

June 12, 2014

VIA OVERNIGHT DELIVERY

Ms. Denise Morrison President and Chief Executive Officer Campbell Soup Company 1 Campbell Place Camden, NJ 08103

Re: Campbell Soup Company's misleading marketing of V8 V-Fusion

Refreshers and V8 Splash Juice Drinks

Dear Ms. Morrison:

The Center for Science in the Public Interest ("CSPI") has identified deceptive practices in the marketing¹ of V8 V-Fusion Refreshers Juice Drinks ("V8 V-Fusion Refreshers")² and V8 Splash Juice Drinks ("V8 Splash")³ (collectively "Products"). This letter details CSPI's findings and offers to discuss resolution before further legal action. Ultimately, if litigation became necessary, CSPI would seek an injunction prohibiting Campbell Soup Company ("Campbell") from (1) misleading consumers about the juice content, nutritional value, and healthfulness of its Products; (2) representing that its V8 V-Fusion Refreshers contain no added sugars; and (3) making deceptive nutrient content claims on its V8 Splash Products in violation of United States Food and Drug Administration's ("FDA") Fortification rule. CSPI may also seek restitution, damages, disgorgement, and attorneys' fees.

<sup>&</sup>lt;sup>1</sup> The term "marketing" includes all forms of marketing in all forms of media and venues, including without limitation: print advertisements, television and radio commercials, product labels, magazines, use of licensed characters, use of celebrities, viral marketing, websites, signage at restaurants, toys, advergaming, sponsorships, school-based marketing (such as book covers and sponsored educational material), and kids clubs.

<sup>&</sup>lt;sup>2</sup> This letter only addresses the V8 V-Fusion Refreshers (20 – 25% juice) variety of the V8 V-Fusion Product Line.

<sup>&</sup>lt;sup>3</sup> This letter addresses the entire line of V8 Splash Juice Drink Products, including V8 Splash (5 – 10% juice), Diet V8 Splash (8% juice), and V8 Splash Smoothies (10% juice).

### Facts Giving Rise to Campbell's Liability

Campbell markets its V8 V-Fusion Refreshers and V8 Splash Products with a variety of representations and claims. The issues that most concern CSPI are:

- 1. Campbell deceptively markets its Products. It misleads consumers about the juice content, nutritional value, fruit and vegetable content, and healthfulness of its V8 V-Fusion Refreshers and V8 Splash Products.
- 2. Campbell misrepresents that its V8 V-Fusion Refresher Products contain no added sugar in violation of 21 C.F.R. 101.60.
- 3. Fortification of V8 Splash Products is improper pursuant to FDA's rule on fortification.

This letter will discuss each of these concerns in detail below.

1. Campbell deceptively markets its Products. It misleads consumers about the juice content, nutritional value, and healthfulness of its V8 V-Fusion Refreshers and V8 Splash lines of Juice Drinks.

Campbell has, over the last 75 years, built a reputation and brand loyalty around its V8 Original 100% Vegetable Juice. Campbell markets its Original Product with the misleading claim that "[e]ating a wide range of vegetables provides essential vitamins, minerals and phytonutrients (plant-nutrients) that your body needs. V8® 100% vegetable juice makes it so easy to get many of these key vitamins and nutrients in one delicious drink." Despite its high sodium content and the fact that vegetable juice is not equivalent to eating real vegetables, Campbell's has built a trusted reputation and nutritious "health halo" around its line of V8 Original 100% Vegetable Juice.

In recent years, Campbell has expanded its offerings to include a variety of blended fruit and vegetable drinks, among them a V8 V-Fusion Juice line and a V8 Splash Juice Drink line. Both V8 V-Fusion and V8 Splash Products make prominent nutrient content claims and depict fresh fruit and vegetables on the front labels.

V8 V-Fusion Products depict images of fresh fruits and vegetables on labels and are marketed as "nutrition-packed" and containing "No added sugar, no high fructose corn syrup."

<sup>&</sup>lt;sup>4</sup> V8 website, Nutritional Benefits, www.v8juice.com/benefits\_v8.aspx (last visited May 20, 2014).

<sup>&</sup>lt;sup>5</sup> V8 website, Products, www.v8juice.com/Products.aspx?SectionID=fusion (last visited May 20, 2014).

<sup>&</sup>lt;sup>6</sup> V8 website, Products, www.v8juice.com/Products.aspx (last visited May 20, 2014).

V8 Splash Products also depict images of fruits and vegetables on their labels in conjunction with prominent banners declaring the drinks' "antioxidant vitamins A & C" content.

Campbell's marketing encourages consumers to "Discover all the great nutritional benefits of V8®" and "enjoy the many benefits that come from getting the recommended servings of vegetables every day." Campbell creates erroneous impression that consuming the Products is a viable alternative to getting a recommended serving of fruits and vegetables—an impression that is reinforced by the prominent antioxidant claims and pictures of fruits and vegetables on its V8 Drink labels.

Unfortunately for consumers, this is not true. Not only are the Products unable to provide the same nutritional benefits as whole fruits and vegetables, Campbell does not extend the same quantity of juice or nutrient content to all of its new juice blends. Campbell confuses consumers with similar label formats that highlight the health benefits of each V8 Product Line by depicting images of fresh fruits and vegetables on the Product labels and in Product marketing, regardless of actual juice content, which can be as low as 5%.

The packaging of V8 V-Fusion Refreshers and V8 Splash Products is almost graphically identical to that of the V-Fusion 100% Juice Products and the original V8 products (see Illustration 1 below), which implies to consumers that the various Product Lines are equally healthful. In reality, V8 Splash Products are simply fruit/vegetable juice cocktails that contain mostly water along with artificial food dyes, high fructose corn syrup (or potentially harmful artificial sweeteners sucralose and acesulfame potassium in the diet variety) and only 5% – 10% juice. V8 Refreshers Products are also just fruit/vegetable juice cocktails that contain mostly water, added sugars and only 20% – 25% juice. In addition, the similarity of the original V8 V-Fusion and V8 V-Fusion Refreshers? Product names is particularly misleading given the Products' vastly different nutrient profiles.

<sup>&</sup>lt;sup>7</sup> V8 website, Nutritional Benefits, www.v8juice.com/Benefits.aspx (last visited May 20, 2014).

<sup>&</sup>lt;sup>8</sup> V8 website, Our Mission, www.v8juice.com/OurMission.aspx (last visited May 20, 2014).

Illustration 1 V8 Splash, V8 V-Fusion, V8 V-Fusion Refreshers, and V8 Original Products



While V8 Original and V8 V-Fusion 100% Juice Products highlight the 100% percent juice on their front labels, V8 Splash and V8 V-Fusion Refreshers Products conveniently omit any percent juice disclosure on their front labels. This information is also conveniently omitted from the website, as are the ingredient lists. Instead, Campbell cherry-picks the information it makes available to consumers via predetermined "frequently asked questions" pop-up windows.

Despite Campbell's heavy emphasis on the fruit and vegetable content of the Products, the nutrient content claims for the Products are based, in part, on added vitamins. The "antioxidant vitamin C" is a synthetic vitamin added for purposes of fortification. The "antioxidant vitamin A" results from a *literal* splash of carrot juice contained in the beverage. Basing nutrient content claims for the Products on vitamins provided by fortification and minimal amounts of vegetable juice, while depicting fruits and vegetables boldly on front labels, misleads consumers to believe that the sources of the nutrients are fruit and vegetable juice rather than added nutrients.

<sup>&</sup>lt;sup>9</sup> See Illustration 1.

<sup>&</sup>lt;sup>10</sup> V8 website, Products, www.v8juice.com/FAQ\_V8Splash.aspx and www.v8juice.com/FAQ\_V8Fusion.aspx (last visited May 20, 2014).

<sup>&</sup>lt;sup>11</sup> Vitamins A and C.

<sup>&</sup>lt;sup>12</sup> For example, V8 Splash Mango Peach boldly features Antioxidant A & C claims on its label. An 8 oz. serving of V8 Splash provides 20% vitamin A while one cup of carrot juice (8 oz.) provides 900% of the Daily Value for vitamin A. This means there is less than 6 ml. (0.18 oz.) of carrot juice per serving.

Furthermore, the levels of vitamins A and C in Campbell's Products are unlikely to provide any of Campbell's claimed health benefits. Campbell's antioxidant claims imply that the vitamins A and C, in its Drinks can protect the eyes, skin, and teeth, and provide resistance to infections in typical American consumers. In fact, these benefits would apply only to consumers suffering from severe vitamin deficiencies, which are rare or non-existent in the United States. Furthermore, several large-scale, long-term randomized clinical trials have found that supplementing a diet with additional doses of vitamins A and C does not reduce the risk of heart disease, cancer, or diabetes.

Campbell's marketing campaign encourages consumers to drink its Products in lieu of fresh fruit or vegetables, implying that these Products are equal or superior to fresh fruits or vegetables.<sup>15</sup> While studies do suggest that people who consume more fruits and vegetables have a lower risk of heart disease,<sup>16</sup> those studies tracked people

<sup>&</sup>lt;sup>13</sup> Promises based on the claim that "V8® vegetable juices are an excellent source of antioxidant vitamins A and C," including that "Vitamin A helps to keep eyes and skin healthy and helps to protect against infections" and "Vitamin C helps to keep teeth and gums healthy and also aides [*sic*] in iron absorption." V8 website, Nutritional Benefits, V8 100% Vegetable Juice, www.v8juice.com/Benefits\_V8.aspx (last visited May 20, 2014).

<sup>&</sup>lt;sup>14</sup> Nancy R. Cook et al., A Randomized Factorial Trial of Vitamins C and E and Beta Carotene in the Secondary Prevention of Cardiovascular Events in Women: Results from the Women's Antioxidant Cardiovascular Study, 15 ARCHIVES INTERNAL MED. 167 (Aug. 2007); J. Michael Gaziano et al., Vitamins E and C in the Prevention of Prostate and Total Cancer in Men: the Physicians' Health Study II Randomized Controlled Trial, 1 JAMA 301 (Jan. 2009); I-Min Lee et al., Vitamins E in the Primary Prevention of Cardiovascular Disease and Cancer: the Women's Health Study: a Randomized Controlled Trial, 1 JAMA 294 (Jul. 2005); Yiquing Song et al., Effects of Vitamins C and E and Beta-Carotene on the Risk of Type 2 Diabetes in Women at High Risk of Cardiovascular Disease: A Randomized Controlled Trial, 90 Am. J. CLINICAL NUTRITION 429 (June 2009). In addition, FDA has concluded that "it is highly unlikely" or "highly uncertain" that vitamin C or E supplements reduce the risk of bladder, colorectal, gastric, or renal cancers. FDA Letter to Jonathan W. Emord, Re: Petition for Qualified Health Claims: Antioxidant Vitamins C and E and Reduction in the Risk of Site-Specific Cancers (Docket Number) FDA-2008-Q-0299 (June 19, 2009), available at www.fda.gov/Food/IngredientsPackagingLabeling/LabelingNutrition /ucm166913.htm.

<sup>&</sup>lt;sup>15</sup> V8 V-Fusion Facebook website, www.facebook.com/V8VFusion (last visited May 20, 2014).

<sup>&</sup>lt;sup>16</sup> F.J. He et al., *Increased Consumption of Fruit and Vegetables Is Related to a Reduced Risk of Coronary Heart Disease: Meta-Analysis of Cohort Studies*, 21 J. HUMAN HYPERTENSION 717 (2007). In contrast, the most recent studies find no lower risk of cancer in people who

who consumed a wide variety of fresh fruits and vegetables, not juices alone (if any), and certainly not sugary juice cocktails like V8 Splash or V8 V-Fusion Refreshers. In fact, the negative effects of the high sugar and liquid calorie content of Campbell's Products on consumers' health outweigh any potential health benefits from vitamins A and C.<sup>17</sup>

Even 100% fruit or vegetable juices are less healthful than whole fruits or vegetables, <sup>18</sup> let alone beverages with 5% – 25% juice and added sugars. Furthermore, the 2010 Dietary Guidelines recommends limits on fruit juice intake:

Although 100% fruit juice can be part of a healthful diet, it lacks dietary fiber and when consumed in excess can contribute extra calories. The majority of the fruit recommended should come from whole fruits, including fresh, canned, frozen, and dried forms, rather than from juice.<sup>19</sup>

Contrary to Campbell's representations, consumption of the Products is not equivalent to consuming whole fruits and vegetables and does not promote overall health. Misled by Campbell's claims, consumers may attempt to meet the recommended

consume more fruit and vegetables. T.J. Key, *Fruit and Vegetables and Cancer Risk*, 104 BRITISH J. CANCER 6 (2011).

<sup>17</sup> Rachel K. Johnson et al., *Dietary Sugars Intake and Cardiovascular Health: A Scientific Statement From the American Heart Association*, 120 CIRCULATION AMERICAN HEART ASS'N 1011 (Aug. 2009); Vasanti S. Malik et al., *Sugar-Sweetened Beverages*, *Obesity*, *Type 2 Diabetes Mellitus*, and Cardiovascular Disease Risk, 121 CIRCULATION AMERICAN HEART ASS'N 1356 (2010); Lisa Te Morenga et al., *Dietary sugars and Body Weight: Systematic Review and Meta-Analyses of Randomised Controlled Trials and Cohort Studies*, 345 British Med. J. 1136 (Jan. 2013); Janne C. de Ruyter et al., *A Trial of Sugar-free or Sugar-Sweetened Beverages and Body Weight in Children*, 367 N. Engl. J. Med. 1397-406 (Oct. 2012); Quanhe Yang et al., *Added Sugar Intake and Cardiovascular Diseases Mortality Among US Adults*, 01 JAMA Internal Med. 13563 (Feb. 2014).

<sup>18</sup> Robin P. Bolton et al., *The Role of Dietary Fiber in Satiety, Glucose, and Insulin: Studies with Fruit and Fruit Juice,* 34 Am. J. CLIN. NUTR. 211-217 (Feb. 1981); G.B. Haber et al., *Depletion and Disruption of Dietary Fibre,* The Lancet 679 (Oct. 1977); JA Houchins et al., *Effects of Fruit and Vegetable, Consumed in Solid vs Beverage Forms, On Acute and Chronic Appetitive Responses in Lean and Obese Adults,* 37 INT'L J. OBESITY 1109-115 (Nov. 2012); Jenny A. Houchins et al., *Beverage vs. Solid Fruits and Vegetables: Effects on Energy Intake and Body Weight,* 20 OBESITY 1844 (2012); Isao Muraki et al., *Fruit Consumption and Risk of Type 2 Diabetes: Results From Three Prospective Longitudinal Cohort Studies,* 347 BRITISH MED. J. 1136 (Aug. 2013).

<sup>19</sup> USDA Dietary Guidelines (2010), Chapter 4, available at www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/PolicyDoc/Chapter4.pdf.

servings of fruits and vegetables by drinking Campbell's high-sugar Products instead of consuming fresh fruit, vegetables, or other lower-calorie, lower-sugar *whole foods*.

The pictures of fruits and vegetables in conjunction with bold antioxidant vitamin claims on V8 packaging, websites, Facebook pages, and other advertising serve to confuse consumers as to which product lines contain juice and which products are primarily sugar water. Campbell misleads consumers by creating the erroneous impression that the vitamins contained in its Products are sourced from the fruits and vegetables depicted on its labels and that *all* of its Products are wholesome, healthful alternatives to consuming fresh fruits and vegetables.

It is misleading for a product to highlight the servings of "fruits and vegetables" and the ample amounts of nutrients they supposedly provide since fruit and vegetable juices are not equivalent to consuming whole fruits and vegetables and that the amount of juice contained is as little as 5%. It is also misleading to overstate the highlighted nutrients benefits while omitting the amounts of sugar and other potentially harmful ingredients that comprise the rest of the beverage. Campbell's marketing of its V8 V-Fusion Refresher and V8 Splash Products is therefore deceptive and misleading to consumers.

# 2. Campbell misrepresents that its V8 V-Fusion Refresher Products contain no added sugar in violation of 21 C.F.R. 101.60.

V8 V-Fusion Refreshers are part of the V8 V-Fusion Product Line. Campbell advertises its V8 V-Fusion Refreshers and its 100% Juice V8 V-Fusion Products together.<sup>20</sup> Campbell represents that its V8 V-Fusion Line of Products has no added sugar (see Illustration 2 below).<sup>21</sup>

<sup>&</sup>lt;sup>20</sup> V8 VFusion Facebook website, www.facebook.com/V8VFusion (last visited May 20, 2014). *See also* V8 website, Products, www.v8juice.com/products.aspx (last visited May 20, 2014).

<sup>&</sup>lt;sup>21</sup> V8 website, Products, www.v8juice.com/products.aspx (last visited January 28, 2014). The V8 website changes often. This illustration is a screenshot of the V8 website taken on January 28, 2014. While the exact layout of the website changes frequently, the misleading message that V8 V-Fusion Refreshers, like the rest of the products in the V8 V-Fusion Product line contain no added sugar, remains.

Illustration 2
Website Advertisement for V8 V-Fusion Products



As stated in the section above, the "no added sugar" claim is a false statement. While the majority of products in the V8 V-Fusion drink line do not contain added sugars, V8 V-Fusion Refreshers do. The illustration above provides just one example of how Campbell's website is constructed to mislead consumers as to the added sugar content of V8 V-Fusion Refreshers. The confusion caused by the fact that V-Fusion Refreshers and V-Fusion juices share the same name "V-Fusion," despite different nutrient and added sugar content, is reinforced by the V8 website. Campbell capitalizes on confusing consumers on its webpage and in advertising through the use of similar names and labels for drinks with varying nutrient content. Not only is it disingenuous and deceptive to market an entire product line as containing "no added sugar" when products in that line *do* contain added sugar, it also violates federal law. 21 C.F.R. 101.60(c)(iii)(B)(2)(1) provides that:

The terms "no added sugar," "without added sugar," or "no sugar added" may be used only if [no] amount of sugars . . . is added during processing or packaging.

Thus, Campbell is in violation of federal law and may not represent that V-Fusion Refreshers Products do not contain added sugar.

## 3. Fortification of V8 Splash Products is misleading and improper pursuant to FDA's rule on fortification.

Campbell promotes its V8 Splash Product as healthful and beneficial to consume, claiming that V8 Splash Products are "an excellent source of vitamins A and C."<sup>22</sup> The

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<sup>&</sup>lt;sup>22</sup> V8 website, Nutritional Benefits, V8 Splash Juice Drinks, www.v8juice.com/Benefits\_V8Splash.aspx (last visited May 20, 2014).

packaging of V8 Splash Products prominently displays pictures of fresh fruit and vegetables (see Illustration 1 above).

These claims imply to the average consumer that V8 Splash Products are healthful, nutritious drinks consisting largely of juices from the depicted fruits and vegetables, and derive their nutrient content from those fruits and vegetables. However, Campbell bases nutrient content claims for its V8 Splash Products on added vitamin C and minimal amounts of vegetable juice. Campbell is only able to claim that its V8 Splash Products are "an excellent source of antioxidant vitamins A and C," by adding vitamins to the V8 Splash Products.

This fortification violates FDA's Fortification rule<sup>23</sup> because the V8 Splash Products consist mostly of water and high fructose corn syrup.<sup>24</sup> FDA's Fortification rule bans the addition of nutrients to nutritionally void or harmful beverages. Absent improper fortification of V8 Splash Products, Campbell could not represent the sugary juice drinks as nutritious, vitamin-rich Products. Fortification of V8 Splash Products is therefore illegal and misleading to consumers.

### Campbell's Violations of State Consumer Protection Laws

Campbell's claims regarding the Products violate state consumer protection laws such as Massachusetts G.L. c. 93A, Texas Business & Professions Code § 17.41 *et seq.*, District of Columbia Code § 28-3905 *et seq.*, New Jersey Statutes Ann. 56:8-1 *et seq.*, California Business & Professions Code §§ 17200 & 17500, and California Civil Code §§ 1770(a)(5) & 1770(a)(14).

Further, Campbell's misrepresentations render the Products misbranded in violation of state food and drug laws, such as California's Sherman Food, Drug, and Cosmetic Law.<sup>25</sup>

As the manufacturer and distributor of the Products, Campbell is responsible for the injuries caused by its actions. Consumer injury occurs each time a consumer sees marketing for, or purchases, one of these Products. Each occurrence is a separate injury.<sup>26</sup>

<sup>&</sup>lt;sup>23</sup> "The Food and Drug Administration does not encourage indiscriminate addition of nutrients to foods, nor does it consider it appropriate to fortify . . . sugars; or snack foods . . .." 21 C.F.R. 104.20(a).

<sup>&</sup>lt;sup>24</sup> V8 Splash Products contain between 5% and 10% juice.

<sup>&</sup>lt;sup>25</sup> Cal. Health & Safety Code § 110660 ("Any food is misbranded if its labeling is false or misleading in any particular.").

<sup>&</sup>lt;sup>26</sup> E.g., Aspinall v. Phillip Morris Companies, Inc., 813 N.E. 2d 476 (Mass. 2004).

#### **Settlement Demand**

In light of the foregoing, CSPI invites Campbell to resolve these instances of illegal and deceptive marketing in order to avoid further legal action. CSPI seeks to prevent Campbell from deceptively marketing alleged health benefits in association with its Products. Of course, adhering to honest marketing practices would only benefit Campbell and its customers in the long term.

Should Campbell choose not to respond to CSPI's findings, CSPI will pursue litigation to seek the following:

- Entry of a permanent injunction that prohibits Campbell from representing that its Products are healthful and beneficial to consume.
- Entry of a permanent injunction that prohibits Campbell from fortifying any of its V8 Splash Juice Drinks.
- Disgorgement of Campbell's profits from the sale of its Products.

If Campbell is willing to discuss a settlement or requires additional information about the claims documented herein, we welcome contact from counsel.

Regards,

Stephen Gardner Litigation Director

Erika Knudsen, Litigation Associate

Stephin Parlow

By: