



October 22, 2019

VIA EMAIL

Mr. Michael Foyteck
Owner/President
Artesian Water
7050 Big Sky Drive, Suite D
Holly, MI 48442
sales@drinkartesian.com, smiller@drinkartesian.com

Dear Mr. Foyteck:

The advertising and marketing materials produced and distributed by your company, Artesian Water, make patently false and misleading claims about bottled water. The International Bottled Water Association (IBWA) strongly objects to these claims, and we demand that you immediately cease and desist making these statements in your advertising and marketing materials (e.g., brochures, website, and videos).

Provided below are some of the false and misleading statements made by Artesian Water (AW):

1. The marketing brochure for Artesian Bottleless Water Cooler products includes false and misleading claims about bottled water, together with the statement *“Go Bottleless for a Healthier Workplace.”* This comparative statement misleads consumers by promoting AW’s product as being superior to bottled water. That is simply not true, and no reference or citation is provided to support this false claim.
2. AW’s marketing brochure also states that your product *“Eliminates Bottled Water Hazards”* and will *“Eliminate...Contamination that come with Plastic Bottled Water Delivery.”* In addition, a video on AW’s website states that *“A bottled water cooler itself is an open well with no barriers to air or water-borne bacteria and other contamination”* and that *“algae and slime”* are often found in bottled water coolers. All these statements are false and misleading. There are no “hazards” associated with bottled water products in sealed containers. Moreover, bottled water coolers are designed to minimize water’s exposure to any harmful substances. With advised proper maintenance and cleaning, there is a very limited chance of cooler water becoming contaminated.

Consumers who choose to drink bottled water can rely on its consistent record of safety and quality. All bottled water products—whether sourced from groundwater or public water systems—are subject to comprehensive government regulation (by the US Food and Drug Administration and various state agencies) and are produced utilizing a multi-barrier approach. Measures in a multi-barrier approach may include one or more of the following: source protection, reverse

osmosis, distillation, micro-filtration, carbon filtration, ozonation, and ultraviolet (UV) light. The finished water product is then placed in a sealed bottle under sanitary conditions and sold to the consumer.

Unlike the strict government regulations for bottled water, water filtration products are, for the most part, unregulated. This leaves consumers particularly vulnerable to false, misleading, and disparaging claims about the superiority of the water produced by such products. The current regulatory scheme for filtration products underscores the deception that AW propagates when it expressly states or implies that its products produce water that is superior to bottled water.

3. A video on the AW website states: *“Now you can go bottleless and drink artesian water.”* This statement is false and misleads consumers into thinking that the water your products make is “artesian water,” which it is not. Your company makes point-of-use filtered water coolers that use tap water as the source. Artesian water is a type of bottled water, which, as a packaged food product, is stringently and comprehensively regulated by the U.S. Food and Drug Administration (FDA). Terms like “artesian” and “spring” water aren’t just empty marketing terms—they’re used in highly specific ways to identify the source of the various bottled water products. The FDA has precise definitions (Standards of Identity (SOIs)) for all types of bottled water, including spring water, purified water, artesian water, mineral water, and sparkling water. (See 21 CFR 165.110 (a)(2)) This regulation helps prevent consumer fraud and confusion.

According to FDA regulations, *“[t]he name of water from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer is ‘artesian water’ or ‘artesian well water.’ Artesian water may be collected with the assistance of external force to enhance the natural underground pressure.”* AW clearly doesn’t make an artesian water and its statements are false and misleading and will cause consumer confusion about the product they are purchasing.

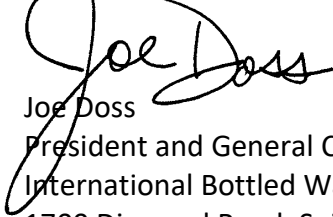
4. The video on the AW website states: *“Plastic water bottles are made from oil. 17 million barrels a year.”* That statement demonstrates a fundamental misunderstanding of how plastic containers are made. Most commercial plastic materials in the United States are derived from oil by-products leftover from gasoline production. The sticky solids that remain from oil refining are literally recycled into pellets that are melted and formed into plastic materials. It is false and misleading to state or imply that virgin barrels of oil are dedicated to making plastic bottles. Moreover, this false statement is often used and attributed to researchers at the University of Louisville. However, according to the school, it has never even heard about it.

In the United States, false, misleading, and unsubstantiated statements and claims can constitute unfair and deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and they are subject to enforcement by the Federal Trade Commission (FTC). Such claims are also actionable violations of the “false advertising” provisions of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a). Under 15 U.S.C. §§

1116-17, a successful false advertising plaintiff may obtain injunctive relief and may also recover a defendant's profits, damages sustained by the plaintiff, and costs of the action, as well as exemplary damages and attorneys' fees in appropriate cases.

Based on the concerns raised in this letter, IBWA demands that Artesian Water immediately cease and desist from making false, misleading, and disparaging statements about the quality and safety of bottled water. We look forward to your prompt response so that we may avoid additional action to protect the bottled water industry and the consuming public. I would be happy to speak with you or someone from your company directly to discuss this matter.

Sincerely,

A handwritten signature in black ink that reads "Joe Doss". The signature is written in a cursive style with a large, looping initial "J".

Joe Doss
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