

## **“NonGMO Labels”—Absence Claims—The Law, Congressional Intent, and FDA Policy**

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A growing number of food products now carry “absence claim” labels that deceive and mislead consumers through false and inaccurate claims about food, food ingredients and their characteristics related to health and safety. This is an especially egregious problem with foods and other products that bear “GMO Free” or “Non GMO” labels such as those sold by anti-GMO activist organizations like the NonGMO Project. These labels are specifically designed to mislead and deceive consumers about the health, safety and other attributes of an absence claim labeled product. This article will examine how “GMO Free” absence claim labels are designed to mislead consumers, in violation of the law, and the failure of the U.S. Food and Drug Administration to use its long-established authority to protect consumers from false and misleading advertising and sanction abusive marketers. The author(s) will detail how the NonGMO Project markets its “GMO Free” label to food manufacturers and retailers. They will demonstrate why health and other claims inherent in “GMO Free” absence claims are false and misleading by design, contradicting the existing, relevant scientific, health and regulatory consensus that GMOs are safe and how that evidence directly contradicts the underlying and implied assertion that “GMO Free” or “NonGMO” products are safer, healthier, more nutritious or environmentally sustainable than products that may contain GMOs. The author(s) will further show multiple ways that “GMO Free” labels mislead consumers including through labels that wrongly imply that a product is safer than GMO counterpart or that there is a GMO counterpart where none exists. Finally, the author(s) will look at the evidence of Congressional intent with respect to FDA’s regulatory authority, its duty to protect consumers from labels that are false and misleading “in any particular” and the consequences of FDA’s continuing failure to act to enforce the law and its mandate against false and misleading advertising.