

Food Standards of Identity Remain a Focus of FDA Regulatory Action

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On August 12, 2015, the U.S. **Food and Drug Administration (FDA)** issued a [Warning Letter to Hampton Creek Foods, Inc.](#) (Hampton Creek). The Warning Letter concerns the failure of a food to conform to an applicable standard of identity (SOI) established by FDA regulation. Food companies are required to meet the **standard of identity (SOI)** established by the FDA regulations for standardized food products.

In the Warning Letter, the FDA claims that Hampton Creek's *Just Mayo* and *Just Mayo Sriracha* products are misbranded in that they purport to be the standardized food "mayonnaise," but do not meet the standard for mayonnaise described under 21 CFR 169.140.

§169.140 Mayonnaise.

(a) *Description*. Mayonnaise is the emulsified semisolid food prepared from vegetable oil(s) ... acidifying ingredients ... and one or more of the egg yolk-containing ingredients specified in paragraph (c) of this section....

(c) *Egg yolk-containing ingredients*. Liquid egg yolks, frozen egg yolks, dried egg yolks ...

The FDA reasons that the term "mayo" has long been used and understood as shorthand or slang

for mayonnaise. Further, the use of the term “mayo” in the product names and the image of an egg on the product label may lead the consumers to believe that the products are the standardized food, mayonnaise, which must contain eggs as described under 21 CFR 169.140(c). Additionally, the use of the term “Just” together with “Mayo” reinforces the impression that the products are real mayonnaise by suggesting that they are “all mayonnaise” or “nothing but” mayonnaise. However, the FDA finds that the *Just Mayo* and *Just Mayo Sriracha* products at issue do not meet the standard of identity for mayonnaise, because, according to the labels for these products, neither product contains eggs. Additionally, the FDA notes that the products contain additional ingredients that are not permitted by the standard of identity for mayonnaise, such as modified food starch, pea protein and beta-carotene, which may be used to impart color simulating egg yolk.

Similar complaints were raised by Unilever, which sued Hampton Creek in 2014 for false advertising and fraud. Unilever ultimately dropped its suit the same year, declaring that the withdrawal would allow Hampton Creek the ability to “address its label directly with industry groups and appropriate regulatory authorities.”

Leaving aside the question of whether FDA’s charges against Hampton Creek have merit, it is important for food producers to consider applicable standards of identity when developing labeling for new food products. Incorporating all or part of a standardized name for a food that does not meet that standard generally requires additional modifying language (such as the term “Spread”) or other disclaimers to adequately distinguish the product as a non-standardized food.

FDA’s Warning Letter also claimed that Hampton Creek’s products are misbranded due to an allegedly unauthorized nutrient content claim and health claim. FDA asserts that statements on Hampton Creek’s labeling and website violated restrictions on the use of claims concerning cholesterol content and heart disease. Of note, FDA’s Warning Letter continues to treat websites as an extension of product labeling, where the product label provides a link to the website.

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