

## *Sustainability*

### **Regulators May Step in As ‘Natural’ Claims Move Beyond Food Aisles**

**L**abels like “natural” and “organic” aren’t just for food and beverages anymore.

Personal care products and other consumer goods now carry such claims as health-conscious consumers care as much about what goes on their bodies as what goes in.

The problem is consumers don’t entirely know what those words mean when they’re attached to things that aren’t food, according to a new survey from the Federal Trade Commission and the U.S. Department of Agriculture.

Survey respondents agreed the term “organic” implies the use of natural materials and fewer to no chemicals or additives. But when asked whether the word has the same meaning for an apple as it does for a dry cleaning service, mattress or shampoo, responses for each item were pretty evenly split between yes, no and not sure.

This confusion may lead regulators to issue new guidelines for marketers.

The commission and the USDA will decide what to do about organic claims on non-agricultural products after getting feedback from the public—the same thing the U.S. Food and Drug Administration recently spent more than a year doing for natural claims on food. With thousands of comments to sift through, the FDA is unlikely to report back before next year.

**Consumer Confusion.** More people buy natural food than organic food, which the majority of consumers see as more expensive, a recent Consumer Reports survey showed.

Among the phrases that consumers associate with natural labels on meat and packaged or processed food: no antibiotics, no artificial ingredients and no genetically modified organisms (GMOs). That’s not necessarily the case though.

“Those who don’t want to do as much to get organic certification can kind of take a cheat and make claims on their products that don’t really match up to what organic is,” Urvashi Rangan, who leads Consumer Reports’ analysis and advocacy on safety and sustainability issues, said. “That doesn’t mean everybody who’s

using natural is distorting the truth but it does mean that they can.”

The magazine’s nonprofit policy arm has called for natural food labels to either be fixed or banned altogether.

**Legal Risk.** “I think it’s a double-edged sword in a way,” said Levi Stewart, a consumption sector analyst for the Sustainability Accounting Standards Board, a nonprofit whose board is chaired by Michael Bloomberg, the majority owner of Bloomberg L.P., parent of Bloomberg BNA.

“Companies realize that there’s a lot of growth in demand for natural products,” Stewart said, “but along with that, there’s more scrutiny in the use of the term.” The board says natural claims and others like it can create unnecessary risks for companies and result in costly lawsuits and tarnished brand reputations.

The food industry faced more than 150 class action lawsuits in 2015, according to a tally from law firm Perkins Coie, which has defended General Mills, Costco and other companies. Most of the cases were over natural claims or false statements of fact, such as misstating calorie or fat content.

“It’s like a securities case where somebody says this is a great investment. . .but they also say you should read the prospectus,” Thomas Doyle, a partner at Baker & McKenzie LLP, said. “It’s the same kind of thing on food labels.”

“The product may be called natural brownies,” Doyle said, “but if somewhere on the back of it, there are 40-letter words that sound like synthetic ingredients, how much are we going to allow a consumer to say, ‘well I didn’t know what that was?’”

**Safety Concerns.** Natural lawsuits aren’t limited to food. Other products that have been hit with class actions over natural and organic marketing claims include Huggies diapers, Pampers wipes and baby formula sold by actress Jessica Alba’s The Honest Co.

Natural and organic personal care brands are especially attractive to parents with young children because they come with a perception of safer ingredients, according to the market research firm Mintel.

“Consumers are looking for products that are better for them, that they think are safer for them or their family,” Libby Bernick, who manages Trucost’s North American business, said. “So companies want to find a way to speak to those customers,” she said, since “there’s more and more of them.”

Manufacturers and retailers that want to differentiate their products are adopting the Environmental Protection Agency's recently revamped label for chemicals that are deemed safer for human health and the environment.

**Percentages Matter.** One early adopter of the label is Seventh Generation, which makes natural laundry detergent, dish soap and other products.

"In each industry, there's not a common definition of what natural means," Joey Bergstein, the Burlington, Vt.-based company's general manager and chief marketing officer, said. "So we've tried to be as clear as we can in our use of the term."

To Seventh Generation, "natural" means mostly plant-based, a claim backed up by the USDA's bio-preferred label. But some of its products also contain a small percentage of synthetic ingredients, which were the subject of a \$4.5-million class action settlement proposed in July.

Percentages also mattered when the FTC reached settlements earlier this year with four companies that marketed sunscreen, shampoo and other personal care products as "all-natural" or "100-percent natural," even though they contained one or more synthetic ingredients. At the time, the commission noted the difference between "natural" and "all-natural."

**Use Sparingly.** "As a lawyer who represents companies that get sued, it is helpful to have the FTC say that natural doesn't mean the same thing as all-natural," Ronie M. Schmelz, counsel at Tucker Ellis LLP, said. "Unfortunately," until the FDA takes a stand on the is-

sue, "the waters are still muddied and companies will continue to get sued."

Some have responded by removing the labels from their products. Roughly one-fifth of food products launched in 2013 to 2014 claimed to be natural, down from about 30 percent in 2009 and 2010, according to Datamonitor.

"There aren't any easy answers except to not use these claims with wild abandon but to be more cautious and to use them sparingly when they're accurate," said Andrea C. Levine, who directs the advertising industry's self-regulatory body at the Council of Better Business Bureaus. Otherwise, words like natural and organic will "cease to mean anything at all if they're slapped on everything," she said.

"And consumers will grow unhappy and they'll refuse to spend more on products whose claims they can't trust," Levine said.

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*The survey from the Federal Trade Commission and the U.S. Department of Agriculture is available at <http://src.bna.com/hQK>.*

*More information on their Oct. 20 roundtable is available at <http://src.bna.com/hQI>.*

*The U.S. Food and Drug Administration's request for comment on natural labeling is available at <http://src.bna.com/hQM>.*

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