

BUSINESS DAY

# Foods With Benefits, or So They Say

By NATASHA SINGER    MAY 14, 2011

START in Aisle 2, third shelf from the bottom: here is grape juice for your heart. Over to Aisle 4: there are frozen carrots for your eyes.

In Aisle 5: vitamin-packed water for your immune system. In the dairy case: probiotic yogurt for your insides and milk for your brain.

Push a cart through the D'Agostino store in Midtown Manhattan, or any supermarket anywhere in America, and you just might start believing in miracles — or at least in miracle foods.

In aisle after aisle, wonders beckon. Foods and drinks to help your heart, lower your cholesterol, trim your tummy, coddle your colon. Toss them into your cart and you might feel better. Heck, you might even live longer.

Or not. Because this, shoppers, is the question: Are all these products really healthy, or are some of them just hyped?

The answer to that question matters to millions of Americans who are wagering their money and their waistlines on hot new products in the grocery aisles called “functional foods.”

Food giants like Dannon, Kellogg and General Mills don’t claim these products actually prevent or cure diseases. Such declarations would run afoul of federal regulations. Nor do they sell them as medical foods, which are intended to be consumed under a doctor’s supervision.

Rather, food companies market functional foods with health-promoting or wellness-maintaining properties. Such claims are perfectly legal, provided that they are backed up by some credible science.

All those heart-healthy red hearts on your box of Quaker Oats cereal or that can of Planters peanuts? That happy-colon yellow arrow on the tub of Activia yogurt? It’s all part of the marketing of functional food.

Over the past decade, despite all those sales pitches for “natural,” “organic” and “whole” foods, functional food has turned into a big business for Big Food. And more Americans are buying into the functional story. Sales of these foods and beverages totaled \$37.3 billion in the United States in 2009, up from \$28.2 billion in 2005, according to estimates from the Nutrition Business Journal, a market research firm.

But as sales soar, federal regulators worry that some packaged foods that scream healthy on their labels are in fact no healthier than many ordinary brands. Federal Trade Commission officials have been cracking down on products that, in their view, make dubious or exaggerated claims. Overwhelmed regulators concede that they are struggling to police this booming market, despite recent settlements with makers of brands like Kellogg’s Rice Krispies and Dannon’s Activia, which the

authorities say oversold their health benefits.

Consumer advocates and some nutritionists are equally blunt. They say shoppers are being bamboozled by slick marketing. Many people grab products with healthy claims on the front of the package and overlook crucial nutritional information, like calorie counts, in the small print on the back.

“Functional foods, they are not about health,” says Marion Nestle, a professor of nutrition, food studies and public health at New York University. “They are about marketing.”

Walk through any supermarket, and you’ll see what Ms. Nestle means.

Here in Aisle 2 is a box of Quaker Oatmeal Squares cereal, made by the Quaker Oats Company. The front of the box, in large white print, proclaims: “Oatmeal helps reduce cholesterol!” Scientists generally agree that fiber can be good for your heart. But read the adjacent smaller print, which the Food and Drug Administration requires, and you’ll find that one serving of Quaker Oatmeal Squares contains only a third of the amount of soluble fiber needed daily to help reduce the risk of heart disease. In other words, you may have to eat three bowls of cereal daily — 630 calories’ worth, without milk — to benefit.

Down the aisle is Welch’s 100% Grape Juice, with no fat and emblazoned with a red-heart certification from the American Heart Association. An eight-ounce glass has 36 grams of sugar; a regular-sized Snickers, by comparison, has 30.

No one is saying that these products are unsafe or unhealthy, or that there isn’t science behind them. But nutritionists like Ms. Nestle contend that the kaleidoscopic array of functional foods on offer, with all those different claims, has left many consumers confused about the products’ actual health value. And, in some cases, regulators say, manufacturers are bending, or even breaking, the rules about how they market these products.

“If people can’t rely on even the most trusted food brands to have good science backing up their claims, who can they rely on?” asks Mary K. Engle, the director of the advertising practices division at the Federal Trade Commission in Washington.

“LET food be thy medicine, and medicine be thy food,” Hippocrates said 2,500

years ago. We've always known that some foods are better for us than others. But it took a little science and a lot of marketing to turn the concept into a global, multibillion-dollar industry.

The idea isn't new. Coca-Cola was first sold as a nerve tonic. In 1897, C. W. Post pitched Grape-Nuts as "a food for brain and nerve centers." Over the years, manufacturers have added iodine to salt to combat goiter, and Vitamin D to milk to fight rickets. The 1960s turned bean sprouts and nuts into health food. In the '70s, Dannon, in a commercial that seems tame by today's standards, said people in Soviet Georgia ate a lot of yogurt and, guess what? Many of them lived past 100.

Today, companies promote myriad processed foods that have been loaded with vitamins and nutrients, or contain a potentially beneficial ingredient, as wellness aids. For many, these healthified foods have become the new health food. Many Americans are willing to pay a premium for ready-to-eat, ready-to-heat and on-the-go foods that seem to promise shortcuts to healthier living.

Manufacturers prefer to think of their products as foods with added benefits, from reduced-fat snacks and desserts to enhanced dairy items.

In Mexico, for example, Nestlé has introduced a fermented milk drink called Svelty Gastro Protect to help control certain bacteria that can cause stomach inflammation. In the United States, the company markets Dreyer's Slow Churned, a reduced-fat ice cream designed to increase satiety.

"We are not adding a small magic compound that is going to have health activity," says Laurent Fay, head of the nutrition and health department at the Nestlé Research Center in Lausanne, Switzerland. "We are targeting our science toward benefits and, for each of these benefits, we develop a research program."

Economists have a term for these sorts of products: credence goods. Most people can't evaluate the claims for such products, like functional foods and medical treatments. So they rely on experts and regulators.

"The majority of American consumers really believe in the concept that certain foods provide benefits that go beyond basic nutrition or reduce the risk of disease," says Wendy Reinhardt-Kapsak, the senior director of health and wellness at the

International Food Information Council, an industry-financed group specializing in health and nutrition information. “Most of the big companies are making those claims within the letter of the law.”

Most, regulators say, but not all. Over the last two years, the F.T.C., which oversees food advertising, has filed complaints of deceptive marketing against Kellogg, Dannon and a subsidiary of Nestlé.

None of the companies have admitted wrongdoing. But each has separately settled with the agency, agreeing to certain restrictions on health-related claims.

The agency’s concern, says David C. Vladeck, director of its bureau of consumer protection, is not only that people might be paying more for foods that are no more healthful than other brands. At a time when millions lack health insurance, he also worries that people who buy foods that, for instance, claim to bolster immunity or reduce the risk of prostate cancer might forgo a flu shot or a doctor’s visit.

“If people are going to spend their money for health benefits,” Mr. Vladeck says, “they ought to get them.”

Still, regulators at the Food and Drug Administration, which oversees food labeling, say it has been hard to curb every questionable claim.

Michael R. Taylor, the F.D.A.’s deputy commissioner for foods, has acknowledged that the agency is acutely aware that as soon as it proves that one claim is misleading, savvy market-types may dream up another. “Going after them one by one with the legal and resource restraints we work under is a little like playing Whac-A-Mole, with one hand tied behind your back,” Mr. Taylor wrote last year on [TheAtlantic.com](http://TheAtlantic.com).

JAMIE LEE CURTIS, with an I-feel-your-pain expression, sits on the couch and rubs her tummy.

“Eighty-seven percent of this country suffers from digestive issues like occasional irregularity,” Ms. Curtis says. “Now the good news: I just discovered a yogurt called Activia that can help.”

This TV commercial — which was later mercilessly spoofed on “Saturday Night Live” — featured an animated diagram in which yellow dots were superimposed over a woman’s abdomen. At first, they all clumped together; then, as if by magic, they transformed into a yellow-dotted downward arrow. “Activia eaten every day is clinically proven to help regulate your digestive system in two weeks,” the voiceover explained.

Regulators later concluded that the commercials, and similar claims on Activia packages, were deceptive. The F.T.C. said Dannon exaggerated its science about the yogurt’s effect on what is delicately known as “intestinal transit time.” Many of the company’s scientific studies actually found that Activia helped no more than a placebo, Ms. Engle says. And while probiotics in Activia may support digestion, the studies that reported an improvement involved people eating the yogurt three times a day, Ms. Engle says — something not mentioned in the ads.

“That was a false claim,” Ms. Engle said of the “improved transit time.”

Dannon agreed to a settlement with the F.T.C. in December. While Dannon did not admit any wrongdoing — standard procedure in such cases — the F.T.C. prohibited it from marketing Activia to relieve temporary irregularity or improve “transit time” unless it also says to consume three servings a day.

Dannon also agreed to drop certain claims on DanActive, a dairy drink, and to pay \$21 million to states to resolve related investigations by 39 state attorneys general.

Miguel Freitas, Dannon’s director of health affairs, says that, taken together, the studies on Activia demonstrate that the yogurt can benefit digestive health.

Activia’s main claim — that the yogurt helps support the digestive system — is accurate and will remain on the product labels, says Philippe Caradec, Dannon’s vice president for regulatory and corporate affairs. “We feel very confident that, after a long review, the essence of the claim we are making remains intact,” he says.

Last month, Activia packages with the prohibited “intestinal transit” claim and May expiration dates were still on sale in some supermarkets, alongside updated Activia packages without the claim and the yellow arrow.

Michael Neuwirth, a Dannon spokesman, says that the company began changing Activia packaging in March and that, as of April 15, all packaging leaving factories had been revised.

Ms. Engle of the F.T.C. disagreed, saying the agency's order, finalized in January, does not allow Dannon to use up old Activia packages with "violative claims on them."

THE classroom teacher had just lost her place in the lesson when a child in the back row piped up.

"We were on the third paragraph of Page 57," the boy volunteered, "and you were explaining that the stone structures made by ancient Romans were called aqueducts."

Why so attentive? The voiceover in the TV ad explained: "A clinical study showed kids who had a filling breakfast of Frosted Mini-Wheats cereal improved their attentiveness by nearly 20 percent."

Sounds great. But regulators weren't so sure. They said the Kellogg ad, like Activia's, was deceptive. Kellogg had indeed commissioned a study that compared children who ate Frosted Mini-Wheats for breakfast with children who had only water for breakfast. But only about half the children in the Mini-Wheats camp showed any improvement in attentiveness after three hours, compared with their baseline before breakfast, according to the F.T.C., which filed its complaint in 2009.

Kellogg agreed to a settlement with the agency, which has prohibited the company from marketing breakfast or snack foods to improve cognitive health unless it has reliable scientific evidence that they do.

Celeste A. Clark, senior vice president for global public policy and external relations at Kellogg, said in an e-mail that the company stands behind the validity of the clinical study and adjusted its marketing more than two years ago to reflect the F.T.C. guidance.

But last June, the agency cited Kellogg again, this time alleging that Rice Krispies cereal had made questionable health claims about children's immunity.

Regulators cited cereal boxes that featured Snap, Crackle and Pop, dressed in superhero capes, standing in front of a shield that says, “Helping to support your family’s immunity.”

In an expanded order, the F.T.C. prohibited Kellogg from making claims about any health benefit of any food — again, unless they are backed by rigorous science and are not misleading.

Dr. Clark, the Kellogg executive, said the company voluntarily discontinued use of the claim on Rice Krispies packages more than a year ago.

To protect consumers, the F.D.A., which oversees food labels, has a variety of rules on label claims. It maintains a short list of bona fide “health claims” that are backed by generally accepted science and have regulatory preapproval. These include statements like “diets low in sodium may reduce the risk of high blood pressure.”

The F.D.A. also permits more general package claims about how a nutrient can promote the normal functioning of the body, like “calcium supports strong bones.” The more general claims don’t require agency preapproval.

Conventional foods, though, are prohibited from being marketed like drugs to prevent, mitigate or cure disease.

But regulators say they are concerned about incidents in which marketing crossed a line.

Last year, Dr. Margaret A. Hamburg, the commissioner of the F.D.A., wrote an open letter to the food industry in which she warned that “misleading ‘healthy’ claims continue to appear on foods” that are not by definition healthy.

The situation is clearer in Europe, where the European Food Safety Authority has set up an independent panel of experts to vet every health claim. Food makers submit applications with scientific evidence for a specific claim — about whether, say, a proprietary strain of bacteria improves intestinal well-being. The panel then reviews each case and issues an opinion on whether the evidence shows that eating the food indeed causes the advertised effect.



The group is currently finishing its review of some 2,700 claims, says Albert Flynn, a professor of nutrition at University College Cork in Ireland who is chairman of the panel. Next year, the agency is expected to issue a list of approved health claims, making food shopping less confusing — at least for consumers in Europe.

“The only claims that will be approved are those that have been shown to be backed by science,” Professor Flynn says, “so consumers can be confident that the claims can be believed.”

POM WONDERFUL has long championed the power of pomegranate juice.

“Cheat death,” one of its billboard ads exhorted, as Pom’s zaftig little bottle sported a noose.

“Death defying,” said another, on which the bottle balances on a tightrope.

“Drink to prostate health,” urged a magazine ad, which then described a small, preliminary study that found that men who had been treated for prostate cancer experienced a decline in a telltale blood protein after drinking pomegranate juice daily for two years. “Sometimes, good medicine can taste great,” the ad concluded.

Pom Wonderful says it has spent about \$34 million to sponsor pomegranate research. Sixty-five of those studies have been published in peer-reviewed journals, says Lynda Resnick, a California entrepreneur who founded Pom with her husband, Stewart Resnick.

“Our research has indicated that it’s good for circulation and reducing inflammation,” Mrs. Resnick says. “It has shown benefit with prostate cancer, enormous benefit with prostate cancer, and general heart health, cardiovascular health, erectile dysfunction.”

But last year, the F.D.A. accused the company of violating of the Food, Drug and Cosmetic Act by marketing its juices and supplements as treatments for disease.

The F.T.C., meanwhile, said the company employed misleading marketing, contending that Pom had exaggerated or overstated research results in advertising,

on the Web and in press communications. The prostate cancer study cited in the ad, for example, concluded that further research was needed to determine whether the improved blood scores would result in a concrete medical benefit, according to the agency's complaint.

Pom denies that it is misleading anyone. The First Amendment protects commercial speech that is truthful and not misleading, Mrs. Resnick says. Companies have a constitutional right to publicly discuss their research results. A second study, she says, also suggested that the juice holds promise for people with prostate cancer.

“We believe the manner in which we have communicated the results of our science research is truthful and appropriate,” Mrs. Resnick says.

Besides, she says, Pom should not be considered a functional food. “It’s a natural food,” she said.

Pom Wonderful has filed a federal law suit contending that the F.T.C. is overstepping its authority and setting new standards for advertising of foods and dietary supplements.

The agency has filed its own claims, which an administrative law judge in Washington is scheduled to hear on May 24.

SO what's a shopper to do?

“This is very confusing to consumers. It’s confusing to a lot of health professionals,” says Wahida Karmally, the director of nutrition at the Irving Institute for Clinical and Translational Research at Columbia University Medical Center. “Just because they call it functional, it doesn’t mean it’s going to be good for you.”

Regulators agree.

Jennifer Thomas, director of the division of enforcement at the F.D.A.’s Center for Food Safety and Applied Nutrition, recommends that consumers take a close look at nutrition panels and ingredient lists, and not just read marketing claims. People may also want to peruse the F.D.A.’s Web site.

“Unfortunately, there are cases where claims are overstated,” Ms. Thomas says. “To the extent that they come to our attention and we can take action, then we do.”

Then again, many people just want to believe. Buying foods marketed as healthy may satisfy our yearning to feel we are doing something healthy for ourselves and our families. At least, that’s why many people thirst after Pom Wonderful, Mrs. Resnick writes in her book on branding, “Rubies in the Orchard.”

As she put it: “Lots of people drink Pom because it makes them *feel* healthier — data or no data.”

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