

Congress of the United States
Washington, DC 20515

October 3, 2018

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

Re: Docket No. FDA-2018-N-3522

Dear Commissioner Gottlieb:

We are pleased that your agency plans to take action to enforce FDA regulations defining what may be labeled a dairy product, to combat the proliferation of imitation and substitute dairy products in the marketplace that violate FDA regulations by employing standardized dairy terms on non-dairy products. We appreciate that you are following the direction provided to your agency by Congress in the recently-enacted Fiscal Year 2018 Consolidated Appropriations Act (H.R. 1625).

We are greatly concerned about the lack of enforcement of existing dairy terms that are described in 21 Code of Federal Regulations parts 131, 133, and 135, which pertain to milk and cultured milk products, cheeses, and frozen dairy desserts, respectively. These standards were written with the express purpose of promoting honesty and fair dealing in the interest of consumers by promulgating regulations that fix and establish, under their common or usual names, reasonable definitions or standards of identity for foods.

As you know, in recent years the proliferation of imitation and substitute dairy foods and beverages that are labeled with standardized dairy terms has dramatically increased. Use of the term “milk” by manufacturers of plant-based products is a clear violation of milk’s standard of identity, and this type of labeling practice is extending to other plant-based versions mimicking butter, yogurt, cheese and ice cream. Moreover, dairy terms convey specific information for consumers on nutritional content and ingredient performance that dairy imitations and substitutes do not meet. Imitation and substitute dairy products do not have standardized requirements for product nutritional content, composition, and processing as do the dairy products they imitate. Most importantly, they are not sourced from cows or other lactating mammals as referenced in the standards established in the Code of Federal Regulations.

Given that dairy terms are being misappropriated by manufacturers of imitation dairy products, we are pleased that FDA now plans to take action to address this issue. As your agency moves forward, we urge you to clearly indicate that imitation products will not be considered in compliance with regulations if they simply add the name of a plant material in front of a standardized dairy term, or otherwise reference dairy terms. Modifying the word “milk” with a plant product descriptor does not result in appropriate names for non-dairy beverages, as these products do not contain milk or milk ingredients, the plant-based liquids are not permitted ingredients in milk, and they do not represent the common or usual names of these beverages.

Some manufacturers of non-standardized imitation dairy products do properly label their products without resorting to standardized dairy names. The current marketplace includes, for example, "rice beverage," or fanciful names that do not have "milk" included in the name of the beverage on the front of the package. We also note that similar standards limiting dairy terms for use on real dairy products are the rule, not the exception, around the world, and that U.S. manufacturers of plant-based foods already comply with these regulations when they export their products.

Thank you for your attention to this matter and for your willingness to act. We look forward to working with you to enforce existing dairy standards of identity.

Sincerely,



PETER WELCH
Member of Congress



MIKE SIMPSON
Member of Congress



JOE COURTNEY
Member of Congress



TOM REED
Member of Congress



SEAN DUFFY
Member of Congress



SUZAN DELBENE
Member of Congress



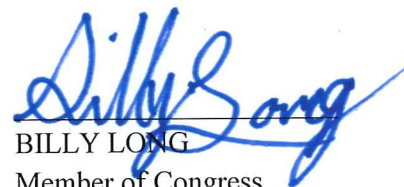
FRED UPTON
Member of Congress



COLLIN C. PETERSON
Member of Congress



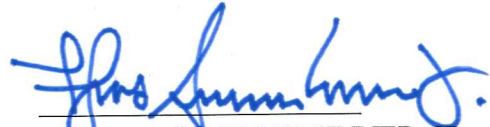
PAUL D. TONKO
Member of Congress



BILLY LONG
Member of Congress



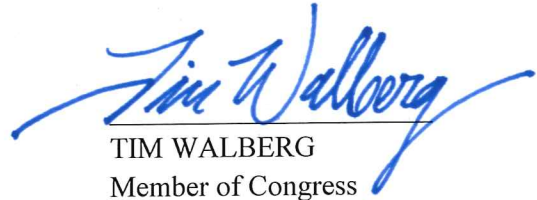
RON ESTES
Member of Congress



F. JAMES SENSENBRENNER, JR.
Member of Congress



BOB GIBBS
Member of Congress



TIM WALBERG
Member of Congress



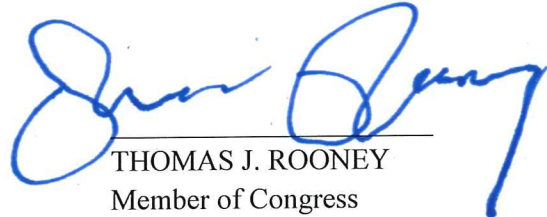
STEVE PEARCE
Member of Congress



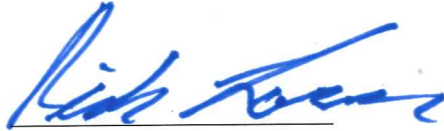
KURT SCHRADER
Member of Congress



TOM MARINO
Member of Congress



THOMAS J. ROONEY
Member of Congress



RICK LARSEN
Member of Congress



GUS M. BILIRAKIS
Member of Congress



LOU BARLETTA
Member of Congress



KYRSTEN SINEMA
Member of Congress



JOHN KATKO
Member of Congress



JOHN J. FASO
Member of Congress



CAROL SHEA-PORTER
Member of Congress



RON KIND
Member of Congress




MARK POCAN
Member of Congress



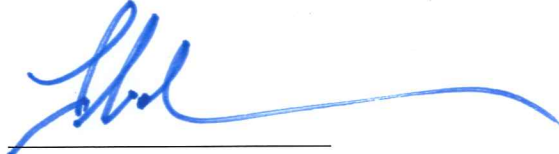
DAN NEWHOUSE
Member of Congress




CHRIS COLLINS
Member of Congress



MIKE GALLAGHER
Member of Congress



LLOYD SMUCKER
Member of Congress



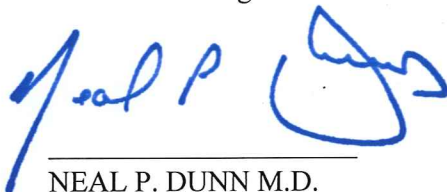
CLAUDIA TENNEY
Member of Congress



TED S. YOHO, D.V.M.
Member of Congress



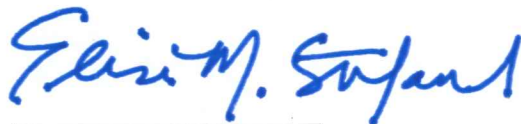
DENNIS A. ROSS
Member of Congress



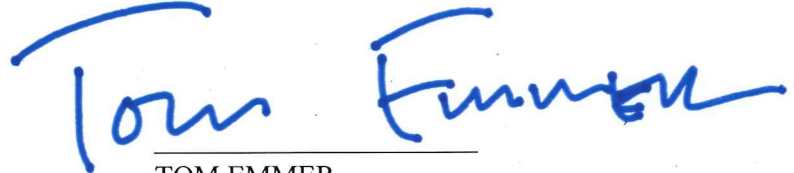
NEAL P. DUNN M.D.
Member of Congress



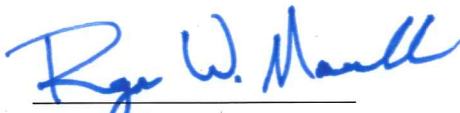
JIM RENACCI
Member of Congress



ELISE M. STEFANIK
Member of Congress



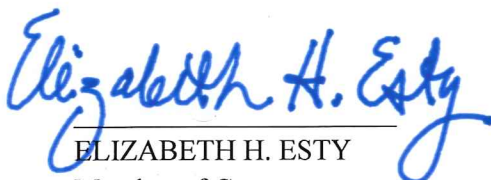
TOM EMMER
Member of Congress



ROGER MARSHALL M.D.
Member of Congress



DANIEL T. KILDEE
Member of Congress



ELIZABETH H. ESTY
Member of Congress



MICHELLE LUJAN GRISHAM
Member of Congress



PAUL MITCHELL
Member of Congress



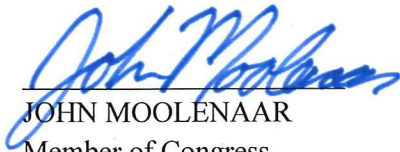
ANN MCLANE KUSTER
Member of Congress



TOM O'HALLERAN
Member of Congress



GLENN 'GT' THOMPSON
Member of Congress



JOHN MOOLENAAR
Member of Congress



GLENN GROTHMAN
Member of Congress