

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
OFFICE OF THE COMMISSIONER
28 STATE House STATION
AUGUSTA, MAINE 04333-0028

JOHN ELIAS BALDACCI
GOVERNOR

ROBERT W. SPEAR
COMMISSIONER

February 5, 2003

Joan Z. Bernstein, Esquire
Bryan Cave, LLP
700 Thirteenth Street, N.W.,
Washington DC 20005-3960

Re: **Maine Quality Trademark for Milk and Milk Products**

Dear Attorney Bernstein:

This is in response to your November 8, 2002 letter requesting that the Maine Department of Agriculture, Food and Rural Resources suspend the use of the Maine Quality Trademark for milk. We have carefully considered the issues raised in your initial letter, as well as subsequent letters from your office dated December 18 and 23 respectively, and, after consultation with the Attorney General's Office, have concluded that there is no cause for the Department to suspend the use of the trademark.

The Department registered the Maine Quality Trademark in 1991 pursuant to the authority provided by 7 M.R.S.A. § 443-B. Section 443-B limits the use of the trademark to products which have been produced in Maine. The statute also requires that the Department define, by rule, "the meaning of the term 'produced within the State' and the minimum percent of the content of any package that must have actually been produced within the State to meet the requirements for use of" the trademark.

In 1994 the Maine Legislature enacted 7 M.R.S.A. § 2901 -3. Under that statute the Department was directed to adopt rules permitting the use of the trademark on milk and milk products. In that statute, the Legislature required that the rules include limitations relating to the use of milk from cows treated with rBST.

Acting in accordance with these statutes, in 1994 the Department lawfully promulgated 01-001 CMR c. 136 - Official State of Maine Grades and Standards for Milk and Milk Products for Use with the State of Maine Quality Trademark. To qualify for licensure for the use of the trademark under this rule, the dairy is required to annually obtain affidavits from each milk producer from which the dairy purchases or intends to purchase milk, containing a sworn statement that the milk producer has not used rBST in the previous 60 days and does not possess or intend to use rBST during the upcoming year. Under the rule,

any milk producer that sells milk to a dairy licensed to use the trademark must notify that dairy by certified mail at least 40 days before using rBST.

The rule also provides that the dairy must, in turn, provide an affidavit to the Department setting forth the current list of all milk producers from which the dairy purchases or intends to purchase milk, affirming that the milk producers have furnished the required affidavits and that the dairy believes that the milk the dairy has or will purchase is from cows not treated with rBST. The dairy must also obtain written consent from each of the milk producers, allowing the Department to draw blood from the milking herd, examine milk production records, inspect medicine storage places, and review such business records as are reasonably necessary to verify compliance with the rules. Finally, the dairy's milk must meet the standards for Maine Grade A milk as set forth in 01-001 CMR c. 329 - Rules Governing Maine Milk and Milk Products.

In your letter you assert that several factors suggest Maine dairies are not complying with the requirements for licensing under the rules. However, no specific information was provided to support this claim, nor does the Department have any other evidence of non-compliance. If you have any information that would suggest that producers or dairies are not complying with these requirements of Maine law (and presumably Monsanto would be in a position to know which producers are using rBST), please let me know and I will see to it that the matter is promptly and fully investigated. In the absence of such information, I have no reason to believe that the law is being violated, and indeed all the information available to the Department indicates that no violations are occurring.

Specifically with respect to the legal requirement that milk marketed with the Maine Quality Seal must come from cows not treated with rBST, the Department believes its reliance on affidavits, as well as the other protections provided by the rules described above, is appropriate and sufficient, especially in light of the fact that there is no evidence whatsoever, at least as known to us, of any dairy or producer violation. Nevertheless, in the event the Department determined that further substantiation might be necessary, it may, in accordance with its rules, draw blood from the milking herd, examine milk production records, inspect medicine storage places, and review such business records as are necessary to verify compliance with the rules.

Your letter also claims that certain advertising by dairies licensed to use it misleads consumers by creating a false impression that the milk produced without the use of rBST is safer or of higher quality. Issues regarding the legality of the advertising claims of the dairies are for the Attorney General's Office to decide. Those issues are, however, separate from the Department's licensure of qualifying dairies to use The State's registered trademark as provided by Maine law. There is nothing inherently deceptive in the use of the trademark itself, which consists of a silhouette of the State of Maine, divided into three sections, with the word "Quality" appearing in the middle section. The State of Maine owns and has registered this trademark, and is entitled to license it as the law provides. Furthermore, the use of the trademark by licensed dairies in accordance with the Department's rules is entirely consistent with the provisions of 7 M.R.S.A. §§ 443-B and 2901-B.

Finally, your letter alleges that the trademark unfairly limits market access. However, the use of the trademark is completely voluntary. In no way does the Department's licensing of its use interfere with the free participation of other dairies or milk producers in the Maine milk market. Likewise, consumer choice is not limited in any way. The Department is satisfied that the use of the trademark is lawful and that it serves a legitimate State interest in promoting milk produced in Maine, under terms determined by Maine's Legislature, while not limiting access to markets in any way.

Sincerely,

Robert W. Spear, Commissioner
Department of Agriculture

cc: Mark Randlett, A.A.G.