



IMPERIAL SUGAR COMPANY

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ROBERT A. PEISER
PRESIDENT &
CHIEF EXECUTIVE OFFICER

July 17, 2003

Docket Management Branch (HFA-305)
Food and Drug Administration
5630 Fishers Lane
Room 1061
Rockville, MD 20852

Re: Docket No. 02N-0434
Withdrawal of Certain Proposed Rules and
Other Proposed Actions; Notice of Intent.

Specifically Re: the proposed withdrawal of **Docket No. 90N-361M**, Declaration of Ingredients-Common or Usual Name Declaration for Protein Hydrolysates and Vegetable Broth in Canned Tuna; **“And/Or” Labeling for Soft Drinks; Proposed Rule; 58 Fed. Reg. 2950, January 6, 1993.**

Dear Sir or Madam:

On behalf of Imperial Sugar Company¹, headquartered in Sugar Land, Texas, and our more than 1200 employees, I urge the FDA to fully withdraw the above referenced proposed rule with regard to the use of “and/or” labeling of sweetener ingredients in soft drinks, and to rescind any and all permission or authority for the use of “and/or” labeling for sweeteners in carbonated drinks and sweetened still beverages that may arguably arise from the May 28, 1997 enforcement letter from the FDA’s Office of Food Labeling to the National Soft Drink Association.

As a matter of law and policy, FDA cannot be party to continuation of what now constitutes consumer fraud and deception in the labeling of sweetener ingredients used in soft drinks. It is now scientifically clear beyond dispute that sweeteners are not interchangeable due to their differences in metabolization, function and taste. The

¹ Imperial is an independent refiner of cane sugar and processor of beet sugar. The company is one of the nation’s leading producers of refined sugar, supplying the retail, wholesale, and industrial trade with a wide range of sugar products. Imperial markets under several strong brand names: Imperial, Dixie Crystals, Pioneer, Holly and Spreckels.

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primary device for informing consumers with accurate and reliable information regarding the sweetener ingredients in soft drinks, and hence their nutritional quality, is the label on the product. The state of nutritional science now indicates that all natural cane and beet sugar is nutritionally different from high fructose corn syrup (HFCS). Whatever may have been the state of nutritional science when “and/or” labeling was begun two decades ago, there can be no doubt now that the use of “and/or” labeling misleads consumers with respect to the nutritional qualities of sweeteners in soft drinks.

Most importantly, while the “and/or” label once may have been variously justified as accommodating practical situations where a soft drink manufacturer needed flexibility to utilize either cane/beet sugar or HFCS, or to accommodate concerns with the cost of providing alternative labels for particular sweeteners actually used in products, long gone are the days when the soft drink industry used cane or beet sugar in their products. For many years now it has been HFCS that has been used in soft drinks to the virtual total exclusion of cane or beet sugar. Nonetheless, the continued use of the “and/or” label permits the impression to be created in the minds of consumers that only all-natural cane or beet sugar might indeed be contained in any of the soft drinks so labeled, when in reality that is not the case, and has not been the case, for some time now. Since they can no longer legitimately claim that cane or beet sugar may actually be used in their soft drink products and no longer can assert any concern about costs for alternative labels for different sweeteners that they do not actually use, it is deceptive for soft drink manufacturers to use ambiguous labels that necessarily lead consumers to believe that anything other than HFCS is used in the soft drinks they consume. As FDA itself has recognized, Section 403 (iii) of the Food and Drug Act compels the conclusion that labels on products that do not include the names of specific sweeteners used in the relevant foods constitutes misbranding. It is therefore time to insure that such deception no longer can be perpetrated through the use of “and/or” labeling.

We urge the FDA to take affirmative action to prevent the deception of consumers that results from the continued use of “and/or” labeling for sweeteners used in soft drinks. If I can provide any further information, please do not hesitate to let me know. Thank you for your consideration of Imperial’s views on this most important consumer issue.

Sincerely,



Robert A. Peiser
President and CEO
Imperial Sugar Company