

## Bar Makers Beware: What the KIND Warning Means for Food Manufacturers

The Food and Drug Administration issued a stern [warning letter](#) to Kind, LLC on March 17, 2015 (which it made public on April 15), identifying a number of significant violations of federal food labeling regulations found both on the labels of Kind bars and on the company's website. Among the violations the FDA identified are the following:

- Kind makes a number of "**nutrient content claims**" that do not comply with legal requirements. A nutrient content claim characterizes the level of a particular nutrient in a food. Some of the nutrient content claims the FDA criticized are:
  - use of the term "**healthy**" is a problem because several of the bars have more saturated fat than is permissible in connection with a "healthy" claim;
  - use of the symbol "+" in connection with claims regarding proteins and antioxidants fails to comply with the regulations because the labels do not identify the foods that the bars are being compared to when they claim to have a higher level of such nutrients;
  - use of the term "**antioxidant-rich**" is inappropriate because the product does not have a sufficient level of recognized antioxidant nutrients; and
  - claiming certain bars are a "**good source of fiber**" is not permissible because the labels do not adequately disclose that the food is also not low in total fat.
- The **Nutrition Facts** statement for certain bars is inadequate because:
  - it fails to disclose levels of monounsaturated and polyunsaturated fatty acids, which is required because the labels included the claim "**no trans fat**";
  - it fails to include the percent daily value for protein, which is required because the label includes a nutrient content claim for **protein**.
- The labels fail to correctly identify the **name and place of business** of the manufacturer.

Kind issued a [written statement](#) acknowledging that its claims may not meet the technical requirements for use of the term "healthy," but also pointing out that nuts, which are a key ingredient in many of their products, contain **nutritious fats** that are generally considered to be good for you. The FDA's action is notable for a few reasons. First, it may be a shot across the bow for other bar manufacturers who make a variety of health-related claims for their products. As companies seek to differentiate their products making claims regarding the level of antioxidants, fat, and protein, as well as more general references to a product being "healthy," they must carefully navigate the legal requirements applicable to making such claims. Second, it shows that the FDA looks beyond the food label and also evaluates claims made on a manufacturer's website with the same level of scrutiny traditionally apply to product labels. Food manufacturers who include the URL of the company's website should keep this in mind and scrutinize their website for nutrient content or other claims that may be the subject of strict regulation.

### Authors



## **Lawrence Reichman**

Partner

[LReichman@perkinscoie.com](mailto:LReichman@perkinscoie.com) [503.727.2019](tel:503.727.2019)

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