



June 18, 2003

Mr. Donald S. Clark, Secretary  
U.S. Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, D.C. 20580

Re: False advertising complaint against Giant Food, Inc.

Dear Mr. Clark,

Under the provisions of the Federal Trade Commission Act and Title 15 of the U.S. Code, Public Citizen (PC) and the Center for Food Safety (CFS) hereby file a false advertising complaint against Giant Food, Inc. (Giant). This complaint relates to observable trends and patterns in the manner in which Giant advertises, displays, signs, and markets specific food products at several Washington, DC, area stores. Based in Landover, MD, Giant is a well-known full-service grocer, with large cases of meat products, including ground beef, in each store. It has sold irradiated ground beef in many DC area stores since late 2002.

This complaint includes three inter-related practices related to irradiated ground beef, each of which is deceptive in its own right:

**1. False and misleading sales practices.** On Monday, June 2, a visit by Peter T. Jenkins of CFS to the Giant in DC on Wisconsin Avenue revealed dozens of packages of unirradiated ground beef being sold in the meat case section that was clearly signed as containing irradiated beef. The signs consisted of a large free-standing medallion-type sign advertising the food safety benefits of irradiated ground beef, three strip signs inserted in the front of the case shelves that said "irradiated for food safety," a display containing Giant pamphlets on the irradiated product (discussed below), and a perpendicular meat case divider that said "irradiated ground beef." But, no irradiated ground beef was present. This was readily discernible to Mr. Jenkins, a food policy analyst, in that Federal law requires that irradiated foods must be labeled as such and must display the round "radura" symbol (21 CFR sec.179.26(c)). (This labeling requirement is due to material differences long-recognized by the U.S. Food and Drug Administration between irradiated and unirradiated foods.) However, the fact that the meat being sold was not irradiated was nowhere made clear to the general shopper, who would not be aware of the Federal labeling regulations as irradiated foods are novel and uncommon.

Inquiry by Mr. Jenkins of the meat stocking clerk revealed that the store's practice was to fill the irradiated ground beef section with unirradiated product when the irradiated product was not available, and then to re-stock with irradiated product when a delivery came in. On information and belief, this practice has been repeated at the Wisconsin store on other occasions and likely has occurred at several other Giant stores.

This practice is grossly deceptive for shoppers who may wish to purchase irradiated ground beef and who would think they were doing so based on the extensive signage and advertising. This practice also is misleading to shoppers who don't wish to purchase irradiated product and are confronted with numerous signs indicating that the otherwise unmarked ground beef packages are irradiated. Mr. Jenkins observed confusion among the meat shoppers who were considering purchases from that case.

**2. False and misleading advertising - signage.** When Giant stores initially sold irradiated ground beef they devoted significant meat case space to the product, but currently several stores have reduced that space to a small sliver of the meat case. Observations of the Wisconsin Avenue Giant already mentioned and the Bethesda, MD (Arlington Rd.); Silver Spring, MD (Colesville Rd.), and Dupont Circle, DC (P St.) Giant stores reveal that the irradiated cases now are typically just a 6-inch wide portion of one shelf and often are empty and appear to be unused (when not filled with unirradiated product as in the case described above). Yet, the advertising and signage claiming that the meat is "irradiated for food safety" are still very prominent, often stretching across and in front of other unirradiated meat. A recent (June 7) observation by Mr. Jenkins of the Bethesda store revealed a 3-foot irradiated sign over a 6-inch case, thus 5/6ths of the sign was over unirradiated product. Also, a free-standing medallion advertisement for irradiated product was placed 2 feet away, right in the middle of unirradiated ground beef.

This false advertising practice is likely to mislead the typical shopper into thinking that more of the meat is irradiated than is actually irradiated. It is like having large signs and advertisements claiming steaks for sale are "certified Black Angus," when the actual steaks under the signs and advertisements are not.

**3. False and misleading advertising - pamphlet.** Most of the stores visited that sell irradiated ground beef also provide a Giant pamphlet in a small pocket attached to the case near the product, with the heading "Irradiated Fresh Ground Beef – Irradiated For Food Safety." A copy of this pamphlet is attached as Attachment A. As this pamphlet is provided in very close proximity to the product, it functions as both an advertisement for the product and a label. But, the pamphlet includes several false and misleading statements:

A. It claims that "every major health organization" has endorsed irradiation for food safety, which in itself is an exaggeration. Then it lists the famous "Mayo Clinic" as a specific example of such an organization. Attached hereto as Attachment B is a letter dated October 30, 2000, from Mr. Bruce Kelly, Director of Governmental Relations of the Mayo Clinic, addressed to New Jersey Assemblyman John V. Kelly, sent in response to earlier claims by other irradiation companies of a Mayo Clinic endorsement. Mr.

Bruce Kelly makes clear that "the Mayo Clinic does not endorse processes or products, and has not made any institutional endorsement of food irradiation." In short, Giant's claim is false and could have been readily verified as false had Giant checked with the Mayo Clinic. Giant's claim is material, as the clinic has a strongly positive reputation, and the claim deceives shoppers who may be considering whether to purchase the product.

B. It says that irradiation is "much like milk pasteurization." This use of the word "pasteurization" (a very different process using rapid heating) when advertising electronically or gamma irradiated products is illegal under the Farm Security and Rural Investment Act (the Farm Bill) signed into law on May 13, 2002 (7 U.S.C. 7901 et seq.). Sec. 10808, under Title X, makes it a violation of the Food, Drug, and Cosmetic Act (21 USC sec. 343) for any company to represent irradiated food as "pasteurized," unless the company first obtains approval under the petition provisions of sec. 10808 or 10809 of the Farm Bill.

Further, guidelines for the food industry promulgated by the USDA Food Safety and Inspection Service plainly state:

*At this time, labeling statements or claims for irradiated products that include the term "pasteurization" are misleading.<sup>1</sup>*

Using a pamphlet that makes such claims immediately adjacent to irradiated products clearly violates this FSIS guideline and misleads shoppers.

C. It makes falsely exaggerated claims suggesting numerous products, such as spices, wheat flour, and potatoes, have been treated by irradiation, when Giant knows that in fact the overall presence of irradiated foods in the marketplace is less than one percent. More specifically, it says: "American astronauts have eaten irradiated foods in space since the early 1970s." But, attached hereto as Attachment C is a letter dated Nov. 9, 2000, from Ms. Vickie L. Kloeris, NASA's Subsystem Manager for Shuttle and International Space Station Food, again to New Jersey Assemblyman Kelley, which indicates that the irradiated foods offered to astronauts amount to just two items constituting about two percent of the total food items available. Further, consumption of these irradiated items by astronauts is strictly optional. Giant's advertising claim includes none of these qualification, implying much greater astronaut consumption than actually occurs, and is therefore deceptive.

Title 15, Section 52 of the U.S. Code states that "it shall be unlawful for any ... corporation to disseminate, or cause to be disseminated, any false advertisement." Title 15, Section 55 defines

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<sup>1</sup> USDA, Office of Policy, Program Development and Evaluation, Labeling and Consumer Protection Staff, [http://www.fsis.usda.gov/OPPDE/larc/Irradiation\\_Q\\_A.htm](http://www.fsis.usda.gov/OPPDE/larc/Irradiation_Q_A.htm) Question and Answer #15, (last accessed June 11, 2003).

"false advertisement" as an advertisement that is "misleading in a material respect." Section 5 of the FTC Act prohibits "deceptive acts or practices." Sections 12 and 15 make this prohibition applicable to food.

Using the term "irradiated" when selling unirradiated ground beef is false and is likely to mislead consumers and affect their decisions about Giant's products. Using the term pasteurized when selling unpasteurized, irradiated ground beef is false and is likely to mislead consumers and affect their decisions. It is also clear that making false and exaggerated claims about specific endorsements and the extent of irradiated food consumption is likely to mislead consumers and is intended to affect their decisions about Giant's products. Both the use of the term "pasteurized" and false and exaggerated claims about endorsements are patterns and trends common in the irradiated food industry, which we earlier brought to your attention in six other complaints.<sup>2</sup>

In sum, Giant's advertising, signage, display, and marketing practices meet all three elements of the FTC Policy Statement on Deception (October 14, 1983): (1) the misrepresentation is likely to mislead the consumer; (2) the misrepresentation is likely to mislead a reasonable consumer; and (3) the misrepresentation is a material one.

We urge the FTC to fully investigate this matter and exercise any and all means to enjoin Giant Food, Inc. from engaging in deceptive practices and disseminating false advertisements. For further information on this, please contact Peter T. Jenkins, CFS Policy Analyst, at 202.547.9359; or email: peterjenkins@icta.org.

Sincerely,

Joan Claybrook  
President  
Public Citizen

Andrew Kimbrell  
Executive Director  
Center for Food Safety

cc: Mr. Lee Peeler, Division of Advertising Practices  
Ms. Janet Evans, Division of Advertising Practices  
Ms. Odonna Matthews, Giant Food

Attachments (3)

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<sup>2</sup> See August 21, 2001, complaint letter from PC and CFS to the FTC on website use of "pasteurized" and "pasteurization" by Agbeta Inc., BioSterile Technology Inc., Oasis-Santa Barbara Inc., Scanmex LLC , and Titan Corp./SureBeam Corp.; and PC's 2001 complaint letters to the FTC on the same terminology in various advertisements by Huisken Meats Inc. (March 7), Omaha Steaks, Inc. (March 29), and SureBeam Corp. (June 26, July 10, and Aug. 6).