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WHAT ARE WE REALLY EATING?:
AN ANALYSIS OF FOOD LABELING TRANSPARENCY

Lily Van Petten*

Understanding a nutrition label can often be like deciphering ancient hieroglyphics. This Note examines the ethical and legal constraints of food nutrition labeling with specific key words such as “all-natural” and “superfood” in the United States. The subject of nutrition in the law is first explored through the 2018 lawsuit Rice v. National Beverage Corp. Many educated, nutritionally informed citizens still do not have a clear grasp of what chemicals and other synthetic ingredients they are consuming when buying popular brands. Large food companies use persuasive marketing to attract consumers, especially through misrepresenting nutritional data. In this case specifically, Lenora Rice sued the National Beverage Corporation for advertising their LaCroix products as “natural” despite the ingredients containing synthetic compounds such as ethyl butanoate, limonene, linalool, and linalool propionate. Although LaCroix claimed that there are indeed natural, plant-sourced versions of these compounds and that these particular forms are used in their products, the argument was dismissed as “incomplete” by Judge Joan B. Gottschall of the Northern District Court of Illinois. The primary issue here is that there is no legal definition of the word “natural”, nor are there definitions for “all-natural”, “superfood” or “antioxidants”, yet these words are thrown around in nutritional marketing campaigns all the time. Between 2016 and 2019, there were over 300 lawsuits disputing the use of the word “natural” alone. Not only is this misleading for consumers, but there are also both metabolic and nutritional repercussions for these misrepresentations that are explained further in this Note. The ethical component of this issue is presented later through a discussion of related cases that have highlighted this lack of legal clarity throughout the late 20th and early 21st century. The U.S. food labeling policies that are regulated by the FDA are not fully enforced, causing precedent to fall upon other organizations and inconsistent rulings. In short, this is an examination of the implications of vague legal language on the health of U.S. citizens.

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The “American obesity paradox”, a development that has arisen as of the 21st century in the United States, is defined as the relationship between climbing obesity rates and a simultaneous consumer interest in eating healthy foods. The blame for this phenomenon is most often placed on large scale food producers and marketing techniques that create a “health-halo” around food, falsely boosting their nutritional benefits. Consumers seek nutritionally rich foods and are deceived by these “halo” foods as they are actually nutritionally empty. Labels such as “all-natural,” “superfood,” and “containing antioxidants” can be catching to the eye, but have no real medical or legal definition. The Food and Drug Administration (FDA) is primarily responsible for the safety of the general public health and proper labeling of eighty percent of domestically and internationally produced food, as well as regulating the quality of human and veterinary drugs, vaccines, medical devices, tobacco products, cosmetics, and dietary supplements. So, it is clear that the regulation of “halo” foods would fall primarily upon this governmental administration. The amount of food produce overseen by the FDA totals up to approximately $417 billion from domestic producers and $49 billion from international imports yearly. There is some overlap, however, between the FDA and the Federal Trade Commission’s (FTC) jurisdiction of oversight of food labeling and advertising. Primarily, the FDA is responsible for food labeling regulation, while the FTC is responsible for

136 Id.
138 The FDA is not responsible for meat, poultry, or processed eggs, as they are regulated by the U.S. Department of Agriculture’s (USDA) Food Safety and Inspection Service (FSIS).
139 Id.
140 Id.
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preventing misleading food marketing.\textsuperscript{141} Although food marketing is supposed to be tightly monitored, food producers get away with deceit, given the increased production of synthetic foods and legal ambiguity of wordage. The term “food fraud” refers to the deliberate mislabeling of food products and the purposeful deception of consumers for financial gain by producers.\textsuperscript{142} In 2012, the United States Pharmacopeia, a nonprofit organization that annually publishes a volume collection of drug information, launched The Food Fraud Database to track cases of these occurrences.\textsuperscript{143} Commonly mislabeled foods included honey, olive oil, saffron, milk, orange juice, fish, and coffee.\textsuperscript{144} Today, food has replaced tobacco as the new regulatory and class action target according to some legal commentators.\textsuperscript{145} The FDA has been petitioned multiple times by both private individuals and groups and federal courts to define the word “natural” in order to clarify confusion in nutrition labeling and food advertisements, as well as to eliminate food fraud.\textsuperscript{146} Although the FDA technically has primary regulatory oversight over food labeling, the void of precedent often falls upon lower court judges and private attorneys to make these decisions.\textsuperscript{147} As a result, food fraud perpetuates.

Some parties have even requested that the term “natural” be made illegal as a descriptor on nutrition labels.\textsuperscript{148} There has been much controversy over whether it is lawful for genetically modified foods or products containing compounds such as high fructose corn syrup to be described as “natural” or

\textsuperscript{141} 21 U.S.C. § 343(a) (2012).
\textsuperscript{143} \textit{Id}.
\textsuperscript{144} \textit{Id}.
\textsuperscript{148} \textit{Id}. 

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“all-natural,” considering that the definition is ambiguous.\(^{149}\) Despite the over 300 lawsuits disputed over the legal definition of these words in the past three years, the FDA has not put forth any clarifying statements.\(^{150}\) The most concrete official FDA policy is that a “natural” product is one comprised of no artificial or synthetic components that would not otherwise be included in that product, including color additives.\(^{151}\) Purposely, however, this definition does not acknowledge food production or manufacturing methods or the use of pesticides. By this logic, even foods that have been pasteurized, irradiated, or treated with any kind of thermal technology can still be described as “all-natural.”\(^{152}\) The FDA has not made any statements about whether or not the word “natural” should describe a healthy product or a certain grade of nutritional value.\(^{153}\)

Some terms are specifically defined by the FDA, such as “natural flavors,” “organic,” and “healthy.”\(^{154}\) Containing “natural flavor,” for example, is an ingredient essentially derived from essential plant oils. While the term “healthy” can only describe a food that has low fat content and limited levels of cholesterol; additionally, if the item is a single-item food, it must provide at least ten percent of the daily value per serving of at least one of the following: vitamins A or C, iron, calcium, protein and fiber.\(^{155}\) Many gaping holes in food quality regulation and food labeling still exist, which leads to these hundreds of lawsuits that ensue over a single word on a food packaging label.

II. **Rice v. National Beverage Corp.**

When LaCroix, a sparkling water brand under the National Beverage Corp., the fifth-largest soft beverage company in the United States, started labeling their seltzer products as “all-natural” in 2018, sales of their seltzer

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149 Id.
152 See id.
153 Id.
154 Id.
beverages increased by seventeen percent in just that year alone. The company claimed that these beverages were a “‘natural’ sodium and calorie-free alternative” to soda, as the two listed ingredients were carbonated water and “natural flavors.” On October 1, 2018, customer Lenora Rice filed a lawsuit against the National Beverage Corp. in the Circuit Court of Cook County, Illinois, accusing LaCroix of creating products that contain synthetic ingredients and non-natural flavorings. Despite the product’s label, the beverage included compounds such as ethyl butanoate, limonene, linalool, and linalool propionate. After testing at an independent lab, these compounds were confirmed to be synthetic. In accordance with these findings, these compounds are all FDA certified as completely synthetic compounds. Results showed that these products are commonly added to food products and other consumer items for smell or taste enhancement. The original claim was a violation of warranty, unjust enrichment, and breach of the Illinois Consumer Fraud and Deceptive Business Practices Act. Rice sought to force LaCroix to take the labels off of their products, handle any financial damages that could have resulted from this misconception, and to give up all profits collected by the seltzer products that were labeled misleadingly. The National Beverage Corp. immediately denied these allegations, claiming that Rice pursued the lawsuit with “‘malicious intentions’” comparable to “‘financial terrorism.’” They claimed that publicization of this case resulted in the loss of billions of dollars as investors began to pull out of the company, ultimately damaging LaCroix’s

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157 Id.
158 See infra Nutritional Justification. (p. 10).
160 Id.
161 Id.
162 Id.
Rather, the corporation contested that these ingredients are indeed extracted from essential oils of fruits and distributed from suppliers that claim they are entirely “all-natural.” This argument was deemed inconsistent by the judge, considering that the original problem was the lack of the term’s legal definition.

The definitions put forth by the FDA are based on previous precedents and refer to other scientific definitions of “natural” that are independent of legal significance. This leaves room for multiple technical interpretations of the word to arise, as it was argued in this case. The products were sent to a laboratory and were found to be safe according to nutritional scientists, although they were determined to be “in no way naturally produced.” LaCroix claimed that there are natural, plant-sourced versions of these compounds (ethyl butanoate, limonene, linalool, and linalool propionate) and that these particular forms are used in their products. This argument was deemed “incomplete” by Judge Joan B. Gottschall of the Northern District Court of Illinois, considering that the average customer would not know which form of these compounds was present in the beverage given the label provided. According to Gottschall, LaCroix’s case was a sympathetic one but ultimately relies on “argument and not evidence”. Gottschall stated that the corporation was guilty and should behave according to the plaintiff’s requests, considering "the court is in no position even to agree that an ingredient entirely derived from plants is of necessity 'all-natural.'" She further reasoned that the type and degree of processing of the product have to be considered into its determination of being “natural” or not, not just the original compounds it is derived from.

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166 Id.
167 Id.
168 Id.
169 Id. The Department of Agriculture and Food Safety and Inspection Service defines “natural product” as one that “does not contain any artificial or synthetic ingredients and does not contain any ingredient that is more than ‘minimally processed’”. This is the definition that is used in this case in place of one put forth by the FDA.
170 See Id. Plaintiff argued that National Beverage Corp. incorrectly and unreasonably interpreted the FDA regulation.
172 Id.
173 Id.
174 Id.
175 Id.
176 Id.
Corp.’s motion for sanctions against Rice was denied because of a lack of an evidentiary basis for their claims.\(^ {177} \)

III. RELATED CASES

It cannot be argued that food labels simply don’t matter. According to CBS News, Consumer Reports found that seventy-three percent of food shoppers seek out foods that are labeled as “natural” because they expect that the word signifies a higher nutritional value. Yet, there are no nutritional requirements to be met in order to use the word in advertising.\(^ {178} \) Nutritional scientist and specialist Roger Clemens said in reference that *Rice v. National Beverage Corp.* that he believes “consumers today are confused with the word “natural,” and that people expect a higher grade of safety and wholesomeness in food described by this word.\(^ {179} \) Author on nutrition law, Nicole E. Negowetti, argues that legally defining the word “natural” would certainly diminish the number of cases that are filed over this confusion every year.\(^ {180} \) Instead, legal clarity is only achieved by private attorneys and state-specific laws that have created precedents about this word usage in the absence of a definition.\(^ {181} \)

A similar case occurred in February of 2017 with the labeling of General Mills Nature Valley granola bars in a case filed by the Organic Consumers Association, Beyond Pesticides, and Moms Across America.\(^ {182} \) Nature Valley bars had been labeled with descriptions including “healthy,” “100% Natural,” and “Made with 100% Natural Whole Grain Oats,” even though these products were found to contain glyphosate, a chemical pesticide and a major ingredient in Roundup, the most widely used herbicide\(^ {183} \) in the country.\(^ {184} \) The Organic Consumers Association, amongst others, claimed

\(^{177} \) *Id.*


\(^{179} \) *Id.*


\(^{181} \) *Id.*


\(^{183} \) An herbicide is a substance used to kill weeds and unwanted plants and is toxic to vegetation.

\(^{184} \) *Id.*
that this inaccurate labeling violated the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901 et seq.\textsuperscript{185} Although the legal definition of “healthy” in this context is “beneficial to one’s physical state,” while “safe” means “free from harm or risk,” the defendant in this case was able to argue a flexible interpretation of the word “natural” considering the FDA only has an “informal policy” about the descriptors’ legal definition.\textsuperscript{186} It was not arguable that the levels of glyphosate were above the safe limit for consumption. Therefore, the product could not have been deemed “healthy.” However, there was still some ambiguity over whether General Mills could use the word “natural.”\textsuperscript{187} It is also important to note that chemical residues from pesticides are not required to be disclosed on a food label, and that refraining from doing so is technically not considered “misbranding,” as long as the pesticide levels are within the legal safe limit for consumption.\textsuperscript{188} Ultimately, however, General Mills was forced to remove these words and phrases from their package labels due to violation of the Federal Food, Drug, and Cosmetic Act policy on tolerances and exceptions for pesticide chemical residues.\textsuperscript{189}

Other cases, such as \textit{Animal Legal Defense Fund v. Hormel Foods Corporation} of 2017, have relied on precedent established by organizations other than the FDA.\textsuperscript{190} Here, the precedent put forth by \textit{Organic Consumers Association} was upheld, on the premise that the wording was a violation of the District of Columbia Consumer Protection Procedures Act (DCCPPA).\textsuperscript{191} This ruling was further justified by using the definition put forth by the United States Department of Agriculture (USDA), which states that a “natural” product is one that contains no artificial ingredients or added color, and that is minimally processed.\textsuperscript{192} Further, minimal processing has to mean that the substance was processed in a way that does not fundamentally alter the product itself, and the label must explain precisely how the product was determined “natural” by including a specification, like “no artificial ingredients; minimally processed.”\textsuperscript{193}

\begin{thebibliography}{99}
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\item \textsuperscript{185} \textit{Id.}
\item \textsuperscript{187} \textit{Id.}
\item \textsuperscript{188} 21 U.S.C. §§ 343, 346a.
\item \textsuperscript{189} \textit{Id.}
\item \textsuperscript{190} \textit{Animal Legal Defense Fund v. Hormel Foods Corporation,} No. 16-1575, (D.D.C., April 7, 2017).
\item \textsuperscript{191} \textit{Id.}
\item \textsuperscript{192} \textit{Meat and Poultry Labeling Terms, United States Department of Agriculture,} (2015), online at \texttt{https://www.fsis.usda.gov/}, (visited Nov. 3, 2019).
\item \textsuperscript{193} \textit{Id.}
\end{thebibliography}
The word “natural” is not the only culprit here. Legal issues arise with other words, including “superfood” and “power foods.” According to research from Harvard University, the origin of the word “superfood” came not from nutritionists and dieticians, but from an advertising campaign for bananas during World War I. To promote banana consumption, the United Fruit Company published pamphlets entitled “Points about Bananas” and “Food Value of the Banana,” which explained the practicality, versatility, and nutritional value of bananas. Now, superfood lists are used all over the internet and are littered in diet fads, despite the fact that there is no nutritional determination for what makes something a “superfood.” Although claimed “superfoods” such as blueberries, quinoa, broccoli, kale, salmon, and acai do have functional nutritional value, they often end up limiting consumer diets by creating a focus on a single category of foods that ultimately have no evidentiary basis. According to research performed in 2015 alone, there was a 36% increase internationally in the number of food products labeled either “superfood,” “superfruit,” or “super grain”; this trend shows that ultimately any food can qualify as a superfood.

IV. NUTRITIONAL ANALYSIS AND ETHICAL IMPLICATIONS

The compounds found in the sparkling water in *Rice v. National Beverage Corp* were found to be both unnatural and frequently used in non-food related products. The compound limonene has been shown to cause tumor growth and kidney toxicity; linalool is a popular cockroach insecticide, and linalool propionate is a strong compound used in cancer treatment. In this case, the claim was made that just because something is originally plant-based does not mean it is necessarily a natural compound, especially after certain chemical processes. This ruling ultimately followed an application of the legal definition of a “natural flavor,” which is an essential oil derived from

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195 *Id.*

196 See *id.*

197 *Id.*

198 See *id.*


200 *Id.*

201 *Id.*
plant material, and these compounds listed certainly do not fit the criteria for a plant-based essential oil.\textsuperscript{202} A study performed at Arizona State University found that consumers are significantly more likely to pay more money (in this study, $1.26 per pound more) for a beef product labeled “natural” only if they are not informed of the legal definition of the word.\textsuperscript{203} Additionally, if the product label also contains “grass-fed,” “corn-fed,” and “fed without genetically modified feed” along with the word “natural,” then uninformed consumers were likely to pay up to $3.80 per pound more for their product.\textsuperscript{204} These results found that consumers who are less informed about the definition of “natural” tend to overestimate the positive nutritional effects of natural products, while informed consumers were significantly less willing to pay the premium for the label including “natural.”\textsuperscript{205} According to research, approximately 80% of studied consumers see “food as medicine,” and seek out foods that are claimed to have preventative value, against health problems such as obesity, diabetes, high cholesterol, and hypertension.\textsuperscript{206} In 2017, sales of quinoa, chia seeds, and kale had large sales growth, and trending foods such as pea protein, seaweed, ginger, chickpeas, matcha, oats, and barley experienced increased consumer attention.\textsuperscript{207} This association with food and medicinal value is particularly concerning since it is an individual’s legal right to know what is in a product that they are going to consume.\textsuperscript{208} For individuals who have diet-related health complications such as diabetes, the interpretation of nutritional information is critical and even potentially life-threatening. Vague, case-specific applications like these lead to public uncertainty about the quality of health products. Misinformation and misconceptions about health products are a particularly concerning issue considering that over one-
third of adults in the United States are obese.\textsuperscript{209} Today, this issue is one of the most prevalent health concerns in the nation and has been deemed an “epidemic”.\textsuperscript{210} Interestingly, as obesity rates rise, so does the interest in eating healthy and access to nutritional information, as well as an interest in shopping for locally sourced foods.\textsuperscript{211} This is likely the cause of the increase in sales of organic food rising almost three times the national sales from 2004 to 2012 ($11 billion to over $27 billion, respectively).\textsuperscript{212} Since then, the increase has been even more dramatic.\textsuperscript{213} It is no coincidence that the increase in branding products as “natural” has caused more interest in eating healthy. It is costly and time consuming for large-scale production companies to tightly monitor the quality of their products and to ensure they are non-GMO and not altered. A study published by the American Journal of Preventive Medicine found that the overwhelming majority of U.S. citizens are unable to understand the significance of the information in a Nutrition Facts Label.\textsuperscript{214} These numbers were significantly higher in the elderly, African Americans and Hispanics, the unemployed, non-U.S. born citizens, those with lower education, low income, low proficiency in English, and those living in the Southern U.S.\textsuperscript{215} The ethical issue at hand is the misleading of the public, who expect that they can trust a nutrition label to be factual and tightly regulated by government oversight. In place of the FDA, some nongovernmental groups have attempted to fill the void of label clarification. One of these is the Center for Science in the Public Interest (CSPI), a consumer advocacy group that monitors food labeling cases and advocates in both state and federal courts by suing or threatening to sue companies violating regulations around labeling deception.\textsuperscript{216} Although groups like this have been able to tackle many cases of food labeling violation, there would

\begin{thebibliography}{9}
\bibitem{211} Id.
\bibitem{212} Id.
\bibitem{213} Id.
\bibitem{215} Id.
\bibitem{216} Id.
\end{thebibliography}
be much alleviation from the state and federal courts if legal clarity was brought to this issue.217

V. CONCLUSION

A possible solution to this issue is replacing words like “natural” with more specific jargon such as “preservative-free” or “hormone-free.”218 Some health-conscious produce brands have already begun labeling with these more technical terms to satisfy consumer needs. This solution circumvents the legal issue of vague language and would not require the FDA to alter their regulations. However, these terms require a more researched, knowledgeable consumer to sift through products and find ones that match their needs in order for this branding to be beneficial.219 Many advocacy groups argue that the “natural” label should be banned to increase producer-consumer transparency, given that the word is legally empty. Although these groups claim that these cases are unlawful and misleading, they continue to occur despite petitions against the FDA.220

Recently, however, there is a positive trend emerging towards branding transparency in nutritional information. Beginning in 2012, large corporations like McDonald’s and Panera Bread began posting calorie counts on their menus and branding apps that allow customers to view full nutritional info and customize their meal plan.221 As a result of this transition, sales rates have been maintained, but there has been a reported increase in customer satisfaction with McDonald’s brand.222 This occurred in response to the Supreme Court’s decision to uphold former president Barack Obama’s healthcare bill which included requiring restaurants with more than twenty

217 See id.
222 Id.
locations to post calorie counts on their menus.\textsuperscript{223} Looking forward, there is hope that a more informed, nutritionally inclined population will know what to do when staring into the grocery store isles.

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