



Massachusetts Maple Producers Association

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Tuesday, March 8, 2016

Maura Healey, Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108-1518

Dear Attorney General Healey:

We are writing to ask that the Massachusetts Attorney General enforce M.G.L. ch.128 §36C, which prohibits the use of the word ‘maple’ in labelling of foods that do not contain pure maple syrup. There are many active violators of this law, and their actions have an adverse impact on farmers in the Commonwealth who produce maple syrup. The law’s companion, M.G.L. ch.128 §38, calls for fines for violators, and we ask that these fines be levied as appropriate. In addition, we ask that guidance be issued and promulgated to all food manufacturers doing business in Massachusetts so that they are aware of this law and the consequences for violations.

The law, enacted in 1982, helps ensure that consumers are not misled about the products they are purchasing, and protects the maple industry from imitation products that attempt to trade on the language of a pure, natural, and historically significant agricultural product. These products damage the maple industry and the Commonwealth’s economy through unlawful and deceptive practices.

The relevant portion of the law reads: “The use of the words “maple” or “maple syrup”, shall not be used in the labelling or branding of any food product which does not contain any maple syrup in its ingredients.”

With tens of thousands of food products available on store shelves throughout Massachusetts, we have not compiled an exhaustive list of violators. By way of example, however, the attached photos show examples of products and their ingredients lists, including Stop & Shop Maple Cinnamon English Muffins, Stop & Shop Instant Oatmeal Maple & Brown Sugar, and Quaker Maple and Brown Sugar Instant Oatmeal. While these products are manufactured outside of Massachusetts, their labels should still be subject to Massachusetts laws.

A number of Massachusetts-based companies are in violation of the law as well, such as Wilbraham-based Friendly's, with their Maple Walnut ice cream. Dunkin' Donuts, with their headquarters in Canton, has eight varieties of baked goods labeled as maple, and none of them have any maple syrup or maple sugar listed in their ingredients. Honey Dew Donuts, based in Plainville, has a Maple Cream Coffee listing, which also contains no maple syrup. Lynfield's Hood Ice Cream also sells a Maple Walnut flavor with no maple syrup listed as an ingredient.

This issue is not unique to Massachusetts. An effort by maple industry organizations from many states, including Massachusetts, is seeking FDA intervention on similar labeling issues (*see attachment*), and a recently filed lawsuit in California seeks action against one particular violator (*see attachment*). While these efforts rely on interpretations of broad laws concerning deceptive labeling, Massachusetts' law is specific to maple products and needs no interpretation as to applicability in the instances we cite above.

Massachusetts has a thriving agricultural economy, and has seen fit to enact laws that help protect farmers from practices that fraudulently capitalize on their products and their work. We hope you will enforce M.G.L. ch.128 §36C, and we look forward to hearing from you about your intended actions.

Sincerely,

A handwritten signature in black ink, appearing to be 'Winton Pitcoff', with a long horizontal line extending to the right.

Winton Pitcoff, Coordinator
Massachusetts Maple Producers Association

Legal citations

M.G.L. ch.128 §36C

Maple syrup and maple syrup food products; labelling

No person shall manufacture, label, package, sell, keep for sale, expose or offer for sale any food article or food product branded as maple, maple syrup, maple candy, maple creams, maple butter, or maple sugar which is not made from pure maple syrup derived from the sap of the maple tree. Any compound or mixture branded or labelled as maple, maple syrup, maple candy, maple creams, maple butter or maple sugar, or branded as an imitation thereof, which consists of maple syrup mixed with any other substances or ingredients shall have printed on the package containing such compound or mixture a statement of the ingredients of which it is made, all said ingredients to be set forth in the same size type as the words "maple syrup".

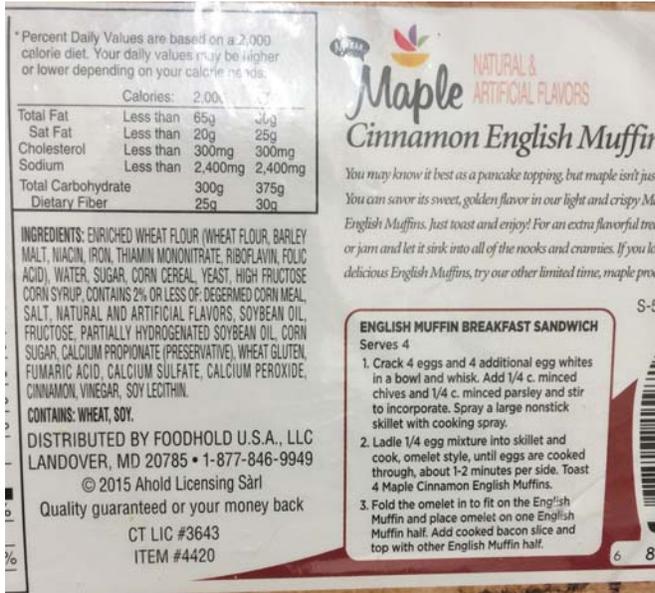
The use of the words "maple" or "maple syrup", shall not be used in the labelling or branding of any food product which does not contain any maple syrup in its ingredients.

M.G.L. ch.128 §38

Whoever violates any provision of sections thirty-three and thirty-five shall be punished for a first offence by a fine of not more than thirty dollars, for the second offence by a fine of not more than seventy-five dollars, and for a subsequent offence by a fine of not more than one hundred and fifty dollars.

Whoever violates any provisions of sections thirty-six B and thirty-six C shall be punished for a first offense by a fine of not more than two thousand dollars, for a second offense by a fine of not more than five thousand dollars and for a subsequent offense by a fine of not more than ten thousand dollars.

Products cited



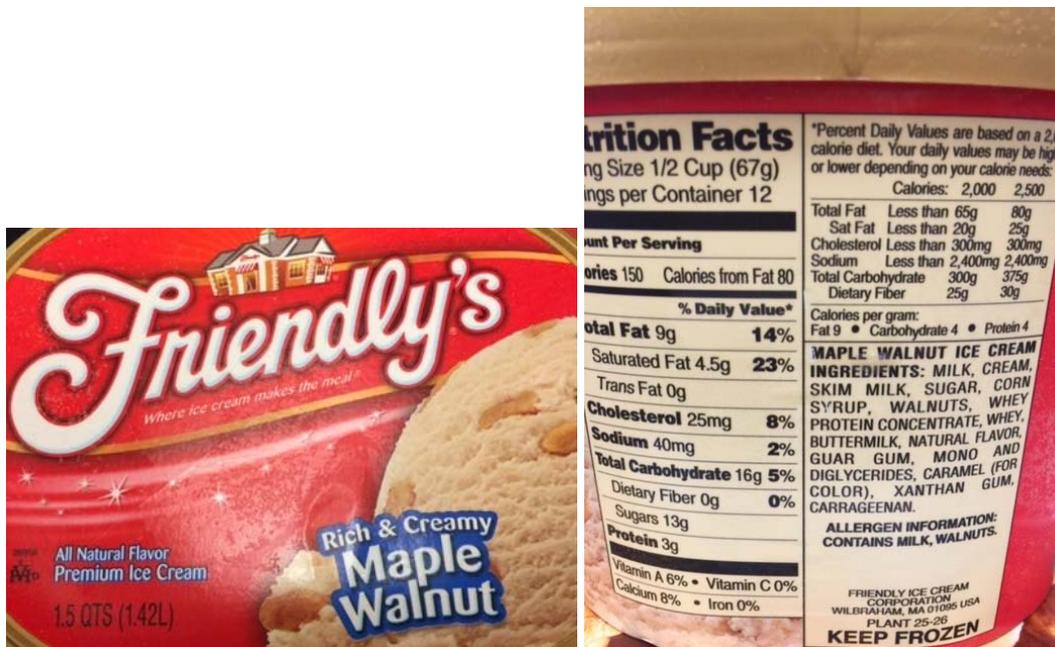
Stop & Shop Maple Cinnamon English Muffins



Stop & Shop Maple & Brown Sugar Instant Oatmeal



Quaker Maple & Brown Sugar Instant Oatmeal



Friendly's Maple Walnut Ice Cream

Nutritional Information for your Donuts

Flavor

Maple Crumb Cake Donut

	Calories	Calories from fat	Total Fat (g)	Saturated Fat (g)	Trans Fat (g)	Cholesterol (mg)	Sodium (mg)	Total Carb (g)	Dietary Fiber (g)	Sugars (g)	Protein (g)
	380	180	20	9	0	25	330	45	1	25	4
% DV*			31%	45%		8%	14%	15%	4%		

Nutrition Facts Per Serving (1 Donut)

Vitamin A 4% - Vitamin C 0% - Calcium 2% - Iron 8%

CONTAINS ALLERGENS: Eggs, Milk, Soy, Wheat

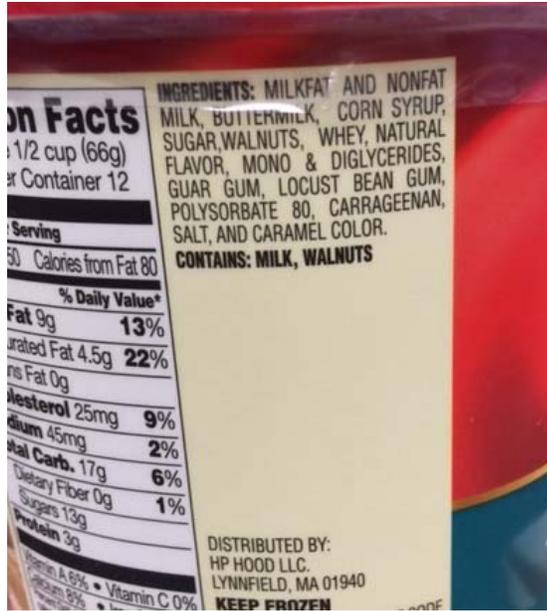
INGREDIENTS: Donut: Enriched Unbleached Wheat Flour (Wheat Flour, Malted Barley Flour, Niacin, Reduced Iron, Thiamin Mononitrate, Enzyme, Riboflavin, Folic Acid), Palm Oil, Skim Milk, Sugar, Water, Egg Yolks, Soybean Oil, Contains less than 2% of the following: Leavening (Sodium Acid Pyrophosphate, Baking Soda, Sodium Aluminum Phosphate), Salt, Defatted Soy Flour, Soy Flour, Wheat Starch, Enzyme Modified Egg Yolks, Soy Lecithin, Gelatinized Wheat Starch, Konjac Flour, Natural and Artificial Flavor, Defatted Wheat Germ, Wheat Germ, Dextrose, Carrageenan, Colored with (Turmeric and Annatto Extracts, Beta Carotene); Maple Flavored Icing: Sugar, Water, Corn Syrup, High Fructose Corn Syrup, Partially Hydrogenated Soybean and/or Cottonseed Oil, Contains 2% or less of: Maltodextrin, Dextrose, Soybean Oil, Corn Starch, Caramel Color, Sodium Propionate and Potassium Sorbate (Preservatives), Salt, Titanium Dioxide (Color), Citric Acid, Polyglycerol Esters of Fatty Acids, Agar, Soy Lecithin (Emulsifier), Natural and Artificial Flavor; Streusel Topping: Sugar, Wheat Flour, Partially Hydrogenated Vegetable Shortening (Soybean Oil and Cottonseed Oils with Polyglycerol Esters of Fatty Acids and Monoglycerides added and TBHQ and Citric Acid to protect flavor), Cinnamon, Natural Flavor.

* Percent Daily Values are based on a 2,000 calorie diet.

Dunkin Donuts Maple Crumb Cake Donut (screenshot from website, 3/8/16)

The screenshot shows the Honey Dew Donuts website. At the top is the Honey Dew Donuts logo. Below it is a navigation menu with links for Coffee, Menu, Promotions, Locations, and About. The main content area features a background image of coffee beans. Below the image, the text reads "Maple Cream Coffee" followed by "Ingredients" and "Brewed coffee, flavoring."

Honey Dew Donuts Maple Cream Coffee (screenshot from website, 3/8/16)



Hood Maple Walnut Ice Cream



VERMONT MAPLE SUGAR MAKERS' ASSOCIATION

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WWW.VERMONTMAPLE.ORG

Ms. Lynn M. Syzbist
Office of Nutrition, Labeling, and Dietary Supplements
5100 Paint Branch Parkway
College Park, MD 20740

February 9, 2016

Dear Ms. Syzbist:

We write to request that FDA take enforcement action concerning misrepresentative labeling of food products whose labels incorrectly indicate the presence of maple syrup. They are misbranded in violation of section 403 of the Food, Drug and Cosmetic Act (FDCA), 21 U.S.C. § 343, and the food labeling regulations in 21 C.F.R. §§ 102.5. Some examples of these products are described below. The products listed below are, however, only a small sample meant for exemplary purposes, and many more such misbranded products exist in the marketplace.

This misbranded group of products declares “maple” on their packaging as a characterizing ingredient even where maple syrup (as defined in 21 CFR § 168.140(a)) is not actually present in the product. In food contexts, the term “maple” has long been used and understood to refer to “maple syrup” (in FDA’s August 12, 2015 letter to Hampton Foods, the term “mayo” was found to have “long been used and understood” to mean “mayonnaise”).

As maple syrup purveyors or producers, or parties otherwise invested in a healthy maple syrup marketplace, we have a particular interest in ensuring that products claiming to contain maple are properly labeled to prevent consumer confusion. Thus, we request that FDA take enforcement actions to stop the misbranding of this class of products, either by removing the maple branding from the packaging, or by adding maple syrup - a substance derived from the heat treatment of sap from the maple tree (as defined in 21 CFR § 168.140(a)).

The regulation violated by this misbranding governs “characterizing properties or ingredients,” and requires that “the common or usual name of a food shall include the percentage(s) of any characterizing ingredient(s) or component(s) when the proportion of such ingredient(s) or component(s) in the food has a material bearing on price or consumer acceptance or when the labeling or the appearance of the food may otherwise create an erroneous impression that such ingredient(s) or component(s) is present in an amount greater than is actually the case.” 21 CFR § 102.5.

Maple syrup, a premium ingredient, plainly has a material bearing on the price and/or consumer acceptance of food products that contain it, which is why it is frequently an ingredient named in the title



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of foods or displayed on its packaging. Thus, if a product name includes “maple,” or its packaging emphasizes the presence of maple (e.g., through vignettes of maple syrup, leaves, and trees), but the product does not actually contain any maple syrup, it is unlawfully misbranded under this regulation.

This unchecked misbranding has an adverse impact on manufacturers of products containing real maple syrup, as it allows cheaper products not containing premium ingredients to compete with those actually containing maple syrup. Further, it deceives consumers into believing they are purchasing a premium product when, in fact, they have a product of substantially lower quality.

The following products are examples misbranding under 21 CFR § 102.5:

- MOM Brands' Better Oats Maple & Brown Sugar Instant Oatmeal with Flax
- Nature's Path Organic Maple Nut Hot Oatmeal
- Madhava Natural Sweeteners Maple Agave Nectar
- Honey Stinger Organic Maple Waffle
- Quaker Oats Maple & Brown Sugar Instant Oatmeal
- Quaker Oats Maple & Brown Sugar High Fiber Instant Oatmeal
- GU Maple Bacon Energy Gel
- Quaker Oats Maple Pecan Raisin Flavored Oatmeal
- Hood Ice Cream Maple Walnut

FDA has legal authority to take the actions requested in this letter under the FDCA. Section 301(a) prohibits introduction into interstate commerce of any food that is “misbranded” while Section 301(b) prohibits “misbranding” of any food already in interstate commerce. Each product identified in this letter is currently in interstate commerce. We hope that many companies marketing misbranded products will consider including maple syrup in their products in order to comply with the law, however if they do not, we request enforcement action by the FDA.

Although this letter contains only nine products, such mislabeling is rampant in the marketplace, and we urge the FDA to take comprehensive action to protect consumers from deception regarding maple products.

Sincerely,

- Maple Syrup Producers Association of Connecticut
- Indiana Maple Syrup Association
- Maine Maple Producers Association
- Massachusetts Maple Producers Association
- Michigan Maple Syrup Association
- Commercial Maple Syrup Producers of Michigan
- Minnesota Maple Syrup Producers Association
- New York State Maple Producers Association
- Vermont Maple Sugarmakers Association
- Wisconsin Maple Syrup Producer's Association
- International Maple Syrup Institute
- North American Maple Syrup Council

news.yahoo.com

Lawsuit vs Quaker Oats asks: Where's the maple syrup?

By Jonathan Stempel

(Reuters) - Quaker Oats Co has been accused in a new lawsuit of fraudulently misleading consumers into believing its Maple & Brown Sugar instant oatmeal contains real maple syrup.

In a complaint filed on Tuesday in Los Angeles federal court, Darren Eisenlord said Quaker Oats causes confusion by including a glass pitcher of maple syrup and the words "maple sugar" on packaging for six instant oatmeal products.

Real maple syrup and maple sugar are "premium ingredients," Eisenlord said, and the PepsiCo Inc unit knows that shoppers would pay more for oatmeal containing them.

He seeks class-action status for shoppers nationwide and in California who, like him, in the last four years bought the "classic" version of the oatmeal, or any of the organic, high-fiber, gluten-free, low-sugar and "weight control" versions.

The lawsuit seeks damages as well as new packaging.

Quaker Oats did not immediately respond to requests for comment on Wednesday.

The lawsuit followed a Feb. 15 letter from the North American Maple Syrup Council, the Vermont Maple Sugar Makers' Association and other trade groups urging the U.S. Food and Drug Administration to crack down on food companies whose labels incorrectly suggest the presence of maple syrup.

These groups say "maple" is understood to refer to "maple syrup," much as "mayo" is understood to refer to "mayonnaise." They pointed to an FDA warning letter last August to the maker of "Just Mayo," which unlike mayonnaise contained no eggs.

The case is Eisenlord v Quaker Oats Co et al, U.S. District Court, Central District of California, No. 16-01442.

(Reporting by Jonathan Stempel in New York; Editing by Lisa Von Ahn)