



August 14, 2012

VIA OVERNIGHT DELIVERY AND FACSIMILE TO (978) 371-3707

Mr. Bradley Irwin
President and Chief Executive Officer
Welch Foods, Inc.
575 Virginia Road
Concord, MA 01742

Re: Welch Foods' misleading marketing and labeling of Welch's Fruit Snacks, Spreads, Fruit Juice Cocktails, and 100% Juice drinks

Dear Mr. Irwin:

The Center for Science in the Public Interest ("CSPI") has identified deceptive practices in the marketing¹ of Welch's products. This letter details CSPI's findings and offers to discuss resolution before further legal action. Ultimately, if litigation became necessary, CSPI would seek an injunction prohibiting Welch Foods from (1) making deceptive health claims about its Fruit Snacks, Fruit Juice Cocktails, Spreads, and 100% Fruit Juice drinks; and (2) representing that Welch's 100% Juice products are healthful and beneficial to heart health and overall health. CSPI may also seek restitution, damages, disgorgement, and attorney's fees.

Facts Giving Rise to Welch Foods' Liability

Welch Foods markets its Fruit Snacks, Fruit Juice Cocktails, Spreads, and 100% Fruit Juice drinks with a variety of claims. The three types of claims that concern CSPI (discussed in detail below) are:

1. Welch Foods claims that its 100% Fruit Juice product line is heart-healthy and may promote overall health. This claim is deceptive and misleading because Welch's 100% Fruit Juice products may instead decrease overall health by

¹ The term "marketing" includes all forms of marketing in all forms of media and venues, including without limitation: print advertisements, television and radio commercials, product labels, magazines, use of licensed characters, use of celebrities, viral marketing, web sites, signage at restaurants, toys, advergames, sponsorships, school-based marketing (such as book covers and sponsored educational material), and kids clubs.

contributing to insulin resistance and obesity, and may thus promote heart disease and diabetes.

2. Welch Foods claims that its Fruit Snacks, Fruit Juice Cocktails, Spreads, and 100% Fruit Juice drinks “Reward Your Heart” and are heart-healthy products. This claim is unlawful because it is a claim of heart disease prevention, it lacks substantiation, and it is deceptive.
3. Welch Foods claims that its Fruit Snacks products are nutritious and healthful to consume. This claim is deceptive and misleading because, far from being a healthful fruit-filled snack, Welch’s Fruit Snacks contain added sugars and artificial food dyes, lack significant amounts of real fruit, and contain no dietary fiber.

1. Welch’s 100% Fruit Juices

Welch Foods markets its 100% Grape Juices as “part of a nutritious diet and active lifestyle . . .”² and claims that the Juices “deliver benefits to help promote overall health.”³ Welch Foods stresses that its 100% Fruit Juices are “heart-healthy”⁴ and have “no sugar added.”⁵ Moreover, Welch Foods highlights the antioxidant content of its 100% Grape Juices and fruit blends, stating that they contain “Twice the Antioxidant Power of orange juice”⁶ and “science suggests that antioxidants can help reduce free radical activity and support health.”⁷ See Illustration 1 below.⁸

² Welch Foods’ website, Health and Nutrition, www.welchs.com/health-and-nutrition (last visited July 2, 2012).

³ Welch Foods’ website, Health and Nutrition, Power of the Concord Grape, www.welchs.com/health-and-nutrition/power-of-the-concord-grape, (last visited July 2, 2012).

⁴ Welch Foods’ website, Health and Nutrition, Power of the Concord Grape, www.welchs.com/health-and-nutrition/power-of-the-concord-grape, (last visited July 2, 2012).

⁵ Welch Foods’ website, *id.*; see also Illustration 1.

⁶ Label-Welch’s 100% Grape Juice, Welch’s 100% Juice Blueberry-Pomegranate-Concord Grape, Welch’s 100% Juice Black Cherry-Concord Grape.

⁷ Welch Foods’ website, Health and Nutrition, All About Antioxidants, www.welchs.com/health-and-nutrition/all-about-antioxidants (last visited July 2, 2012).

⁸ See attached Exhibit 1 for larger image.

Illustration 1 Welch's 100% Grape Juice



Welch Foods touts high antioxidant content as support for its claim that its 100% Juices are “heart-healthy.” Welch Foods claims that the antioxidant properties of polyphenols in grape juice provide health benefits.⁹ However, to support this claim Welch Foods does not provide competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate this claim.¹⁰ Instead, Welch Foods only references studies that were uncontrolled,¹¹ conducted on animals,¹² or showed that grape juice was ineffective at providing the cardiovascular benefits associated with polyphenols.¹³

⁹ Welch Foods’ website, Health and Nutrition, Power of the Concord Grape, www.welchs.com/health-and-nutrition/power-of-the-concord-grape, (last visited June 6, 2012).

¹⁰ See Order to Show Cause and Order Modifying Order, *In the matter of Kellogg Company*, No. C-4262 (Federal Trade Commission May 28, 2010), available at www.ftc.gov/os/caselist/0823145/100602kelloggorder.pdf (emphasis added).

¹¹ See, e.g., E. Anselm et al., *Grape Juice Causes Endothelium-Dependent Relaxation Via a Redox-Sensitive Src- and Akt-Dependent Activation of eNOS*, 73(2) *CARDIOVASC RES.* 404 (2007); E.J. Chou et al., *Effect of Ingestion of Purple Grape Juice on Endothelial Function in Patients with Coronary Heart Disease*, 88(5) *AM. J. CARDIOL.* 553 (2001); J.H. Stein et al., *Purple Grape Juice Improves Endothelial Function and Reduces the Susceptibility of LDL Cholesterol to Oxidation in Patients with Coronary Artery Disease*, 100(10) *CIRCULATION* 1050 (1999).

¹² See, e.g., *id.* E. Anselm (involving in vitro and ex vivo studies, not in humans); D. Shanmuganayagam et al., *Concord Grape Juice Attenuates Platelet Aggregation, Serum Cholesterol and Development of Atheroma in Hypercholesterolemic Rabbits*, 190(1) *ATHEROSCLEROSIS* 135 (2007).

¹³ See, e.g., M.M. Dohadwala et al., *Effects of Concord Grape Juice on Ambulatory Blood Pressure in Prehypertension and Stage 1 Hypertension*, 92(5) *AM. J. CLIN. NUTR.* 1052 (2010); E.J. Chou et al., *Effect of Ingestion of Purple Grape Juice on Endothelial Function in Patients with Coronary Heart Disease*, 88(5) *AM. J. CARDIOL.* 553 (2001); J.H. Hollis et al., *Effects of Concord Grape Juice on Appetite, Diet, Body Weight, Lipid Profile, and Antioxidant Status of Adults*, 28(5) *J. AM. COLL. NUTR.* 574 (2009); A.R. Albers et al., *The Antiinflammatory*

Additionally, Welch's 100% Grape Juice's high levels of vitamin C may not result in Welch's claimed antioxidant benefits of "heart health." The Office of Dietary Supplements at the National Institutes of Health publishes reports on health benefits of various dietary supplements, including vitamin C. It is noteworthy that the report on vitamin C does not indicate any heart-health benefit:

Although the Linxian trial data suggest a possible benefit, overall, the findings from most intervention trials do not provide convincing evidence that vitamin C supplements provide protection against cardiovascular disease or reduce its morbidity or mortality. However, as discussed in the cancer prevention section, clinical trial data for vitamin C are limited by the fact that plasma and tissue concentrations of vitamin C are tightly controlled in humans. If subjects' vitamin C levels were already close to saturation at study entry, supplementation would be expected to have made little or no difference on measured outcomes.¹⁴

In fact, there is no accepted benefit to increasing vitamin C intake beyond the recommended daily value,¹⁵ and vitamin C accounts for only a small fraction of the antioxidant activity provided by whole fruits and vegetables.¹⁶ Indeed, the health

Effects of Purple Grape Juice Consumption in Subjects with Stable Coronary Artery Disease, 24(11) ARTERIOSCLER. THROMB. VASC. BIOL. e179 (2004).

¹⁴ NATIONAL INSTITUTES OF HEALTH, OFFICE OF DIETARY SUPPLEMENTS, VITAMIN C FACT SHEET, ods.od.nih.gov/factsheets/VitaminC-HealthProfessional/ (last visited July 30, 2012).

¹⁵ The Institute of Medicine concluded that "the existing data are not consistent or specific enough to estimate a vitamin C requirement based on any of these biomarkers for cardiovascular disease." INSTITUTE OF MEDICINE (IOM), DIETARY REFERENCE INTAKES FOR VITAMIN C, VITAMIN E, SELENIUM, AND CAROTENOIDS 122 (2000). Moreover, although deficiencies in vitamin C increase the risk of cardiovascular disease, the vast majority of Americans do not suffer from vitamin C deficiency. See James E. Enstrom et al., *Vitamin C Intake and Mortality Among a Sample of the United States Population*, 3 EPIDEMIOLOGY 194 (2002); Howard D. Sesso et al., *Vitamins E and C in the Prevention of Cardiovascular Disease in Men: The Physicians' Health Study II Randomized Controlled Trial*, 300(18) JAMA 2123 (2008); Lawrence H. Kushi et al., *Dietary Antioxidant Vitamins and Death From Coronary Heart Disease in Postmenopausal Women*, 334 (18) N. ENG. J. MED. 1156 (1994); Jorg Muntwyler et al., *Vitamin Supplement Use in a Low-Risk Population of U.S. Male Physicians and Subsequent Cardiovascular Mortality*, 162(13) ARCH. INTERN. MED. 1472 (2002); Stavroula Osganian et al., *Vitamin C and Risk of Coronary Heart Disease in Women*, 42(2) J. AM. COLL. CARDIOLOGY 246 (2003).

¹⁶ Rui Hai Liu, *Health Benefits of Fruits and Vegetables are from Additive and Synergistic Combinations of Phytochemicals*, 78 AM. J. CLIN. NUTR. 517S, 517S-520S, at 518S (2003) (finding that less than 1% of the total antioxidant activity of whole fruit comes from vitamin C; the vast majority of antioxidant activity is related to phytochemicals in the whole fruit).

benefits of antioxidants are suggested by studies involving the consumption of *whole* fruits and vegetables, not juices.¹⁷

Moreover, the negative effects of high sugar and calorie content on consumers' health outweigh Welch Foods' claimed health benefits based on the vitamin C in its 100% Juice drinks. Welch's 100% Grape Juice contains 36 grams of sugar and 140 calories per 8-ounce serving.¹⁸ Eight ounces of Coca-Cola contains 27 grams of sugar and 100 calories, while Welch's 100% Grape Juice contains one-third more sugar and 40 more calories than this sugar-sweetened beverage. The sugars in Welch's 100% Grape Juice are approximately half fructose and half glucose, and excess intake of fructose can lead to insulin resistance, which leads to type 2 diabetes and obesity.¹⁹ Thus, contrary to Welch Foods' representations, consumption of its 100% Fruit Juices does not "promote heart health" and "overall health."²⁰ Welch Foods' marketing of its 100% Juice drinks is deceptive and misleading.

It is clear that Welch Foods uses heart-health claims simply to increase sales. (Just recently, the American Heart Association issued a study showing that adding its Heart Check mark to a label increased sales 1.5-6.7 percent, depending on the group of shoppers).²¹

¹⁷ See, e.g., Penny M. Kris-Etherton et al., *Bioactive Compounds in Foods: Their Role in the Prevention of Cardiovascular Disease and Cancer*, 113 AM. J. MED. 71S, 71S-88S (2002) ("Numerous epidemiologic studies indicate that an increase in the consumption of fruits and vegetables is associated with a decrease in the incidence of cardiovascular disease . . . and stroke."); Manuela Blasa et al., *Fruit and Vegetable Antioxidants in Health*, in *Bioactive Foods Promoting Health: Fruits and Vegetables* 37, 37-58 (Ronald Ross Watson & Victor R. Preedy eds., 2010) ("The synergy among phytochemicals is one of the reasons that nutritional guidelines insist on varying the foods in one's diet, particularly fruits and vegetables."); Rui Hai Liu, *Health Benefits of Fruit and Vegetables are from Additive and Synergistic Combinations of Phytochemicals*, 78 AM. J. CLINICAL NUTRITION 517S, 517S-20S, at 518S (2003).

¹⁸ Welch Foods' website, www.welchs.com/products/100-percent-juices/healthy-start/healthy-start-100-percent-grape-juice (last visited June 6, 2012).

¹⁹ James H. Hollis et al., *Effects of Concord Grape Juice on Appetite, Diet, Body Weight, Lipid Profile, and Antioxidant Status of Adults*, 28 J. AM. COLLEGE NUTRITION 574; 575 (2009) (Supported by Welch Foods Inc.). Of the 41 grams of sugar in the concord grape juice tested, 52% was fructose and 48% was glucose. (Study also states that ". . . [CG] concord grape juice may still contribute to insulin resistance and its associated metabolic abnormalities because of its high fructose and total sugar content."); David Faeh et al., *Effect of Fructose Overfeeding and Fish Oil Administration on Hepatic de Novo Lipogenesis and Insulin Sensitivity in Healthy Men*, 54 DIABETES 1907 (2005).

²⁰ See *supra* notes 2, 3.

²¹ United Press International, *Health News, Nutrition Data on Front Label Effective*, UNITED PRESS INT'L, June 30, 2012, available at

Additionally, Welch Foods encourages consumers to drink juice in lieu of fresh fruit, stating that “Getting enough fruits and vegetables each day is important for overall health—but everyday life often gets in the way. . . . Welch’s 100% Grape Juice makes it easy to squeeze in more purple fruit each day as a part of a health diet for the whole family.”²² Instead of consuming fresh fruit or other lower-calorie, lower-sugar *foods*, consumers may attempt to fill their need for fruits and vitamins by drinking a high-calorie juice.

Finally, Welch Foods’ packaging encourages customers to draw similar conclusions of health benefits for all of Welch Foods’ products. By packaging fruit juice cocktails containing added high-fructose corn syrup and only 25% juice, such as Welch’s Concord Grape juice cocktail, with graphics that are deceptively similar to its 100% Juice products, Welch Foods’ marketing, packaging, and labeling is deceptive and misleading to consumers. See Illustration 2 below.²³

Illustration 2

Welch’s Concord Grape Juice Cocktail vs. Welch’s 100% Juice products



2. Welch Foods’ Heart Health Claims for Fruit Snacks, Fruit Juice Cocktails, Spreads, and 100% Juices

Welch Foods markets its Fruit Snacks, Fruit Juice Cocktails, Jams, Jellies, and Spreads, as well as its 100% Juices, as being heart-healthy. Beginning as far back as 2007, Welch Foods used the image of a heart on its products’ labels. See Illustrations 1 and 3.

www.upi.com/Health_News/2012/06/30/Nutrition-data-on-front-label-effective/UPI-44271341100837.

²² Welch Foods’ website, www.welchs.com/health-and-nutrition/power-of-the-concord-grape (last visited July 2, 2012).

²³ See attached Exhibit 2 for larger image of Welch’s Concord Grape Juice Cocktail (front of package). Attached Exhibit 1 has a larger image of 100% Grape Juice.

Recently, Welch Foods placed a giant heart image on the packaging of most of its product line, including not only its 100% Juice drinks, but also its Fruit Juice Cocktails, Jams and Spreads, and Fruit Snacks. See Illustration 3.²⁴ This enlarged heart is accompanied by the prominent phrase “Reward Your Heart.” See Illustration 3. Welch Foods incorporated this image and slogan into its marketing of the majority of its products as well. See Illustration 3 below.

Illustration 3
Welch Foods website



Although the “Reward Your Heart” campaign was ostensibly for the 2012 American Heart Month of February, products containing this graphic remained on store shelves well into April, and the “Reward Your Heart” website remained up through mid-March.²⁵ This heart graphic, along with the text “Reward Your Heart,” is an

²⁴ Fruit juice cocktails, such as the Passion Fruit Cocktail, contain 37 grams of sugar per 8 oz serving. Welch Foods’ website, www.welchs.com/products/refrigerated/refrigerated-juice-cocktails/passion-fruit-cocktail (last visited July 2, 2012). The Concord Grape cocktail, packaged very similarly to its 100% concord grape juice product, has 33 grams of sugar per 8 oz serving. Welch Foods’ website, www.welchs.com/products/refrigerated/refrigerated-juice-cocktails/concord-grape-cocktail (last visited July 2, 2012).

²⁵ Although many of the heart graphics and slogans of “Reward Your Heart” were taken down as of March 15, 2012, Welch Foods’ website still employs several images of hearts, as well as a “Reward Your Heart” graphic and link offering customers the choice of following their “heart health history.” See Welch Foods’ website www.welchs.com/health-and-nutrition (last visited July 2, 2012).

implied health claim according to the Food and Drug Administration (“FDA”), and is misleading and deceptive to consumers.²⁶

Placing the “Reward Your Heart” slogan and heart graphic on a product misleads consumers into thinking the product is heart-healthy and may prevent heart disease. Welch Foods placed the heart slogan and graphic on products containing high sugar and calorie contents, and on products that lack significant amounts of vitamins or minerals.²⁷ According to the FDA, even the “use of a heart symbol alone (i.e., in the absence of a statement explaining its use), could be misleading.”²⁸ Through the “Reward Your Heart” campaign, Welch Foods marketed a deceptive and misleading heart-health claim for the vast majority of Welch’s products.

3. Welch’s Fruit Snacks

Welch Foods markets its Fruit Snacks as healthful and nutritious, claiming the Fruit Snacks are “wholesome,” “made with real fruit,” contain “100% Vitamin C,” “25% Vitamins A & E,” “no preservatives,” and are “fat free” and “gluten free.” See Illustration 4. The packaging of Welch’s Fruit Snacks “Berries ‘n Cherries” prominently displays pictures of strawberries, blueberries, raspberries, and cherries, along with a picture of these berries next to the large claim, “made with real fruit.” See Illustration 3 below.²⁹

²⁶ 21 C.F.R. 101.14(a)(1) (stating that symbols, *e.g.*, a heart symbol, is an implied health claim if it suggests, “within the context in which . . . presented, that a relationship exists between the presence or level of a substance in the food and a disease or health-related condition.”); *see also* FDA Industry Guidance, <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/ucm064908.htm#health> (last visited July 2, 2012).

²⁷ *E.g.*, Welch’s Passion Fruit Flavored Juice Cocktail, containing 35g sugar, 20% Vitamin C, and high fructose corn syrup; Welch’s Fruit Snacks containing 11g sugar per 25.5g pouch, and corn syrup, modified corn starch, red 40, and blue 1.

²⁸ FDA Industry Guidance, www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/ucm064908.htm#health (last visited July 2, 2012).

²⁹ See attached Exhibit 3 for larger image.

Illustration 4 Welch's Berries 'n Cherries Fruit Snacks



These claims imply to the average consumer that Welch's Fruit Snacks are a healthful, nutritious snack consisting largely of the depicted fruits. Welch Foods markets its Fruit Snacks as healthful despite the fact that the Fruits Snacks are made in large part with apple and pear juices, which are similar to empty-calorie sugar syrup, along with corn syrup, sugar, and modified cornstarch.³⁰ On the ingredients list, fruit purees come long after all of these unhealthy and non-nutritious ingredients. Almost half of each Fruit Snacks pouch is comprised entirely of sugar.³¹ Furthermore, Welch Foods is only able to claim that its Fruit Snacks contain "100% Vitamin C" and "25% Vitamins A & E" by clearly violating FDA's Fortification Policy.³² Absent improper fortification of the Fruit Snacks with vitamins C, E, and A,³³ Welch Foods could not represent these sugary snacks as a nutritious, vitamin-rich food. In short, Welch Foods represents that its Fruits Snacks are healthful despite the fact the Fruit Snacks contain added sugars and synthetic food dyes of questionable safety (especially to the target market of children), lack significant amounts of real fruit, contain no dietary fiber, and only contain a significant amount of vitamins due to improper fortification.

Thus, stating that the Fruit Snacks are "wholesome" and representing that they are beneficial to consumers' health is misleading and deceptive.

³⁰ In fact, FDA considers these juices to be nothing more than sugar, and prohibits products from claiming "no added sugar" when they contain concentrated fruit juices. See 21 C.F.R. 101.60(c)(2)(ii).

³¹ The Nutrition Facts of the "Berries 'n Cherries" Fruit Snacks indicate that each 25.5g pouch contains 80 calories and 11 grams of sugar. The 11 grams of sugar includes sugar from the apple and pear juices, corn syrup, sugar, and smaller amounts of fruit purees. See Illustration 4.

³² "The Food and Drug Administration does not encourage indiscriminate addition of nutrients to foods, nor does it consider it appropriate to fortify . . . sugars; or snack foods such as candies . . ." 21 C.F.R. 104.20(a).

³³ The "Berries 'n Cherries" ingredients list includes "ascorbic acid (vitamin C), alpha tocopherol acetate (vitamin E), vitamin A palmitate."

Welch Foods' Violations of State Consumer Protection Laws

Welch Foods' claims regarding its 100% Juice drinks, Fruit Juice Cocktails, Jams, Jellies, Spreads, and Fruit Snacks (1) are generally false, misleading, and deceptive; (2) are illegal health claims; and (3) lack prior substantiation. As such, these claims violate state consumer protection laws such as Massachusetts G.L. c. 93A, Texas Business & Professions Code § 17.41 *et seq.*, District of Columbia Code § 28-3905 *et seq.*, New Jersey Statutes Ann. 56:8-1 *et seq.*, California Business & Professions Code §§ 17200 & 17500, and California Civil Code §§ 1770(a)(5) & 1770(a)(14).

Further, Welch Foods' misrepresentations render its products misbranded in violation of state food and drug laws, such as California's Sherman Food, Drug, and Cosmetic Law.³⁴

As the manufacturer and distributor of Welch's Spreads, Fruit Snacks, Fruit Juice Cocktails, and 100% Juice drinks, Welch Foods is responsible for the injuries caused by its actions. Consumer injury occurs each time a consumer sees marketing for, or purchases, one of these products. Each occurrence is a separate injury.³⁵

Settlement Demand

In light of the foregoing, CSPI invites Welch Foods to resolve these instances of illegal and deceptive marketing in order to avoid further legal action. CSPI seeks to prevent Welch Foods from deceptively marketing alleged health benefits in association with its 100% Grape Juice, 100% Juice, Fruit Juice Cocktails, Spreads, and Fruit Snacks. Of course, adhering to honest marketing practices will only benefit Welch Foods and its customers in the long term.

Should Welch Foods choose not to respond to CSPI's findings, CSPI will pursue litigation to seek the following:

- Entry of a permanent injunction that prohibits Welch Foods from representing that its Fruit Snacks are healthful and nutritious, and prohibits Welch Foods from representing that its Fruit Snacks promote heart health or heart disease prevention.
- Entry of a permanent injunction that prohibits Welch Foods from representing that any of its Fruit Juice Cocktails promotes heart health or heart disease prevention.
- Entry of a permanent injunction that prohibits Welch Foods from representing that any of its Jams, Jellies, and Spreads promotes heart health or heart disease prevention.

³⁴ Cal. Health & Safety Code § 110660 ("Any food is misbranded if its labeling is false or misleading in any particular.").

³⁵ *E.g., Aspinall v. Phillip Morris Companies, Inc.*, 813 N.E. 2d 476 (Mass. 2004).

- Entry of a permanent injunction that prohibits Welch Foods from representing that any of its 100% Juice products promotes heart health or overall health.
- Disgorgement of Welch Foods' profits from the sale of its Fruits Snacks, Fruit Juice Cocktails, Spreads, and 100% Juice drinks.

If Welch Foods is willing to discuss a settlement or requires additional information about the claims documented herein, we welcome contact from counsel.

Regards,

Stephen Gardner
Litigation Director

Amanda Howell
Litigation Staff Attorney

By:

A handwritten signature in blue ink, appearing to read "Amanda Howell", is written over a light blue circular stamp.

Exhibit 1



Illustration 1
Welch's 100% Grape Juice

Exhibit 2



Illustration 2
Welch's Concord Grape Juice Cocktail

Exhibit 3



Illustration 4
Welch's Berries 'n Cherries Fruit Snacks