

EXHIBIT 18
(DECLARATION – SHAMROCK FOODS)

of our products outside of Ohio, as well. We also have sales into multiple distributors in states adjacent to Ohio, any of whom may have sales of our products to retail customers in Ohio.

C. In addition to state of the art processing, Shamrock Foods has emphasized premium packaging and labeling graphics, product variety, product innovation, and product quality as areas of competitive differentiation. We have two family farms (one of which is Shamrock Farms Company, hence the brand identity) which supply us with approximately 40% of our raw milk supply. Neither of these farms has ever used rBST. When use of rBST was approved by FDA in 1993, we responded to the many inquiries from consumers and the media that we were not using it in our own farm operations. We did not, however, make any labeling claim relative to rBST (until 2006). The intervening period from 1993 to 2006, however, brought a constant increase in concern and objection to rBST. These concerns were registered by consumers validated by our own market research as well as industry research, and also by customers (the businesses which sell our milk to consumers). There also was a noticeable proliferation in the availability of products which were claiming to be rBST free.

D. By 2006, Shamrock Foods concluded we could no longer be credible with the consumer expectations we were promising, and which we were committed to fulfill, without making rBST free a requirement in our own milk supply. We worked for several months with the external balance of our milk supply to comply with our requirement of rBST free. Effective July 1, 2006, and continuing through today, 100% of our milk supply is produced without the use of rBST. We have added several million dollars per year to our cost, in order to accomplish this. We have signed affidavits and supply contracts imposing unlimited liability for any breach of performance relating to avowed non-use of rBST. We have worked cooperatively with the Arizona Department of Agriculture, and they include inspection of compliance with rBST free herd management within their own oversight procedures

E. With an rBST free milk supply in place, Shamrock Foods proceeded to change its labels in order to be able to communicate that accurately, and truthfully, to the consumer. This is product information which the consumer expects, and cares about. The details of the labeling claim were worked through in conjunction with the Arizona Department of Agriculture, which, in our opinion, was quite strict, and adamantly so, with respect to the specifics of our claim. My reason for citing their strictness, was the abundant presence of competitive milk products available in our market, but processed in other states, which made claims that the State of Arizona would not allow us to make. As a result of the work with the state of Arizona, we made changes to our labels in order to comply with their interpretation of FDA guidance. The current version of our labels has been used since late-2006.

F. In early 2007, we applied for a permit in Illinois in order to ship products into customers we'd developed in that market. We were initially notified that our labels violated Illinois policy for rBST claims for not having the "qualifying statement" in immediate proximity to the label claim. They also considered our claim to be a "certified claim" which required third party verification to provide evidence of accuracy of the claim. We provided the details of our work with the Arizona Department of Agriculture, as well as the third party certifier procedures we put into place. The result of this was that Illinois issued a letter stating: "Since you have already made revisions to your labels, we will not require another label change at this time if the revisions address all of the other issues noted. When you next make changes in your label, we ask that you revise this claim to be within Illinois policy that you have been sent."

G. Pennsylvania has recently adopted new label regulations re: rBST free claims. In February, 2008, we submitted our current labels for approval and have not received a decision, but our product is still being sold in Pennsylvania using the very same label that is accepted in 49 states.

H. We received a letter, dated June 3, 2008, from the Ohio Department of Agriculture claiming our labels are not compliant with Ohio regulations, and that we must change our labels to comply with Ohio's new regulations by September 19, 2008. That letter is attached to this Declaration as Exhibit A.

- I. Ohio's regulations are highly objectionable for a number of reasons:
1. They interfere with our ability to communicate to the consumer in an accurate and truthful manner-communication which the consumer has told us, through marketing research is important to her in making her purchase decision. This directly threatens our sales results and our ongoing ability to compete on the entirety of the attributes of our products, which is our unique positioning.
 2. Further, Ohio's regulation, and the very act of necessitating changes in our labeling in order to comply, implies that we've been misleading consumers, to date. Or it may imply that we've changed our policy, and now accept the use of rBST in the production of our milk. Either of these interpretations is potentially devastating to our business in terms of winning/maintaining consumer confidence at the point of purchase. These implications could not be further from the truth. First, the statements on our packages are truthful and factually correct; secondly, our current message complies with the (spirit of) FDA's 1994 interim guidance. The focus of our message is entirely on farm production, not on milk composition, and we carry a "no significant difference" statement.
 3. Ohio's regulation provides no viable business solution. The specifics of the regulation, given the reality of the space we have to work with on our "small bottle" packaging, viably remove the option of effectively making a claim in order to provide the communication demanded by the consumer. Our choices, then, are:
 - a. Comply with Ohio for Ohio sales only. This necessitates for Shamrock Foods, that we produce and maintain a duplicate inventory of products; i.e., an "Ohio product" line and a "non-Ohio product" line. In and of itself, this adds substantially to the cost and material management implications of production planning and inventory storage (not including the costs of producing a complete second set of labels). However, if this were the only challenge, this, arguably, would be doable. Where this option becomes prohibitive is in the supply chain. As previously mentioned, the distribution map is not aligned with a state by state distinction. Our clear opinion is that neither customers, nor their distribution providers, would accept a duplication of products within their respective systems in order to serve Ohio stores with one set of products, and stores outside of Ohio with a different set of products. The reality of business is that SKU velocity and inventory turnover are essential metrics in a business environment where the demand for slots exceeds the supply given the constant proliferation of new products being introduced. This option is commercially unacceptable, and an argument that it could be done would require either a level of naiveté, or arrogance with respect to the realities of the marketplace. This option effectively prevents interstate commerce.

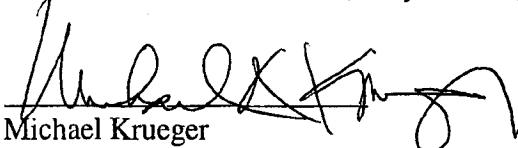
- b. Adopt Ohio regulations for all products. This option is functionally doable. The downside is that we sacrifice our ability to communicate truthfully about our products in all markets, including, the other 48 states (Pennsylvania pending), where the competitive set is primarily comprised of products which tout rBST free in their labeling—a qualifier demanded by the consumer. This option effectively prevents interstate commerce.
- c. Exclude Ohio from our marketing area. This effectively disqualifies us from consideration for any existing, or potential customer, which has retail outlets in Ohio. This option effectively prevents interstate commerce.

In addition to any calculable operating expenses, label production costs, and lost revenue potential from the above options is the reality that we are paying a premium of several million dollars per year to assure an rBST free milk supply, and we are unable to recover that investment as a result of being denied the right to speak to that fact in a free and truthful manner.

- 4. Further, we object to Ohio's regulations in that Ohio effectively defines the United States law for labeling for anyone (like ourselves) that is manufacturing and distributing products nationally. If we were to adopt "option b" (above) that solution would be rendered ineffective if another state were to follow Ohio's lead and impose even more stringent requirements. If Ohio's standards could be met by complying to the latest and toughest state's standards, then we'd be making another round of labeling changes in order to stay compliant with the most stringent state (at the time). However, if another state's latest requirements could not be met without becoming non-compliant in Ohio, then we'd be effectively prohibited from making any labeling claim. Ohio regulations pre-empt FDA guidance on rBST free labeling.

J. We urge the State of Ohio to withdraw its labeling requirements to any extent which they exceed FDA guidance, so as not to obstruct our ability to engage in interstate commerce, and, so as not to impede our freedom to speak factually and truthfully to our consumers.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 20th day of June, 2008.


Michael Krueger



Ohio Department of Agriculture



Governor Ted Strickland
Lieutenant Governor Lee Fisher
Director Robert J. Boggs

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June 3, 2008

Jeff Patterson
Shamrock Farms Dairy Division
2228 N. Black Canyon Hwy.
Phoenix, AZ 85009

Re: Dairy Product Labeling

Dear Mr. Patterson:

The Ohio Department of Agriculture has the duty and the authority under Chapter 917 of the Ohio Revised Code to regulate the content on dairy labels to ensure that the claims made on the labels are not false or misleading. Section 901:11-8-01 of the Ohio Administrative Code, establishing rules for the Department to regulate dairy product labeling, became effective on May 22, 2008. All approved labels must be in use by September 19, 2008.

The purpose of this rule is to ensure that the public has the information necessary to make an informed decision about the dairy products they purchase, while at the same time ensuring that only the most accurate information is contained on the label.

Therefore, in accordance with RC 917.05, RC 3715.60 and the above mentioned OAC 901:11-8-01, the Ohio Department of Agriculture has reviewed your company's dairy labels on the 12 fl. oz. milk sold in Subway Restaurants, and found them not in compliance with Ohio regulations for the following reasons:

- 1) The rbST disclaimer is not contiguous with the rbST production claim.
Please see **OAC 901:11-8-01(B)(2)**; and
- 2) The composition claim, "NO rBST", is not permitted to be on the label.
Please see **OAC 901:11-8-01(C)**.

Enclosed is a copy of OAC 901:11-8-01 for your convenience in reviewing this matter. ODA will defer proposing any administrative action before September 19, 2008.

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Please contact this office at (614) 466-5550, if you have any questions concerning this letter or the enclosed rule and to submit your new label(s) for approval. Thank you.

Sincerely,

OHIO DEPARTMENT OF AGRICULTURE

A handwritten signature in cursive script, appearing to read "Lewis R. Jones".

Lewis R. Jones, Chief
Dairy Division

Enc.

Copy to: Terry Tully, Dairy Program Manager, Arizona Department of Agriculture

April 21, 2008

901:11-8-01 **Dairy labeling.**

- (A) Pursuant to R.C. 917.05 and R.C. 3715.60, dairy products will be deemed to be misbranded if they contain a statement which is false or misleading.
- (B) A dairy label which contains a production claim that "this milk is from cows not supplemented with rbST" (or a substantially equivalent claim) may be considered misleading on the basis of such language, unless:
 - (1) The labeling entity has verified that the claim is accurate, and proper documents, including, but not limited to, producer signed affidavits, farm weight tickets and plant audit trails, to support the claim, are made readily available to ODA for inspection; and
 - (2) The label contains, in the same label panel, in exactly the same font, style, case, and color and at least half the size (but no smaller than seven point font) as the foregoing representation, the following contiguous additional statement (or a substantially equivalent statement): "The FDA has determined that no significant difference has been shown between milk derived from rbST-supplemented and non-rbST-supplemented cows."
- (C) Making claims regarding the composition of milk with respect to hormones, such as "No Hormones", "Hormone Free", "rbST Free", "rbGH Free", "No Artificial Hormones" and "bST Free", is false and misleading. ODA will not permit such statements on any dairy product labels.
- (D) Statements may be considered to be false or misleading if they indicate the absence of a compound not permitted by the United States Food and Drug Administration to be present in any dairy product, including, but not limited to antibiotics or pesticides. Except as otherwise provided in this rule, accurate production claims will not be deemed false or misleading.
- (E) All dairy product labels must meet the requirements of this rule no later than one hundred twenty days after its effective date.
- (F) The provisions of this rule shall not be construed to prohibit seals or marks referenced in and specifically authorized by a federal law or Ohio statute.