

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



Division of Advertising Practices

May 10, 2010

G. Charles Nierlich
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-2933

Re: CytoSport, Inc., FTC File No. 102-3157

Dear Mr. Nierlich:

As you know, the staff of the Federal Trade Commission's Division of Advertising Practices conducted an investigation into whether your client, CytoSport, Inc. ("CytoSport"), violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in connection with its marketing of nutritional products sold under the Muscle Milk®, Monster Milk®, and Mighty Milk® brands. The National Advertising Division of the Council of Better Business Bureaus ("NAD") referred this matter to us after CytoSport declined to participate in the NAD's self-regulatory review process.

The staff's inquiry focused on whether CytoSport's product labeling and marketing for its ready-to-drink products could mislead consumers by implying that CytoSport's products contain milk, when in fact they are water-based nutritional drinks. Staff was concerned about the absence of a disclosure on product labeling that the drinks do not contain milk as an ingredient.

Upon careful review of the matter, including non-public information submitted to the staff, we have determined not to recommend enforcement action at this time. Among the factors we considered are CytoSport's representations that the company has modified all of its product labels for Muscle Milk® and Monster Milk® ready-to-drink products to address the staff's concerns. In particular, CytoSport has pledged to disclose, prominently and directly below the product name on the front panel of the label, that the product "Contains No Milk." CytoSport has further pledged that all ready-to-drink products featured in new advertising campaigns will display the updated labels. CytoSport has also represented to staff that it is no longer marketing the Mighty Milk® line of nutritional products for children.

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This action is not to be construed as a determination that a violation has not 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 warrant.

Very truly yours,

A handwritten signature in black ink that reads "Mary K. Engle". The signature is written in a cursive style with a large, looped "M" and "E".

Mary K. Engle
Associate Director

cc: David G. Mallen, National Advertising Division