearly different in process, and the products are physically different. rBST is a genetically engineered hormone structurally different from a cow's natural hormone. Because, as Monsanto notes, growth hormones in cows are passed into the milk,¹⁹ the milk itself will contain altered hormone. Also, milk

Also, like Dean's statement, Alta Dena's statements are found on the website, not the label. The statements are only accessed by consumers seeking information about the dairies' rBST use. In determining such a claim, it is appropriate to view the entire context of the statement, including the unique audience it targets.³¹ In context, these are accurate responses to consumers desiring to avoid risk, not statements making negative health claims about rBST.

Labels may properly differentiate products based on grounds besides human health. In the FDA's 1993 approval, serious health impacts on cows³² and a difference in pus counts in milk were associated with rBST use.³³ Additionally, consumers may feel that synthetic hormones in their products are unnatural, and avoi

Ultimately, a number of consumer groups have publicized their concerns about rBST and prominent studies have also raised questions about rBST.⁴⁵ The issue has received much media coverage.⁴⁶ With so much information now available to consumers, it defies logic to conclude that consumer demand for rBST-free milk is based on milk labels, let alone dairy websites.

Current Labels Do Not Harm Consumers.

Monsanto's claim that rBST-free labels harm consumers through deception is unsupported. To show deception, Monsanto must show that the labels contain unsubstantiated claims, the claims are likely to mislead a reasonable consumer, and the claims are material such that they are to the consumer's detriment or injury.⁴⁷ Monsanto

conventional milk. So even if rBST-free milk is more expensive on average, that does not show that labels indicating rBST-free drive up prices.

Monsanto also asserts that milk produced with rBST would become less available, however Monsanto shows no evidence for this, nor shows how it would be harmful to consumers.

As noted above, milk with and without rBST is different in both process and product. Where consumers prefer one product over another for any number of reasons, whether it be the risk of health implications, animal welfare concerns, or desire for natural foods, there is no cognizable harm when the consumer purchases accordingly.

Current Labels Do Not Harm The Industry.

Monsanto claims that the labeling of rBST-free milk is harming the industry because farmers will not be paid enough for their product. The contrary is true—farmers are paid a premium for rBST-free milk, and the evidence does not support Monsanto’s contention that their product saves farmers money. The Center for Food Safety’s mission to promote a safe and sustainable food supply depends on the vitality of healthful farming practices. Due to serious health concerns, consumer aversion, and negative economic impacts of rBST, we believe the synthetic hormone is bad for the industry, and we believe Monsanto’s claim is unfounded.

Monsanto contends that profits are not passed along to farmers. This is flatly contradicted by Monsanto’s statement that farmers are paid a premium for rBST-free milk.⁵⁰ Moreover, Monsanto presents no causational evidence linking milk labels to any documented harm to farmers, and ultimately, the price negotiated between farmers and dairies is not contingent upon labeling.

Monsanto’s claim that farmers are denied profits by not using rBST is likewise dubious. It is not clear that using rBST actually helps farmers. The only large national study on the subject contradicts the claim that rBST can reduce milk prices and save on grain use.⁵¹ Dairy farming is an occupation well established in society; it is unfounded to claim that the industry now needs Monsanto’s produc

Conclusion: FTC Investigation Is Not Appropriate.

Monsanto's request for an investigation is unwarranted. While Monsanto clearly has a business interest in silencing opposition to its product, its interest is at odds with consumer concerns and scientific evidence. Monsanto has not shown that any advertisements or labels are actually wrong, let alone misleading. Monsanto has not produced any evidence that consumers are deceived by labels, nor has it demonstrated harm from advertising. On the other hand, recent scientific studies have raised serious, verifiable concerns about the use of rBST, and consumers have demonstrated a legitimate interest and concern in the matter.

If anything, FDA's rBST guidelines are out of date because they do not represent the current science that milk derived from cows treated with rBST is materially different and should be under a mandatory labeling requirement. Nonetheless, labelers continue to comply with the existing guidance,⁵² even though FDA itself has asserted that it has no authority to require comparative labeling statements.⁵³

To describe the labelers and industry as a whole as deceptive is simply not accurate. The accuracy of labels and advertising is important to society, and is best served by allowing substantiated health and safety concerns to be communicated in the marketplace. We urge the FTC to respect the consumers' concerns, and not to take action against labelers accurately informing consumers about a dairy's own product.

Sincerely,

Kevin Golden
Staff Attorney

Shawn Eisele
Law Clerk

⁵²Letter from Brian Robert Lowry, Associate General Counsel, Office of Policy, Stewardship, Regulation