UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Advertising Practices

June 23, 2009

VIA EMAIL AND FEDERAL EXPRESS

Phillip Allen, Esq.
Division Counsel
Long John Silver's/A&W Restaurants
Yum! Brands, Inc.
1441 Gardiner Lane, Mail Drop L2520
Louisville, KY 40213

Re: Long John Silver's - Lobster Bites, File No. 092-3149

Dear Mr. Allen:

As you know, the staff of the Federal Trade Commission's Division of Advertising Practices has conducted an investigation into whether Long John Silver's, Inc. violated Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52, in connection with the marketing of its Lobster Bites food product.

Specifically, the staff's inquiry focused on whether Long John Silver's adequately discloses in its marketing materials that its "Lobster Bites" product is made from langostino lobster, a species of squat lobster, rather than the American species more commonly associated with the term lobster. Of particular concern to the staff was a television commercial depicting American lobster in a manner that suggested Long John's Silver's "real lobster" bites were made from the American species. It is the staff's position that, to avoid misleading consumers, the term "langostino" must appear adjacent to the word "lobster" and must be sufficiently prominent that consumers notice and understand the term to be part of the product name. This position is consistent with the Food and Drug Administration's policy on labeling claims for langostino lobster and other squat lobster species.[1] The staff also believes that, because consumers may not understand that langostino lobster is a substantially different species from the more commonly consumed American lobster, marketers of the langostino species should avoid any express or

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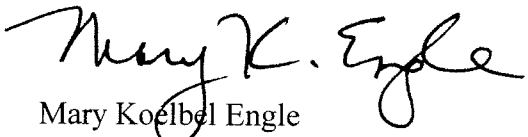
[1] FDA permits the use of the term "lobster" without qualification only for the *Homarus* species, which includes the European and American lobsters. Labeling of other species, including langostino, as "lobster" without qualification would cause the product to be misbranded in violation of the Federal Food, Drug, and Cosmetic Act. *See* FDA's 2008 Seafood Complete List, *available at* http://www.accessdata.fda.gov/scripts/SEARCH_SEAFOOD/index.cfm?other=complete1.

implied claims, through words or images, that contribute to that misperception.

In light of assurances made by Long John Silver's about revisions to its marketing materials, we have decided not to recommend enforcement action at this time. The staff based its decision on Long John Silver's cooperation in making prompt revisions to its marketing materials. Specifically, Long John Silver's immediately discontinued the television commercial of concern to the staff and revised its website. The company has also indicated that, in all future advertising and marketing material, it will include the term "langostino" adjacent to the term "lobster" in a sufficiently prominent manner so that consumers understand that it is part of the product name. Finally, Long John Silver's has indicated that it will complete necessary modifications to existing point-of-purchase materials and other in-store materials within approximately eight weeks and will direct its franchisees to use the revised versions. Therefore, it appears that no further action is warranted at this time and the investigation is closed. The staff appreciates Long John Silver's cooperation in the resolution of this matter.

This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Very truly yours,



Mary Koelbel Engle
Associate Director

good cause by the Board or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] September 10, 1971.

[SEAL] TYNAN SMITH, *Secretary.*

[FR Doc.71-13595 Filed 9-15-71;8:45 am]

FIRST NATIONAL CHARTER CORP.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by First National Charter Corporation, which is a bank holding company located in Kansas City, Mo., for prior approval by the Board of Governors of the acquisition by applicant of 80 percent or more of the voting shares of the Bank of Overland, Overland, Mo.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Kansas City.

Board of Governors of the Federal Reserve System, September 10, 1971.

[SEAL] TYNAN SMITH, *Secretary.*

[FR Doc.71-13596 Filed 9-15-71;8:45 am]

[1] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Chairman Burns.

FEDERAL TRADE COMMISSION

MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL TRADE COMMISSION AND THE FOOD AND DRUG ADMINISTRATION

This Memorandum of Understanding updates and replaces:

a. "Working Agreement Between the Federal Trade Commission and the Food and Drug Administration—June 1954."

b. "Liaison Agreement Between the Federal Trade Commission and the Food and Drug Administration—January 23, 1968."

I. Purpose:

a. It is agreed that the common objective of preventing injury and deception of the consumer requires that the statutory authorities and procedures, and the manpower and other resources available to each agency are so employed as to afford maximum protection to the consumer. This means joint planning of coordinated programs, exchange of information and evidence to the extent permitted by law, by the staffs of both agencies in appropriate undertakings, and the careful selection of the procedure of either agency (or simultaneously by both) promising greatest benefit to the public.

b. In order to provide for exchange of complete information so that both agencies will be utilized to the maximum effectiveness in the public interest, each agency will designate a liaison officer to serve as the primary source of contact. These liaison officers will be responsible for currently informing each other of proposed proceedings and of internal developments in areas of joint concern to the extent that such information is not privileged.

II. *Designated liaison officers.*

a. *Federal Trade Commission.* The Assistant to the General Counsel of the Federal Trade Commission.

b. *Food and Drug Administration.* The Associate Commissioner for Compliance of the Food and Drug Administration.

III. In order to facilitate the purposes of this agreement, it is specifically agreed that:

a. With the exception of prescription drugs, the Federal Trade Commission has primary responsibility with respect to the regulation of the truth or falsity of all advertising (other than labeling) of foods, drugs, devices, and cosmetics. In the absence of express agreement between the two agencies to the contrary, the Commission will exercise primary jurisdiction over all matters regulating the truth or falsity of advertising of foods, drugs (with the exception of prescription drugs) devices, and cosmetics;

b. The Food and Drug Administration has primary responsibility for preventing misbranding of foods, drugs, devices, and cosmetics shipped in interstate commerce. The Food and Drug Administration has primary responsibility with respect to the regulation of the truth or falsity of prescription drug advertising. In the absence of express agreement between the two agencies to the contrary, the Food and Drug Administration will exercise primary jurisdiction over all matters regulating the labeling of foods, drugs, devices, and cosmetics;

c. The initiation of proceedings involving the same parties by both agencies shall be restricted to those highly unusual situations where it is clear that the public interest requires two separate proceedings. For the purpose of avoiding duplication of work and to promote uniformity and consistency of action in areas where both agencies have a concern and the actions of one agency may affect proceedings by the other, it is recognized that such liaison activity is required in instances where:

(1) The same, or similar claims are found in both labeling and advertising;

(2) Written, printed or graphic material may be construed as either advertising or as accompanying labeling or both, depending upon the circumstances of distribution;

(3) The article is a drug or device and appears to be misbranded solely because of inadequacy of directions for use appearing in the labeling for conditions for which the article is offered in advertising generally disseminated to the public.

IV. It is further agreed that:

a. Regulations promulgated under section 5 of the Fair Packaging and Labeling Act by the respective agencies for the commodities for which they have jurisdiction under that Act, shall be as uniform as possible.

V. Meetings to be held:

a. The respective liaison officers will hold meetings from time to time to discuss matters of concern to each agency and that they will be accompanied by whatever staff they may deem appropriate and necessary.

VI. Period of agreement:

This agreement, when accepted by both parties, covers an indefinite period of time and may be modified by mutual consent of both parties or terminated by either party upon thirty (30) days advance written notice.

Approved and accepted for the Food and Drug Administration: April 27, 1971.

CHARLES C. EDWARDS, *Commissioner of Food and Drugs.*

Approved and accepted for the Federal Trade Commission: May 14, 1971.

MILES W. KIRKPATRICK, *Chairman, Federal Trade Commission.*

By direction of the Commission dated September 9, 1971.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-13640 Filed 9-15-71;8:49 am]

OFFICE OF EMERGENCY PREPAREDNESS

NEW JERSEY

Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in me by the President under Executive Order 11575 of December 31, 1970; and by virtue of the Act of December 31, 1970, entitled "Disaster Relief Act of 1970" (84 Stat. 1744); notice is hereby given that on September 4, 1971, the President declared a major disaster as follows:

I have determined that the damages in certain areas of the State of New Jersey from heavy rains and flooding, beginning about August 27, 1971, are of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 91-606. I therefore declare that such a major disaster exists in the State of New Jersey. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11575 to administer the Disaster Relief Act