

## The Kombucha Tea Recall

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Daily health drink turned nighttime libation? It sounds crazy, but it looks like it might be the future for Kombucha tea, a drink which has made a major splash with health food enthusiasts around the nation. Recently however, suppliers of Kombucha voluntarily pulled the product from supermarket shelves due to regulatory concerns related to alcohol content in the drink.

### Background

Originating in East Asia in the 1800's, Kombucha tea is also known as a "mushroom", because the yeast and bacteria contained therein take on a similar shape during fermentation.<sup>1</sup> It is prepared by combining yeast and bacteria with sugar and black or green tea.<sup>2</sup> Thereafter, the mixture is allowed to ferment, creating what is known as Kombucha.<sup>3</sup> This brewing process usually begins with a starter Kombucha, commonly known as the "daughter", which is taken from another Kombucha, typically referred to as "big momma."<sup>4</sup> The alcohol content of the "big momma" is directly correlated with its age and acidity.<sup>5</sup> The finished product is a drink composed of B vitamins, vinegar, and certain other compounds.<sup>6</sup> Kombucha has been associated with a number of health benefits, including, but not limited to, increased immunity, cancer prevention, and improved digestion and liver function.<sup>7</sup> Ardent drinkers of Kombucha also attribute weight loss, improved complexion, and reduction in hair loss to consumption of the product.<sup>8</sup> The most notable of these assertions comes from G.T. Dave, founder of Synergy Kombucha, who claims Kombucha consumption aided his mother in her battle against cancer.<sup>9</sup> The mainstream health community has yet to subscribe to the benefits of Kombucha, although many drinkers of Kombucha swear by these health benefits.<sup>10</sup> Little scientific evidence has been produced to verify these claims.<sup>11</sup> Furthermore, some doctors and the FDA advise that caution should be taken when consuming the product

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<sup>1</sup> *Vibranz Beverages*© Returns Popular Kombucha Tea to Stores Following Nationwide Recall, Businesswire.com, August 3, 2010, <http://www.marketwatch.com/story/vibranz-beverages-returns-popular-kombucha-tea-to-stores>; see Jennifer Lance, *FDA & TTB Investigate Kombucha for Elevated Alcohol Content*, GreenLivingIdeas.com, July 8, 2010, <http://greenlivingideas.com/topics/food-and-cuisine/fda-ttb-investigate-kombucha-elevated-alcohol-content>.

<sup>2</sup> Brent A. Bauer, M.D., *Kombucha Tea: What are the Health Benefits?*, MayoClinic.com, June 26, 2009, <http://www.mayoclinic.com/health/kombucha-tea/AN01658>.

<sup>3</sup> *Id.*

<sup>4</sup> Lance, *supra* note 1.

<sup>5</sup> *Id.*

<sup>6</sup> Bauer, *supra* note 2.

<sup>7</sup> *Id.*

<sup>8</sup> Lance, *supra* note 1.

<sup>9</sup> Synergy Kombucha label.

<sup>10</sup> Mitch Lipka, *Kombucha Tea After the Recall: It's Back and Still Controversial*, WalletPop.com, Aug. 5, 2010, <http://walletpop.com/blog/2010/08/05kombucha-tea-after-the-recall-its-back-and-still-controversial/>.

<sup>11</sup> Lance, *supra* note 1.

because of possible adverse reactions.<sup>12</sup> Reports have surfaced claiming that Kombucha has caused upset stomach, allergic reactions, toxic reactions, and metabolic acidosis in some consumers.<sup>13</sup> These adverse effects should be considered when drinking Kombucha, because the tea is often brewed in homes under non-sterile conditions.<sup>14</sup> Negative reactions aside, consumers are likely to continue to purchase the product because of the potential health benefits the drink is said to produce.

### The Recall

While sales of bottled water and sodas dropped recently due to the poor economy, the Kombucha tea craze enabled the product to stay resilient against the drop in consumer spending of bottled beverages.<sup>15</sup> Last year, sales in Kombucha tea and similar beverages topped \$295 million, a 25 percent increase over a two-year period.<sup>16</sup> In response to this boost in Kombucha sales, Whole Foods, through its Local Producer Loan Program, extended a low-interest loan to an already established tea company eager to grab a piece of the Kombucha tea market share.<sup>17</sup> In the midst of such progress, sales of Kombucha tea recently came to a screeching halt.<sup>18</sup> In June, suppliers of Kombucha voluntarily removed their product from grocery store shelves after discovering the product contained elevated levels of alcohol above what is allowed for by the FDA.<sup>19</sup> Additionally, Whole Foods, which considers the product a top seller, pulled the beverage from its stores nationwide to comply with regulatory standards.<sup>20</sup> The FDA mandates that any product containing over 0.5 percent alcohol by volume must have a warning label stating its alcohol content.<sup>21</sup> The FDA considers fruit juices, soft drinks and other beverages which may contain trace amounts of alcohol to be non-alcoholic beverages.<sup>22</sup> These beverages which contain trace amounts of alcohol may be labeled as “non-alcoholic” or “alcohol-free.”<sup>23</sup> Originally, Kombucha was believed to contain only trace amounts of alcohol, associated with the fermentation process.<sup>24</sup> Therefore, it was labeled as a non-alcoholic beverage.<sup>25</sup> The June recall was instituted after the discovery that some Kombucha beverages did contain over 0.5 percent alcohol content. Apparently, the tea was leaving the manufacturers’ hands with alcohol levels below 0.5 percent and was labeled as such,

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<sup>12</sup> Bauer, *supra* note 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Cf.* Lance, *supra* note 1.

<sup>16</sup> *Id.*

<sup>17</sup> See Dawn Kawamoto, *Alcoholic Tea: Whole Foods Pulls Kombucha Drinks*, DailyFinance.com, June 18, 2010, <http://www.dailyfinance.com/story/whole-foods-pulls-kombucha-teas-citing-alcohol-content/19522361/>.

<sup>18</sup> *Cf.* Lipka, *supra* note 10.

<sup>19</sup> *Id.*

<sup>20</sup> See Kawamoto, *supra* note 17.

<sup>21</sup> *Id.*

<sup>22</sup> U.S. Food and Drug Adm’n, *Inspections, Compliance, Enforcement, and Criminal Investigations*, www.fda.gov, November 29, 2005, <http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074430.htm>.

<sup>23</sup> *Id.*

<sup>24</sup> See Janene Gier, *Kombucha Tea Pulled from Shelves for Alcohol Testing*, THE UNIV. DAILY KANSAN, June 29, 2010, <http://www.kansan.com/news/2010/jun/29/kombucha-tea-pulled-shelves-alcohol-testing/>.

<sup>25</sup> *Id.*

but due to post-shipment fermentation, the alcohol levels elevated above the allowable limit in some of drinks.<sup>26</sup> The elevated alcohol content in these beverages was not reflected on the labels of the bottles sold in the grocery stores.<sup>27</sup> This mislabeling was concerning, because it could have potentially caused severe health problems for consumers who should not be drinking alcohol, such as children, pregnant women and those who cannot drink alcohol for medical reasons.<sup>28</sup> The founder of Synergy Kombucha spoke with the media after Kombucha had been removed from stores.<sup>29</sup> He made the assurance that the beverage had been pulled from shelves due to the mislabeling of the product and that any rumored contamination in the beverages was untrue.<sup>30</sup>

### The Future of Kombucha

Kombucha was originally marketed as a non-alcoholic beverage, but the recall appears to be altering the beverage's status.<sup>31</sup> The FDA has suggested that Kombucha simply be pasteurized, which would decrease the alcohol content and reduce the risk of contamination to consumers.<sup>32</sup> This process is controversial, because it would take away the very characteristics which make it so appealing to its drinkers... it is organic and non-pasteurized.<sup>33</sup> The latest update from market leader, Synergy Kombucha, says the company plans on manufacturing two different lines of Kombucha to meet market demand and FDA regulations.<sup>34</sup> The original Synergy Kombucha will be back with the same flavors, taste and packaging, but will be adorned with a different label stating that it contains above 0.5 percent alcohol by volume.<sup>35</sup> Its sister product will meet the FDA regulation for non-alcoholic beverages, possessing the "below 0.5 percent alcohol by volume" label.<sup>36</sup> This marketing dichotomy appears to be the best decision for Synergy Kombucha, and consumers as a whole, as it does not bar anyone from enjoying the product. It also allows at least one type of Kombucha to be sold in stores, if not both. In states where alcohol is barred from being sold in grocery stores, the non-alcoholic drink may be carried. In states where alcohol may be sold in grocery stores, perhaps both drinks may be shelved. Either way, this decision is definitely a good one for both Synergy Kombucha and the customers who love their product. Other Kombucha manufacturers could definitely take a cue from Synergy Kombucha as to how to appease the FDA regulations, while still making a quality Kombucha product. The real question is whether avid Kombucha drinkers are ready to make the mental adjustment that they are consuming an alcoholic beverage when drinking the real stuff.

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<sup>26</sup> See Jason Wachob, *Kombucha Update! Synergy's GT Dave Speaks*, MindBodyGreen.com, June 22, 2010, <http://www.mindbodygreen.com/0-1009/Kombucha-Update-Synergys-GT-Dave-Speaks.html>.

<sup>27</sup> Kawamoto, *supra* note 17.

<sup>28</sup> Lance, *supra* note 1.

<sup>29</sup> Wachob, *supra* note 26.

<sup>30</sup> *See Id.*

<sup>31</sup> See Gier, *supra* note 24.

<sup>32</sup> Kawamoto, *supra* note 17.

<sup>33</sup> *Id.*

<sup>34</sup> See Jason Wachob, *GT Dave: Kombucha is Coming Back! (But How Soon May Depend on Your State)*, www.MindBody.Green.com, Sept 13, 2010, <http://www.mindbodygreen.com/0-1392/GT-Dave-Kombucha-is-Coming-Back-But-How-Soon-May-Depend-on-Your-State.html>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

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