

United States Senate

WASHINGTON, DC 20510

October 4, 2010

Dr. Margaret A. Hamburg, Commissioner
Food and Drug Administration
10903 New Hampshire Ave
Silver Spring, MD 20993-0002

Dear Dr. Hamburg,

We understand that the Food and Drug Administration (FDA) is seeking public comments regarding “the usefulness to consumers of point-of-purchase nutrition information Front-of-Pack and Shelf Tag Nutrition Symbols” (Docket No. FDA–2010–N–0210). Over the years, we have consistently heard concerns from farmers and consumers about food labeling, particularly for dairy products. In addition to the package labeling comment, we also wanted to inquire about which agencies and authorities govern similar potentially misleading dairy terms being used in marketing campaigns even if the labels on the products comply with current guidelines.

Unfortunately, terms such as “milk,” “cheese,” “ice cream,” and “yogurt” that have a specific standard of identity under federal law and regulations have increasingly been misappropriated on labels of other food products. While it is clear from scattered enforcement actions that FDA’s position is that these terms should not be used in such a manner for imitation dairy products, we are concerned that without more effective action, these misleading labels will become even more prevalent and further erode the meaning of the terms. This practice unfairly allows non-dairy products to imply nutritional equivalence to dairy products and potentially mislead consumers as to the true nutrient content or ingredients of these imitation products.

This is not to say that products imitating dairy products should be excluded from the market. Some consumers clearly want this choice whether it is due to dietary restrictions or personal preference such as a decision not to consume animal products, but the products should be accurately labeled, either as imitations or with a non-dairy term.

The National Milk Producers Federation (NMPF) has filed comments on the labeling docket on July 28, 2010 and a longer petition on April 28, 2010 requesting increased enforcement against what FDA regards as misbranded products under relevant law and regulations. These documents provide specific examples of products that are improperly using dairy terms on their labels and details on how some of these imitation products do not contain the nutrients consumers have come to associate with products using dairy terminology. We encourage you to take actions either through the pending docket or through other enforcement to eliminate these instances of misbranding.

In addition to our concern about the erosion of the meaning of these dairy terms, which have a standard of identity, through their use on non-dairy products, we also want to call your attention to the importance of upholding the integrity of our standards of identity as it relates to the incorporation into products of dairy ingredients not currently permitted by those standards. A common area of concern and one which merits continued scrutiny by FDA is the use of milk protein concentrate (MPC), dry ultra-filtered milk, or caseinates as substitutes for domestic milk in standardized products. This has been a particular concern given the oversight in our tariff structures which permits MPC and casein to enter the

U.S. virtually unrestricted. From 1995 to 2009, imports of MPC (Harmonized Tariff Schedule code 0404.90.10) rose from 15.89 million pounds to 95 million pounds. This is particularly problematic in times like these, when dairy prices are low and thousands of farmers are having trouble making ends meet. We should be doing all that we can to ensure that high quality, domestically produced standard dairy ingredients are used, as required by law and regulations, in products bearing standardized labels of identity in order to uphold their meaning to consumers and their value to America's dairy industry. If we allow claims to stand that misrepresent foods as standardized dairy products, we are not providing a level playing field for our farmers or the companies that are making real dairy products with standards of identity.

Finally, we seek your view as to which agencies and authorities govern marketing campaigns that use misleading dairy terminology, even though the labels on the package may be accurate. For example would it be permissible for a product that did not meet the standard of identity for "cheese," "ice cream," "milk", or "yogurt" to be advertised as being one of these products even if the label did not use the dairy term? Would the Federal Trade Commission or FDA have jurisdiction in such a case and to what degree do the two agencies work together on such issues?

We encourage your swift attention to this matter and look forward to your response.

Sincerely,

Urs O Feiguel

Zon Harkin

Kirsten E. Gillibrand

Jim Johnson

Jeanne Shabazz

Bob Sanders

Chuck Schumer

Bob Casey, Jr.

CC: Federal Trade Commission Chairman Jon Leibowitz