

A “NATURAL” EXPERIMENT: CLAIMS, CONSUMERS, AND CASES

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PRESENTATION OVERVIEW

1. Regulatory Landscape Governing “Natural” Claims
2. Food Science Research and Consumer Perceptions
3. Class Action Lawsuits and “Natural” Claims

WHO HAS AUTHORITY OVER “NATURAL” CLAIMS?

- USDA
 - For meat, poultry, and processed eggs
 - Organic products
- FDA
 - For all other food, beverages, and food products
 - Approximately 80% of U.S. food supply
- FTC
 - Food and beverage advertising

USDA

- USDA (Natural)
 - No artificial ingredients; no added color; no chemical preservatives
 - Must be minimally processed
 - Traditional food process, or
 - Processed in a manner that does not fundamentally alter the product
 - Label must include statement explaining the meaning of natural
- USDA (Naturally Raised)
 - Meat comes from animals raised with no growth hormones, no antibiotics, and no animal by-products
 - Exception: drugs can be used for parasite control
- Draft Guidance (2013)
 - Defining “synthetic” and “agricultural” for USDA Organic label
 - “Natural” = “non-synthetic”

FDA

- FDCA
 - 403(a): Prohibits misbranding of food, which encompasses food that has a label that is false or misleading
- Non-Binding Advisory Opinion (1991)
 - Nothing artificial or synthetic added to product that would not normally be expected to be there
- Response to Comments from Proposed Rulemaking (1993)
 - Term “natural...is of considerable interest to consumers and industry”
 - If “natural is adequately defined, the ambiguity surrounding use of this term that results in misleading claims could be abated”
- GAO Report (2008): FDA provides “limited assurance” of compliance with labeling laws
- Primary Jurisdiction Referrals (2014): can “natural” include GM?
 - FDA declined to intervene
- Request for Comments on Term “Natural” in Food Labeling (2016)

NATURAL = PRODUCT OF THE EARTH?



U.S. Food and Drug Administration

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About FDA

What is the meaning of 'natural' on the label of food?

From a food science perspective, it is difficult to define a food product that is 'natural' because the food has probably been processed and is no longer the product of the earth. That said, FDA has not developed a definition for use of the term natural or its derivatives. However, the agency has not objected to the use of the term if the food does not contain added color, artificial flavors, or synthetic substances.

AND THE NET RESULT...



BUT ARE CONSUMERS CONFUSED?

- 97% of Americans have purchased food labeled “natural”
- 63% Americans have a preference for food labeled as “natural”
- 66% Americans: “natural” means no pesticides or GMOs
 - >80% Americans: “natural” *should* have that definition
- Natural v. Organic
 - 50%: “natural” label is important or very important
 - 35%: “organic” label is important or very important
 - Most Desirable Label Claim
 - 31% = “all natural”; 14% = “100% organic”
- What does it mean to eat meat from animals that are “naturally raised”
 - 77%: access to outdoors
 - 85%: ate natural diet free of chemicals, drugs, animal by-products
 - 76%: treated humanely; 68%: not confined
- 77% Americans trust “natural” claims on labels some of the time
 - 9% say they trust the labels all of the time

THE “NATURAL” PRICE PREMIUM

- >50% would pay more for food that is labeled “natural”
- 51% Americans search for “all natural” products
- Food labeled as “natural” accounts for 10% of all grocery sales
 - \$40 billion in 2013
 - Compare to organic: 5% of all grocery sales

THE “HEALTH -HALO” EFFECT

- “Health-Halo” Theory
 - Individuals over-estimate healthfulness of food based on one perceived attribute of the food
 - Markers included: “organic”, “whole grains”, “natural”
 - Leads people to eat more of that food
- FDA Commissioner Hamburg (2010)
 - Food labels with “natural” claims may not provide the full picture of a product’s nutritional value

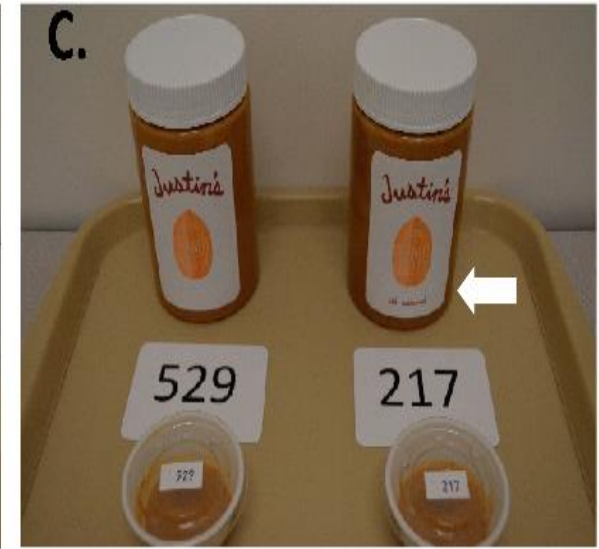
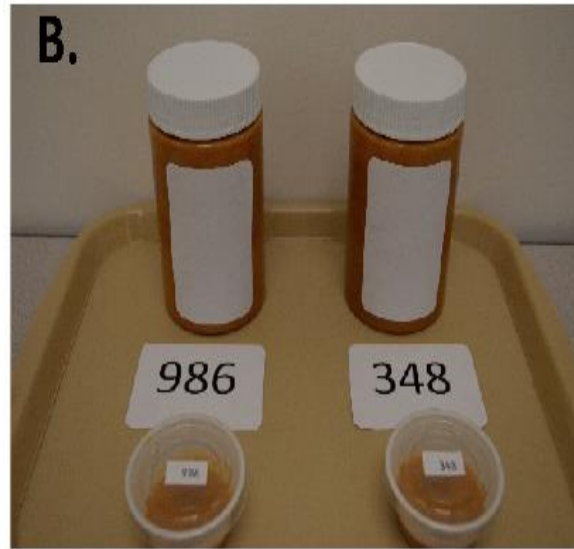
IMMERSIVE SENSORY TECHNOLOGY LAB

- Traditional Food Science Research
 - Consumer surveys and focus groups
 - Testing booths where context is typically stripped away
- Immersive Sensory Technology Lab
 - Context (visual, auditory, and olfactory) can be manipulated
 - Can better mimic real-world settings

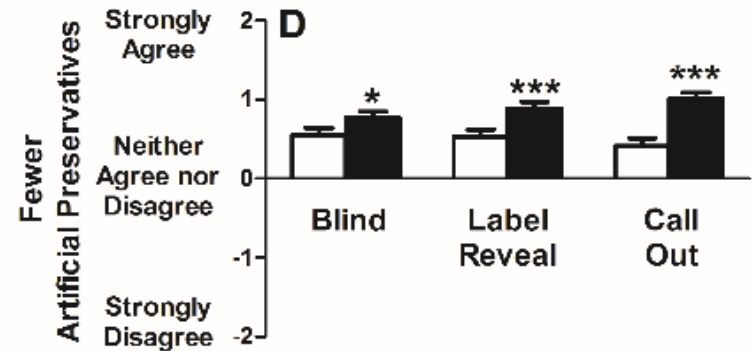
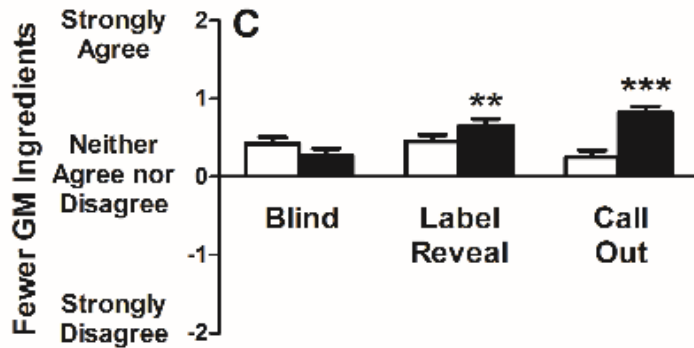
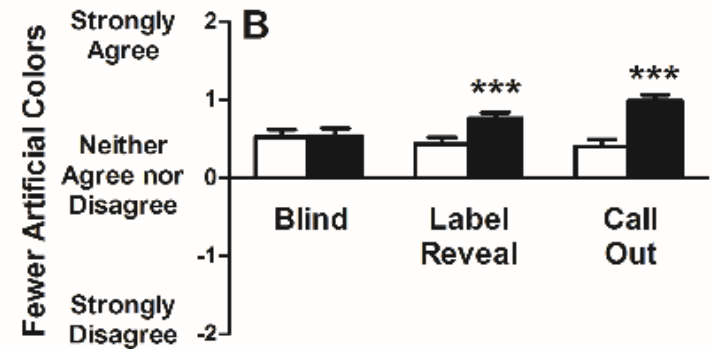
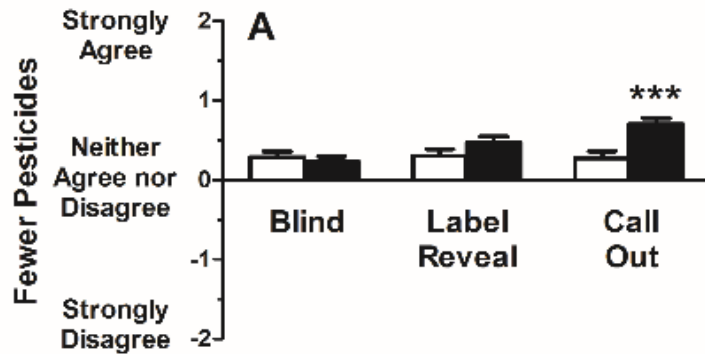


OUR LAB STUDY: ROLE OF CONTEXT IN CONSUMER EVALUATION OF NATURAL CLAIMS

- Research Methods
 - Script from actor, videotaped in local supermarket
 - Product sampling (Blank; Reveal; Reveal + Call Out)



OUR LAB STUDY: ROLE OF CONTEXT IN CONSUMER EVALUATION OF NATURAL CLAIMS



Black=Natural Claim

LITIGATION AND CONSUMER PROTECTION

- Food labeling class action lawsuits
 - Over 100 cases filed since 2011 that involve “natural” claims
 - The “Food Court”: U.S.D.C. N.D. Cal.
- Claims
 - No private right of action under FDCA or FTC Act
 - Based on state law analogues
 - NLEA preemption for state laws not analogous to federal laws
 - Legal Theories
 - False or misleading labels or advertising
 - Violations of state consumer protection laws
 - Four general categories: Food labeled as “natural”, but:
 - Has artificial preservatives
 - Processed with chemicals or synthetic ingredients
 - Contains high fructose corn syrup
 - Contains GMOs
- Some examples:
 - 7UP, Capri Sun, Naked Juice, Alexia Foods

“NATURAL” CLAIMS AND THE COURTS

Table 1: Natural Product Claims (2010-2014)

Claim	2010	2011	2012	2013	2014
Natural	3,083	3,289	3,254	5,294	5,124
All Natural	1,244	1,379	1,208	1,974	1,660
100% Natural	271	309	287	415	349
Nothing Artificial	788	825	896	1,732	1,832
Natural Flavor	209	253	282	508	520
Natural Ingredient	201	208	187	403	410
From Nature	2	1	2	7	4
GMO-Free	154	318	394	1,327	1,992
Natural and Xantham gum	0	0	0	0	0
Natural and Soy Lecithin	367	416	426	736	688
Natural and High Fructose	127	147	165	205	1
Total Number of Food & Beverage Innovations	11,989	11,906	11,950	18,948	19,535

Source: GNPD (Mintel)

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THE BIG PICTURE

- Is regulation by litigation effective and/or efficient? State initiatives?
- How to frame the “natural” debate?
- How “natural” overlaps with GM
- Impact of an expanding commercial speech doctrine
- Ban or Define?: a \$40 billion industry is at play
- Importance of Regulatory Science

THANK YOU!

Comments Welcome

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