



Can You Label your Food Product as "Healthy"

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Do you sell a food product that you would like to label as "healthy?" Using the term is more complicated than it seems. One company has recently discovered how seriously the government regulates food labeling.

Scientists and academics debate the definition of what is "healthy" – a universal definition can be difficult to pin down. Depending on what a consumer believes, she will make dietary choices accordingly. Consequently, many food companies build entire brands around the purported health benefits of their products.

The Food and Drug Administration ("FDA") is the government agency that is responsible for protecting the public health by assuring the safety, efficacy and security of the nation's food supply. The FDA recently challenged a small, but fast-growing, maker of fruit and nut bars for its claims that its bars are "healthy."

In a letter, dated March 17, 2015, and released on April 14, 2015, the FDA warned Kind LLC ("Kind") that it is misleading consumers by using the word "healthy" on labels of four products.

"None of your products listed above meet the requirements for use of the nutrient content claim "healthy" that are set forth in 21 CFR 101.65(d)(2)," wrote William A. Correll Jr. of the FDA New York District.

A chart, found on the FDA's website (We have identified that the following link is no longer active, and it has been removed), explains the conditions under which a product may use the term "healthy."

The FDA claims that four particular Kind Bars have too much saturated fat to be considered healthy. The FDA standard is less than 1 gram, and the four bars at issue exceed that standard. The FDA letter also cited issues related to product label claims about fiber, antioxidants, trans fats and non-GMO glucose.



“The above violations are not meant to be an all-inclusive list of violations that may exist in connection with your products or their labeling. It is your responsibility to ensure that your products comply with the Act and its implementing regulations,” the letter said. “You should take prompt action to correct the violations. Failure to promptly correct the violations may result in regulatory action without further notice, including seizure and/or injunction.”

The FDA stated that it may seek to have the company’s products removed from store shelves or seek a court order compelling its compliance if the company doesn’t fix the labeling violations.

In a statement, Kind’s spokesman Joe Cohen, said, “Nuts, key ingredients in many of our snacks and one of the things that make fans love our bars, contain nutritious fats that exceed the amount allowed under the FDA’s standard. There is an overwhelming body of scientific evidence supporting that nuts are wholesome, nutritious and healthful.”

We will continue to track developments to see how Kind Bar deals with the FDA warning. If you would like to learn more about the FDA’s food labeling guidelines, the agency has guidance available [here](#). Foster Swift’s Agri-Business Law attorneys are also here to help guide our clients through the complicated web of food labeling requirements.

