

EA  
June 1, 1943

State Dairy Commission  
New State House  
Phoenix, Arizona

Attention: Mr. J. H. Shouse  
Deputy Commissioner

Gentlemen:

We acknowledge receipt of your letter of May 24, with copy of letter of May 20, 1943, from Arizona Milk Producers.

This involves construction of Sections 50-936 and 50-952, Arizona Code 1939, being Sections 36 and 52 of the Act of 1931, referred to by Mr. Dysart as the "State Dairy Code".

Should the product "Cremix" not come under the exception of the last sentence of Section 36, (now known as Section 50-935 of the Code of 1939), referring to "Ices, sherbets and other similar frozen products" etc., it is the apparent intention of the law to prohibit the sale of imitations of milk products as defined therein.

It is the general rule that the article sold or offered for sale need not be adulterated or deleterious to health to come within the statute against imitations. It is sufficient to constitute a violation that the article sold or offered for sale for human consumption is in fact an imitation of the well known and recognized genuine product regardless of the name under which such product shall be sold or offered for sale.

If the product "Cremix" is offered for sale in the original package so labeled and advertised thereon in such manner as not to mislead the consumer there would be no violation under this section. But on the other hand, any person, if using the same through some method of mixing or processing, created a product to be offered for sale, or sold, in imitation of such frozen milk product as defined in the statute, he would be a violator of the law.

Section 50-952 of the Code (Section 52 of the Act of 1931, referred to as the "Milk Code") makes it a misdemeanor for any one

"who shall sell, or cause to be sold, any frozen product, which shall closely resemble any of the frozen products as defined in this Act, unless such product has the equivalent in butter fat content to such frozen product so imitated as required in this

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Act, regardless of the name under which such product shall  
be sold or offered for sale."

Respectfully,

JOE CONWAY  
Attorney General

THOMAS J. CROAFF  
Assistant Attorney General

EARL ANDERSON  
Chief Assistant Attorney General

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