



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

April 10, 2015

BY OVERNIGHT MAIL

Eric Stoll, CEO
Snap Infusion LLC
2 Dundee Park Suite 102
Andover MA, 01810

Re: SmartCandy

Dear Mr. Stoll:

We are concerned that recent advertisements including website marketing of “SmartCandy” may violate federal and state laws prohibiting false advertising and deceptive practices. Pursuant to New York Executive Law § 63(12) and General Business Law Article 22-A, the New York Attorney General has the authority to commence legal action to enjoin false advertising and deceptive, fraudulent or illegal business practices, and to obtain relief and penalties. The Attorney General is also authorized to issue subpoenas in connection with an investigation into activity that may be deceptive, fraudulent or illegal.

The marketing by Snap Infusion LLC (“Snap Infusion”) of SmartCandy as “A Vitamin Infused Snack” appears to violate the Food and Drug Administration’s (“FDA”) Fortification Rule, which states in pertinent part that the FDA: “does not consider it appropriate to fortify sugars; or snack foods such as candies . . .” 21 C.F.R. § 104.20(a). SmartCandy’s nutrient content claims it “delivers an excellent source of vitamin C” and “[e]ach pack is an excellent source of Vitamins A + B + C.” These claims can only be based on added vitamins, not the fruits prominently depicted on the SmartCandy packaging but absent from the list of ingredients. Absent this inappropriate fortification, SmartCandy could not claim to be anything more than nutritionally void candy.

Even though the products contain no fruit, SmartCandy’s website advertisements, marketing and labeling depict fruits and contain additional fruit-based claims. For example, Orange SmartCandy is packaged in an orange colored box with depictions of oranges and the statements “Real Fruit” and “Yogurt-Candy Coated Fruit.” However, the listed ingredients include only white grape juice concentrate and less than 2% of dried

orange powder. Similarly, Strawberry SmartCandy is packaged in a red box with depictions of strawberries and the statements “Real Fruit” and “Yogurt-Candy Coated Fruit.” However, the product label indicates that it contains only white grape juice concentrate and less than 2% of dried strawberry powder. The SmartCandy varieties “Orange, Cherry, Lemon” and “Mixed Berry, Grape and Strawberry” depict the identified fruits on their packaging, but the products apparently contain no fruit whatsoever – other than elderberry juice “for color.” Thus, the claims concerning the fruit content of SmartCandy appear to be misleading and deceptive.

Additionally, claims such as “SmartCandy is jam packed with vitamin A, making sure your vision is healthy and clear” and “Infused with a unique blend of B Vitamins, SmartCandy gives your brain and body the boost it needs” imply that eating SmartCandy is an acceptable way to ingest vitamins A and B despite the FDA’s admonition that infusing candy with vitamins is not appropriate. In addition, these claims appear unsubstantiated and therefore misleading.

Further, SmartCandy marketing proclaims “The best part? They all pass USDA school guidelines for snacks in schools!” However, a review of the guidelines for foods in schools indicates that the sugar content and lack of nutrients other than added vitamins render SmartCandy unacceptable under school nutrition guidelines. *See, e.g.*, www.fns.usda.gov/sites/default/files/allfoods_flyer.pdf.

Additionally, SmartCandy’s label and marketing indicates that it is “Naturally Designed” and a “Naturally Delicious Snack,” statements that misleadingly suggests that the product is natural.

Finally, on its Facebook page, SmartCandy posts links to multiple misleading statements regarding the product. For example, SmartCandy posted a link with the comment, “Have you checked out A Mom’s Take review of #SMARTCANDY?” that states, among other things, that SmartCandy “FROOT looks and feels like a candy treat, but isn’t! It’s a disguised yogurt and candy coated fruit snack.” Another post on SmartCandy’s Facebook page, “Check out what Cute Everything has to say about #SMARTCANDY ” links to a comment that states, among other things, that SmartCandy “FROOT flavors have been approved to meet school guidelines as a healthy snack choice.” This claim also appears to be unsubstantiated.

This Office is concerned that the SmartCandy advertising and marketing misrepresents the nutrition and health benefits of SmartCandy and makes claims for which it lacks substantiation.

The potential violations cited in this letter are not intended to be all inclusive. In connection with this inquiry, we request your cooperation in providing the following information to this Office at the address provided below on or before April 20, 2015:

1. Copies of all SmartCandy’s advertising, whether in print, television, radio, internet or other media that have been aired, broadcast, published, printed, distributed

over the internet or otherwise presented to the public in New York State or that invited New York State residents to seek more information in other locations, and copies of all advertisements that are scheduled to be presented, along with a schedule of when and where such ads appeared or are scheduled to appear.

2. All SmartCandy-related media kits, press kits and healthcare professionals kits, including all promotional materials intended for distribution to and viewing by the general public, consumers and their families.

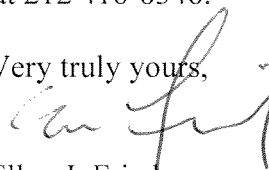
3. All substantiation, including but not limited to all surveys, studies and testing, including the assessment of claimed nutritional and health benefits for children of the SmartCandy products, as well as their “natural[] design,” whether conducted by SmartCandy or by any independent testing laboratory.

3. All substantiation for the claim that SmartCandy meets USDA guidelines for snacks in school.

Following the receipt and review of the requested documents, we will arrange a meeting to discuss SmartCandy’s production and marketing of SmartCandy products.

If you have any questions, please contact me at 212 416-8348.

Very truly yours,



Ellen J. Fried
Assistant Attorney General