



Division of Advertising Practices

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

August 19, 2008

Jerry L. Lovejoy, Esq.
General Counsel
El Pollo Loco, Inc.
3535 Harbor Blvd., Suite 100
Costa Mesa, California 92626

Re: El Pollo Loco Advertising Claims
Matter No. 082-3190

Dear Mr. Lovejoy:

As you know, the staff of the Federal Trade Commission conducted an investigation of El Pollo Loco, Inc. for possible violations of Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 52. The investigation concerned use of the term "healthy" in certain television advertising and web site materials.

The staff's inquiry focused on whether references to "healthy" in these materials were consistent with the nutritional criteria established by the Food and Drug Administration ("FDA") for use of this claim.¹ Specifically, the staff was concerned that the use of the term "healthy" by El Pollo Loco was not limited to menu offerings meeting FDA's definition of that term. Although FDA's regulation defining the term "healthy" applies to claims made in food labeling, the Federal Trade Commission has taken the position that, to avoid misleading consumers, the use of FDA-defined terms in food advertising should be consistent with the FDA labeling definition.²

We appreciate the company's prompt action to revise its television advertising and to modify its web site materials.³ Given the limited dissemination of the advertising and the company's revisions, the staff has determined not to recommend enforcement action at this time

¹ See 21 C.F.R. §101.65(d)(2)-(4), available at <http://www.cfsan.fda.gov/~dms/flg-6-2.html#healthy>.

² See Enforcement Policy Statement on Food Advertising (May 1994) at Section III.A.1., available at <http://www.ftc.gov/bcp/policystmt/ad-food.shtm>.

³ The staff notes that the term "healthy" continues to appear on El Pollo Loco's web site as part of the design of a third-party logo for "healthydiningfinder.com," an independent site that identifies healthier menu offerings at several different restaurants. The healthydiningfinder.com site explains its nutrition criteria and includes a disclosure that featured menu items do not always meet the FDA criteria for "healthy." See <http://healthydiningfinder.com/site/diners/nutrition-criteria.htm>.

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and is closing the investigation.

This action is not to be construed as a determination that a violation has not 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 K. Engle
Associate Director
Division of Advertising Practices