



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Advertising Practices

June 23, 2009

VIA EMAIL AND FEDERAL EXPRESS

Phillip Allen, Esq.
Division Counsel
Long John Silver's/A&W Restaurants
Yum! Brands, Inc.
1441 Gardiner Lane, Mail Drop L2520
Louisville, KY 40213

Re: Long John Silver's - Lobster Bites, File No. 092-3149

Dear Mr. Allen:

As you know, the staff of the Federal Trade Commission's Division of Advertising Practices has conducted an investigation into whether Long John Silver's, Inc. violated Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52, in connection with the marketing of its Lobster Bites food product.

Specifically, the staff's inquiry focused on whether Long John Silver's adequately discloses in its marketing materials that its "Lobster Bites" product is made from langostino lobster, a species of squat lobster, rather than the American species more commonly associated with the term lobster. Of particular concern to the staff was a television commercial depicting American lobster in a manner that suggested Long John's Silver's "real lobster" bites were made from the American species. It is the staff's position that, to avoid misleading consumers, the term "langostino" must appear adjacent to the word "lobster" and must be sufficiently prominent that consumers notice and understand the term to be part of the product name. This position is consistent with the Food and Drug Administration's policy on labeling claims for langostino lobster and other squat lobster species.¹ The staff also believes that, because consumers may not understand that langostino lobster is a substantially different species from the more commonly consumed American lobster, marketers of the langostino species should avoid any express or

¹ FDA permits the use of the term "lobster" without qualification only for the *Homarus* species, which includes the European and American lobsters. Labeling of other species, including langostino, as "lobster" without qualification would cause the product to be misbranded in violation of the Federal Food, Drug, and Cosmetic Act. See FDA's 2008 Seafood Complete List, available at http://www.accessdata.fda.gov/scripts/SEARCH_SEAFOOD/index.cfm?other=complete1.

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implied claims, through words or images, that contribute to that misperception.

In light of assurances made by Long John Silver's about revisions to its marketing materials, we have decided not to recommend enforcement action at this time. The staff based its decision on Long John Silver's cooperation in making prompt revisions to its marketing materials. Specifically, Long John Silver's immediately discontinued the television commercial of concern to the staff and revised its website. The company has also indicated that, in all future advertising and marketing material, it will include the term "langostino" adjacent to the term "lobster" in a sufficiently prominent manner so that consumers understand that it is part of the product name. Finally, Long John Silver's has indicated that it will complete necessary modifications to existing point-of-purchase materials and other in-store materials within approximately eight weeks and will direct its franchisees to use the revised versions. Therefore, it appears that no further action is warranted at this time and the investigation is closed. The staff appreciates Long John Silver's cooperation in the resolution of this matter.

This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Very truly yours,



Mary Koelbel Engle
Associate Director