

— Phony “mozzarella” and “tomato sauce” alleged

Lawsuit Targets Kraft Heinz’ “Bagel Bites” Snack Product’s Claims

by Pete Hardin

“Real” or phony? Once again, Kraft Heinz is being legally challenged for allegedly dumbing down food products and debasing a good (standardized) dairy name – this time, “mozzarella.”

A private lawsuit was filed on April 25, 2021, challenging a descriptor on Kraft Heinz’ “Bagel Bites” snack product. The front-panel descriptor on “Bagel Bites” packages claims “mozzarella cheese.”

The 20-page complaint was filed on behalf of Christopher Lemke of Brookfield, Wisconsin. Defendant Kraft Heinz Food Company is a Pennsylvania limited liability company with its principal place of business in Pittsburgh, Pennsylvania. *Lemke v. Kraft Heinz Food Company* was filed in U.S. District Court for the Western District of Wisconsin. The case number is: 3-21-cv-00278

Plaintiff’s attorney is Spencer Sheehan, of Sheehan & Associates, P.C. Sheehan is based in Great Neck, New York. He specializes in cases involving fraudulent marketing of consumer food products, with particular emphasis on violations of names and claims of food products with standards defined by the federal Food and Drug Administration.

The “Bagel Bites” ingredients list fails the ingredients’ “litmus test” for mozzarella, for which the federal Food and Drug Administration has published a standard of identity. Ingredients in products that have an FDA standard of identity may not deviate from the clearly defined list of allowed ingredients.

“Bagel Bites” are small “pizza snacks” – baked round flour items, topped with tomato sauce and a cheese topping. We quote from the portion of the ingredients list on “Bagel Bites” back panel:

“CHEESE BLEND (PART-SKIM MOZZARELLA CHEESE [PART-MILK, CHEESE CULTURES, SALT, EYZYES], **MODIFIED FOOD STARCH**, SKIM MILK) ..” (Bold emphasis added.)

Modified food starch is not an ingredient approved by the FDA for use in mozzarella cheese.

Food products using names that have a standard of identity are considered to be adulterated and misbranded if they contain ingredients other than those approved by FDA.

“Tomato Sauce” claim also challenged

An additional challenge by the plaintiff in *Lemke v. Kraft Heinz* focuses on the “Bagel Bites” product claim that it contains “Tomato Sauce.” The complaint asserts that, “... the front label representation of ‘Tomato Sauce’ is false, deceptive and misleading because the ingredient contains non-tomato extenders and thickeners.” Those “non-tomato extenders and thickeners” include cornstarch and methylcellulose. The complaint alleges that use of those extenders may “reduce the amount of tomatoes used by thirty-five percent.” Further, the complaint states:

“60. Cornstarch and methylcellulose are cheaper than tomato ingredients because they are produced industrially in a chemical plant instead of originating on a farm.

“61. Consumers value tomatoes in tomato sauce more than cornstarch and methylcellulose because tomatoes are rich in lycopene, an antioxidant that contributes to heart health and reduction in cancer risk.”

Food starch holds 10X its weight in water

For marketers of processed foods, food starch is worth its weight in gold ... almost. Food starch has the unique capacity to hold **TEN TIMES** its own weight in water. Example: Let’s say a firm has a 100-lb. batch of yellow “cheese sauce.” By adding two pounds of food starch to the vat, the processor may add 20 lbs. of water to the mix, while retaining the same basic consistency to the product. Thus, 2 lbs. of food starch, plus 20 lbs. of water equal an additional 22 lbs. of material. Food starch is cheap. Water is cheaper. For products infused with plant starch and water, taste, nutritional content, and product quality may suffer. But so what, in Kraft Heinz’ mode of doing business?

Kraft Foods, particularly since the 1990s (when it was owned by the Philip Morris Companies), has vigorously researched how to drive down ingredient costs by adding extenders, fillers and cheaper ingredients (such as milk protein concentrate). Various food starch products commonly adorn the ingredient labels of many Kraft-Heinz processed food products.

Dairy’s “REAL Seal” adorns “Bagel Bites” ... WHY?

Kraft Heinz’ “Bagel Bites” package features dairy’s iconic “REAL Seal.” According to the *Lemke v. Kraft Heinz Food Company* complaint, Kraft-Heinz actually uses a modified version of the “REAL Seal.” On the “Bagel Bites” packages, that icon claims: “MADE WITH REAL CHEESE.”

That claim is patently false, since the “mozzarella cheese” does not comply with FDA standards and thus should be considered adulterated and misbranded. “REAL” it is not.

The *Lemke* case specifically lambastes defendant Kraft Heinz for abuse of dairy’s “REAL Seal.” The complaint notes:

“29. As stated in the FTC guidelines against deceptive marketing regarding certifications and Seals of Approval:

“It is deceptive to represent directly or by implication that a product, package or service has been endorsed or certified by an independent third party.”

The “REAL Seal” is owned by the National Milk Producers Federation (NMPF) – the dairy cop lobby organization.

In the instance of Kraft Heinz’ “Bagel Bites,” NMPF’s oversight of “REAL Seal” use is shown to be bogus. The complaint cites the “REAL Seal” website’s claims of vetting users’ claims, which states:

“So how do we ensure that products fulfill the strict requirements detailed above? We require every brand to submit copies of packaging and a detailed ingredient label for each product they wish to certify. This allows us to properly vet the products to ensure they meet the “REAL® Seal standards.”

The *Lemke* complaint further states:

“36. According to the NMPF, the original “REAL” seal can be used where a food contains dairy ingredients that meet federal standards of identity.

“37. Where a food or dairy ingredient does not meet a standard of identity but can use a modified version of the REAL Seal, subject to evaluation by the NMPF.

“38. The four modified seals contain the word “REAL,” accompanied by the qualifying statements; ‘Made with Milk,’ ‘American Made Butter,’ ‘American Made Cheese’ and “Made With Dairy.”

“39. Defendant’s Product does not qualify for the traditional ‘REAL’ seal because the “cheese blend” contains modified food starch an extender and filler.

“40. Though NMPF guidelines might have allowed defendant to use one of the four modified REAL Seals, defendant misappropriated the original ‘REAL’ seal and added the statement, ‘MADE WITH REAL CHEESE.’

“41. The use of the standard ‘REAL’ seal with the statement ‘MADE WITH REAL CHEESE’ is unauthorized by the NMPF because the Product does not contain ‘real cheese.’

“42. No reasonable Wisconsin consumer expects ‘real mozzarella cheese’ to have modified food starch.”

Bravo! Bravo! Bravo!

The Milkweed contacted the organization that monitors dairy’s “REAL Seal” for answers to a few questions, including:

• Is Kraft-Heinz’ modified version of the “REAL Seal” icon in compliance with rules regarding that icon’s use?

• Does the fact that the ingredients listed as being contained in the “mozzarella” are not in compliance with FDA’s standard of identity for mozzarella mean that Kraft-Heinz is violating its contract by using the “REAL Seal” on ostensibly adulterated and misbranded products?

A “REAL Seal” representative politely declined to comment on the lawsuit.

Critics Cite “Georgia-Style” Tactics by CDFA in QIP Referendum

by Pete Hardin

Grade A dairy producers in California are currently in the final few weeks of United Dairy Families Sunset referendum during which they may vote to continue, or sunset, that state’s Quota Implementation Program (QIP – California’s farm milk quotas).

Critics of the QIP program are pointing to numerous instances of heavy-handed oversight of the referendum by the California Department of Food and Agriculture (CDFA). Restricted ballots and a lack of transparency prevail – tactics similar to what Republican legislators in Georgia crafted recently under the guise of “election reform.”

In the case of California’s current QIP vote among Grade A dairy producers, CDFA’s antics look like a clear case of “election deform.”

California producers’ votes in the current referendum must be post-marked by June 1. The referendum has Grade A California dairy producers voting on whether to continue the QIP program as is, or else to “sunset” it in 2025.

The QIP deducts \$0.38/cwt. from all Grade A milk producers’ incomes, and pays out up to \$1.70/cwt. to the minority of dairy farmers who own quota. Quota is based upon pounds of milk fat. Over the decades since the quota program’s predecessor program was created in the 1960s, milk quota has as-

sumed massive value. Milk quota is bought and sold, and has been used as a collateralized asset for loans.

Dairy producers first inklings about the costs to bankroll quota started in late 2018, when California shifted to the federal milk order program. At that point, the cost to fund QIP became a line-item deduct on all Grade A producers’ milk checks. During the past year-plus, CDFA has denied two petitions by dissident dairy producers seeking to have a referendum on the issue.

Here’s a list of gripes offered by QIP opponents regarding CDFA’s tilted handling of QIP matters:

• When CDFA denied the “STOPQIP” group’s first petition, CDFA declared that about 80 signatures on that petition were in error. But CDFA officials refused to specify which signatures were amiss.

• Requests were made that the Producer Review Board (a 13-member body that advises CDFA on QIP matters) have a meeting on how to conduct the current referendum. CDFA officials refused. In fact, it’s been about seven months since some appointments to the PRB have expired and CDFA has not named replacements, or scheduled any meetings.

• CDFA denied requests to by the STOPQIP group to review the list of Grade A producers who would receive ballots in the referendum, and whose signatures they will accept.

• CDFA denied requests by the STOPQIP

group to inspect the envelopes containing ballots to verify they are the List of Producers and their correct addresses, before those referendum ballots were mailed out.

• CDFA has refused to reveal who will oversee counting of the ballots, once the referendum has concluded, and turned down a request to have both sides represented in the vote counting

Irregularities in the current referendum are obvious, according to Craig Gordon, one of the leaders of the STOPQIP effort. Gordon reports: some ballots have contained wrong names; and some eligible producers have not yet received ballots. CDFA disallowed an individual who purchased a 10,000-cow dairy earlier this year from voting. But the seller of that operation was also denied the right to vote.

Across the board, CDFA is exhibiting zero transparency in its handling of the QIP referendum, critics assert.

Craig Gordon’s comments:

“The worst thing about this referendum is not CDFA’s refusal to do the election correctly, but CDFA’s refusal to recognize this whole process is illegal and continue to collect \$433,000 a day on a un-

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Priority IAC: Enhancing Rumen Function & Protein Conversion Efficiency, con't

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scale. The *Smartbacteria* eat something, make something, and then they die. When the microorganisms die, they make microbial protein. The cow benefits not only from the VFAs produced in the process, but the microbial protein from the dead bacteria as these cells are broken down and used by the cow as amino acids. Microorganisms are the life in the rumen and make nearly everything.

With May 2021 soybeans priced over \$16.00/bushel and one to two years of adverse weather having hit U.S. dairy farmers, Microbiology Nutrition is about helping the cow make her own protein, allowing for producers to be more efficient with less fed proteins as the microorganisms as the source.

Breunig's initial motivation

Richard's introduction to microbiology came through a feed formulation error. Reflecting on this misfortune ... which occurred while he was managing Clover Mist Farms ... he states that the "train-wreck" in question was caused by a feed-mixing error that decimated the herd. With animals dying ... some trusted consultants bolting, and other consultants offering less than helpful information, ... Richard was in a lonely position, struggling to rescue the remainder of the herd.

But what was one of Richard's greatest challenges, has turned out to be the greatest part of his professional life's learning process. Clover Mist Farms, a premier breeding establishment at the time, was saved by Richard's intense study of nutrition and microbiology. While still in recovery mode at Clover Mist Farms, Breunig founded Priority IAC, Inc. in 1998. Thus far, Priority IAC is the only company combining the fields of microbiology and novel nutrition together for animal health; as well as providing a more cost-effective and easier approach to bovine nutrition. He refers to this plan of action as Microbiology Nutrition.

As part of this plan... according to their website... "Priority IAC maintains a research and product development mentality that starts on the dairy. Priority IAC provides education on how each branded strain of *Smartbacteria* works, how the most fermentable, home-grown forages can be used, and how producers can monitor their cow performance to know what adjustments to make. P-One™ (their "flagship" product) is a new concept. It's different: less costly, more efficient, and a much more effective way to feed cows." The inclusion rate of P-One™ is very small, as numerous *Smartbacteria* are delivered in this small package. The return back to the producer through the use of Microbiology Nutrition is tremendous with reduced ration costs, less added proteins, and fewer costly feed additives; all while making use of high-quality forages.

According to Breunig, for optimum performance the pH of the milk cow's rumen should be in the 5.8 to 6.6 range. The more that the rumen pH falls below that optimum range, the more acidosis is increased. And if the rumen pH swings the other side – above the optimum range – the rumen will experience alkalosis.

Let's get into the dollars and cents details. If a 25# bag of P-One costs \$18.00, then a daily dose of 0.05# per head costs \$0.34. If feeding P-One at that rate lowers supplemental soybean (protein) requirements by 3# per head per day (as asserted by a respected New York dairy farmer I've interviewed), and soybeans are priced at \$16/bushel (\$0.27/lb), then the reduction in feed costs amounts to \$0.81 per cow per day. At these price/cost estimates, the return on investment is 138%.

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derground regulation, and the Secretary Ross does nothing about it, nor does the Attorney Generals office. This is typical of the people who work under Governor Gavin Newsom leadership."

Also after all of their testifying in front of Judges and getting the endorsement from Secretary Ross, United Dairy Families predictably deserted their Sunset Proposal. Not one flier or email asking dairymen to vote for their proposal, which means that we were right about their integrity and this was nothing but a stall tactic by the quota holders of California.

Stay tuned for StopQIP next round of petitions.

Not just another probiotic

Early in our May 7 conversation, I lumped the *Smartbacteria* in the general category of probiotics. Breunig asked me not to do that, because "probiotic" has become an all-inclusive term... with no stated ... or even implied ... performance guarantee. Conversely, Priority IAC's *Smartbacteria* have guaranteed numbers of colony-forming units, plus a statement of purpose, explaining why each of these strains is there in the first place. On the Priority IAC website Breunig explains:

"Not all bacteria or bacteria strains are the same, the strain truly matters. The unique individual that is the needle in the haystack ... found from the masses, as there are numerous species of bacteria, with scientific estimates at more than a trillion. There are trillions of strains (or subspecies/subtypes) of each of the different species that form the estimated population on the Earth at five million trillion, or scientifically stated as 5x10 to the 30th exponent, bacteria. Just as there are notable differences among individual people, the same is true between this unimaginable number of bacteria strains. Among the many strains within each family of living bacteria, there are significant differences between individual strains. Some strains have little impact or can even negatively affect the host, while others are beneficial, even smart. Priority IAC understands that all bacteria are not the same, that the strain truly matters. Priority IAC products contain billions of *Smartbacteria*; in fact, a daily serving of a Priority IAC product actually contains more branded strains of *Smartbacteria* than all of the people on Earth."

Compared to orchestra

Earlier in this article I likened these very precise Priority IAC microbial ensembles to an orchestra. That said, let me give the reader some of the names of just a sample of these "musicians" and the "instruments" they play. In the gut enhancer category, we find *Lactococcus lactis* A2020™, which uses sugars and has anti-inflammatory properties. Then there's *Lactobacillus plantarum* LP100™, which integrates with the intestine to fight off disease-causing bacteria. There's *Lactobacillus casei* LC222™, which helps regulate digestive systems. Don't forget *Lactobacillus faecium* EF141™, which catalyzes efficient use of sugars.

There's *Propionibacterium freudenreichii* Prop1-IAC™, an acid consumer. In the pathogen inhibitor category, we find *Bacillus subtilis* (strains B5000h™, B50005™, B5150™), which blocks unwanted invaders. And in the immune communicator category we find *Lactobacillus reuteri* 1E-1® and *Enterococcus faecium* 2E-1™.

Increasingly, I am accepting Breunig's assessment that "pro-biotic" is very general concept, best described as a shotgun approach. By comparison, the Priority IAC Microbiology Nutrition approach can be compared to a well-sighted rifle. Additionally, many Priority IAC products are approved by organic certifiers. I have long considered beneficial microbes in agriculture (like in soil health, making cheese, making silage) as the little guys with the big names. Describing his products, Breunig expands that moniker into "the little guys with big names and even bigger jobs."

Kidron, OH (May 6): #1 springing heifers: \$1,050 to \$1,100. Extreme top: \$1,225. Cows: Top - \$1,085.

High-end cull cows: \$0.63 to \$0.72/lb. Lot of heifers went to beef buyers @ \$0.70-\$0.85/lb.

Jersey/Holstein heifer calves brought surprisingly high prices: up to \$250 apiece for top animals in this category. Other good dairy heifer calves: \$100-\$120. Top Holstein heifer calf: \$210.

Back-to-farm Holstein bull calves: \$120-\$205.

Rosebush, MI (May 5): Light sale this day – about 280 head. No dairy calves offered for sale.

Open heifers: 200-250# — \$1.20/lb. 500# — \$0.70-\$0.85/lb. Breeding age heifers: \$675-\$750,

Bred heifers: Short-breds (excellent quality) — \$750-\$900. #1 Holstein springers: \$1,100 - \$1,450.

Just fresh heifers (40-60 days in milk): \$1,500 average; extreme top — \$1,750. Milk cows: Kill price to \$1,250.

March 2021 Milk Production

| State | Milk Cows ^{1,2} | | | | Milk Production ^{1,3} | | | |
|---------------------|--------------------------|-------|-----------------|---------|--------------------------------|--------------------------|-----------------|----------------|
| | March | | January - March | | March | | January - March | |
| | 2020 | 2021 | 2020 | 2021 | 2021 | Percent change from 2020 | 2021 | Percent change |
| | (thousands) | | | | (million lbs) | | | |
| AL | -- | -- | 4.0 | 3.0 | -- | -- | 11.0 | -21.4 |
| AK | -- | -- | (D) | (D) | -- | -- | (D) | (NA) |
| AZ | 200 | 196 | 198.0 | 197.0 | 443 | -3.1 | 1,265.0 | -2.1 |
| AR | -- | -- | 5.0 | 5.0 | -- | -- | 18.0 | -- |
| CA | 1,722 | 1,720 | 1,723.0 | 1,720.0 | 3,732 | 1.5 | 10,663.0 | 0.7 |
| CO | 194 | 203 | 193.0 | 203.0 | 451 | 4.4 | 1,306.0 | 4.2 |
| CT | -- | -- | 19.5 | 19.0 | -- | -- | 112.0 | -1.8 |
| DE | -- | -- | 3.8 | 3.0 | -- | -- | 14.5 | -23.7 |
| FL | 116 | 108 | 116.0 | 108.0 | 203 | -7.3 | 585.0 | -8.5 |
| GA | 82 | 80 | 82.0 | 80.0 | 160 | -1.8 | 460.0 | -3.4 |
| HI | -- | -- | (D) | (D) | -- | -- | (D) | (NA) |
| ID | 647 | 652 | 646.0 | 651.0 | 1,392 | 0.8 | 3,995.0 | -- |
| IL | 82 | 83 | 82.0 | 83.0 | 162 | 1.9 | 462.0 | 0.7 |
| IN | 176 | 193 | 176.0 | 193.0 | 396 | 10.0 | 1,133.0 | 9.4 |
| IA | 219 | 224 | 217.0 | 223.0 | 474 | 2.6 | 1,367.0 | 1.7 |
| KS | 171 | 175 | 170.0 | 174.0 | 362 | 3.1 | 1,045.0 | 2.8 |
| KY | -- | -- | 49.0 | 47.0 | -- | -- | 238.0 | -5.2 |
| LA | -- | -- | 10.0 | 10.0 | -- | -- | 37.0 | -5.1 |
| ME | -- | -- | 27.0 | 27.0 | -- | -- | 144.0 | -4.6 |
| MD | -- | -- | 42.0 | 43.0 | -- | -- | 229.0 | 1.8 |
| MA | -- | -- | 10.0 | 10.0 | -- | -- | 50.0 | -2.0 |
| MI | 428 | 442 | 427.0 | 441.0 | 1,034 | 3.5 | 2,976.0 | 2.9 |
| MN | 445 | 462 | 445.0 | 460.0 | 915 | 7.6 | 2,629.0 | 6.0 |
| MS | -- | -- | 8.5 | 8.0 | -- | -- | 33.0 | -10.8 |
| MO | -- | -- | 77.0 | 74.0 | -- | -- | 268.0 | -2.5 |
| MT | -- | -- | 12.0 | 11.0 | -- | -- | 61.0 | -4.7 |
| NE | -- | -- | 59.0 | 59.0 | -- | -- | 360.0 | -1.9 |
| NV | -- | -- | 31.0 | 31.0 | -- | -- | 189.0 | -0.5 |
| NH | -- | -- | 11.0 | 10.5 | -- | -- | 58.0 | -4.9 |
| NJ | -- | -- | 4.7 | 4.4 | -- | -- | 24.0 | -7.7 |
| NM | 332 | 333 | 333.0 | 335.0 | 721 | -1.1 | 2,099.0 | -0.7 |
| NY | 626 | 626 | 626.0 | 626.0 | 1,327 | 0.5 | 3,826.0 | -0.1 |
| NC | -- | -- | 41.0 | 40.0 | -- | -- | 238.0 | -0.4 |
| ND | -- | -- | 14.5 | 15.0 | -- | -- | 82.0 | 2.5 |
| OH | 253 | 260 | 253.0 | 260.0 | 497 | 3.3 | 1,425.0 | 2.2 |
| OK | -- | -- | 42.0 | 40.0 | -- | -- | 178.0 | -11.0 |
| OR | 127 | 125 | 127.0 | 125.0 | 224 | -0.9 | 645.0 | -2.3 |
| PA | 485 | 475 | 483.0 | 475.0 | 893 | -1.5 | 2,565.0 | -1.6 |
| RI | -- | -- | 0.6 | 0.5 | -- | -- | 2.5 | -7.4 |
| SC | -- | -- | 11.0 | 9.5 | -- | -- | 45.0 | -18.2 |
| SD | 129 | 147 | 129.0 | 144.0 | 287 | 13.4 | 818.0 | 10.5 |
| TN | -- | -- | 31.0 | 29.0 | -- | -- | 133.0 | -8.3 |
| TX | 590 | 617 | 587.0 | 616.0 | 1,336 | 3.9 | 3,851.0 | 3.7 |
| UT | 98 | 95 | 97.0 | 95.0 | 187 | -2.6 | 542.0 | -2.3 |
| VT | 124 | 119 | 124.0 | 120.0 | 222 | -4.3 | 641.0 | -4.6 |
| VA | 75 | 74 | 76.0 | 74.0 | 134 | -2.2 | 382.0 | -4.0 |
| WA | 280 | 278 | 281.0 | 278.0 | 573 | -1.2 | 1,653.0 | -2.8 |
| WV | -- | -- | 6.0 | 5.0 | -- | -- | 19.0 | -17.4 |
| WI | 1,260 | 1,267 | 1,260.0 | 1,264.0 | 2,718 | 3.7 | 7,814.0 | 2.4 |
| WY | -- | -- | 6.5 | 8.0 | -- | -- | 52.0 | 30.0 |
| 24 State Total | 8,861 | 8,954 | -- | -- | 18,843 | 2.0 | -- | -- |
| U.S. ^{4,5} | | | 9,378.0 | 9,458.0 | | | 56,745.0 | 1.0 |

D) Withheld to avoid disclosing data for individual operations. (NA) Not available. ¹ Preliminary. ² Includes dry cows, excludes heifers not yet fresh. ³ Excludes milk sucked by calves. ⁴ Includes states for which individual monthly estimates are not available. ⁵ Milk cows will not add due to rounding. Source: U.S. Department of Agriculture, National Agricultural Statistics Service, *Milk Production*, (April 2021).