



Member Organizations:

Associated Milk Producers Inc.

Bongards' Creameries

Ellsworth Cooperative Creamery

FarmFirst Dairy Cooperative

First District Association

Midwest Dairymen's Company

Rolling Hills Dairy Producers Cooperative

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January 25, 2019

The Honorable Scott Gottlieb
Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, Maryland 20993

RE: Docket #: **ID:** FDA-2018-N-3522-4873
Use of the Names of Dairy Foods in Labeling of Plant-Based Products

Commissioner Gottlieb:

On September 28, 2018, the FDA invited interested parties to provide information on specific topics related to the labeling of plant-based products with names that include the names of dairy foods such as "milk," "cultured milk," "yogurt," and "cheese." We greatly appreciate the questions posed by FDA regarding consumer confusion with regard to the use of dairy names on plant-based product labels.

I am providing these comments on behalf of the Midwest Dairy Coalition (MDC), which is a coalition of seven farmer-owned dairy cooperatives based in the Upper Midwest.

We strongly believe that consumers should have access to a broad array of beverage and food choices. However, it should not be permissible for food and beverage manufacturers to use misleading labeling to market their products. We argue that the use of standardized dairy names on plant-based beverage and food products is causing consumer confusion.

Converting to more transparent labeling practices for plant-based beverages should not be a significant burden for those companies marketing those products. In fact, in many other countries, many of these same companies already use terms such as "beverage" instead of "milk" because transparent labeling laws are tightly enforced in those nations. In addition, even in the U.S., some retailers are already marketing plant-based beverages using the term "beverage" instead of "milk," because the retailers seek to be fully transparent with their consumers.

Consumer Confusion about Plant-Based Products Labeled Using Dairy Names

The members of the Midwest Dairy Coalition have had a long-standing concern about the lack of enforcement of FDA's existing standards of identity for milk and dairy products.

Specifically, 21 Code of Federal Regulations parts 131, 133 and 135 describe dairy terms that pertain to milk and cream, cheeses, and frozen desserts, respectively. In each of these regulations, the use of standardized dairy terms relate directly to the FDA definition of milk in 21 CFR 131.110(a), which clearly states that:

"Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows."

Unfortunately, because of years of poor enforcement of these dairy standards of identity by FDA, there has been a proliferation of imitation dairy products that have been negligently permitted to be labeled using terms such as “milk,” “cheese” and “yogurt,” but which do not meet the FDA standards for the use of those terms. We therefore appreciate the agency’s willingness to revisit the issue of dairy standards of identity enforcement.

We are particularly concerned that consumers are being misled to believe that imitation dairy products contain the same nutritional value as the actual dairy products they are imitating. In fact, imitation dairy beverages fail to match the nine essential nutrients contained in cow’s milk. This is particularly true for protein, where most imitation dairy beverages provide little to no protein, in comparison to the 8 grams of protein per serving of actual milk. It is also true that most imitation dairy beverages do not include as much potassium per serving as real milk, which should be a concern to FDA because potassium is one of three nutrients most lacking in American diets.

This consumer confusion has been documented in a series of recent consumer surveys. An online poll by IPSOS, commissioned by Dairy Management Inc., was conducted Oct. 30-31, 2018, and surveyed 2,006 adults nationwide. The survey found that:

- Only 20 percent of all consumers said plant-based beverages should be labeled milk, as U.S. dietary guidelines do not recommend imitators as a substitute for dairy milk; even when limited to buyers of plant-based drinks, support for mislabeling rose to only 41 percent.
- About 50 percent of consumers mistakenly perceive that the main ingredient of a plant-based beverage is the plant itself; such drinks are mostly flavored water.
- More than one-third of consumers erroneously believe plant-based beverages have the same or more protein than dairy milk. Milk has up to eight times more protein than its imitators.

This IPSOS survey is consistent with previous surveys as well. For example, another IPSOS survey, also commissioned by Dairy Management, Inc., in August of 2018 found that:

- 73 percent of consumers believed that almond-based drinks had as much or more protein per serving than milk.
- 53 percent said they believed that plant-based food manufacturers labeled their products “milk” because their nutritional value is similar.
- Misinformation was more prevalent among those who only bought plant-based drinks. Of those buyers, 68 percent strongly or somewhat agreed those drinks have the same nutritional content as dairy milk.

The latest survey, an online IPSOS poll – commissioned by National Milk Producers Federation – was conducted Jan. 4-7, 2019, and surveyed 1,005 adults nationwide. The respondents were asked the following question: “The U.S. Food and Drug Administration currently defines ‘milk’ as the product of an animal, but doesn’t enforce that labeling rule. Do you believe that the FDA should restrict non-dairy beverage companies from using the term ‘milk’ on their product labels?”

The survey respondents– by a nearly 3-to-1 margin – answered that they want FDA to enforce existing regulations and prohibit non-dairy beverage companies from using the term “milk” on their product labels.

While most consumers are aware that plant-based beverages do not contain actual cow’s milk, there is even evidence of confusion on that point for some consumers, as well. For example, results derived from online interviews of 1,000 U.S. adults, conducted Aug. 4 – 6, 2018 by the International

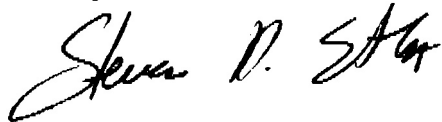
Food Information Council Foundation found that one quarter of consumers either thought almond drinks contained cow's milk or weren't sure.

We want to make it very clear that we are not stating that plant-based beverages should be prohibited from being marketed to consumers. Instead, we are simply emphasizing the profound nutritional differences of imitation dairy products and that plant-based products should not be allowed to be marketed using standardized dairy terms.

Our main request, therefore, is for FDA to simply enforce its own long-standing regulations regarding milk and dairy product standards of identity. However, if it would help to improve enforcement, we recommend the FDA clarify that it is not permissible to insert the name of a plant (such as almond, rice, or coconut) in front of a dairy term (such as "milk," "cheese," "yogurt" or "ice cream") on food or beverage labeling in order to comply with the FDA standards of identity in 21 CFR parts 131, 133 and 135.

We appreciate your willingness to address this issue, and look forward to continued dialogue with you and your agency on this important matter.

Thank you,

A handwritten signature in black ink that reads "Steven D. Etko". The signature is written in a cursive style with a large, stylized "S" at the beginning.

Steven D. Etko
Coordinator