



# National Milk Producers Federation

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Agri-Mark, Inc.  
Associated Milk  
Producers Inc.  
Bongards' Creameries  
Cooperative Milk  
Producers Association  
Cortland Bulk Milk  
Producers Cooperative  
Dairy Farmers of  
America, Inc.  
Ellsworth  
Cooperative Creamery  
FarmFirst Dairy  
Cooperative  
First District Assoc.  
Foremost Farms USA  
Land O'Lakes, Inc.  
Lone Star Milk  
Producers  
Maryland & Virginia  
Milk Producers  
Cooperative Association  
Michigan Milk  
Producers Association  
Mid-West  
Dairymen's Company  
Mount Joy Farmers  
Cooperative Association  
Northwest Dairy Assoc.  
Oneida-Madison Milk  
Producers Cooperative  
Association  
Prairie Farms Dairy, Inc.  
Premier Milk Inc.  
Scioto County  
Cooperative Milk  
Producers' Association  
Select Milk  
Producers, Inc.  
Southeast Milk, Inc.  
St. Albans Cooperative  
Creamery, Inc.  
Swiss Valley Farms  
Tillamook County  
Creamery Association  
United Dairymen  
of Arizona  
Upstate Niagara  
Cooperative, Inc.  
Zia Milk  
Producers, Inc.

October 12, 2017

Susan T. Mayne, Ph.D.  
Director  
Center for Food Safety and Applied Nutrition (CFSAN)  
US Food and Drug Administration  
CPK 1 HFS-820  
5001 Campus Drive  
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Dear Dr. Mayne:

We love the fact that FDA had the wherewithal to send a warning letter recently to Nashoba Brook Bakery in Concord, MA for listing “love” as an ingredient in its product and for failure to conform to a federal standard of identity. While we have no doubt that the folks at Nashoba do indeed put love into the manufacture of their product, we hate to see misleading food labels that don’t comply with legal standards that other companies follow.

We note two relevant points below from FDA’s warning letter:

“Your Nashoba Granola label lists ingredient “Love”. Ingredients required to be declared on the label or labeling of food must be listed by their common or usual name [21 CFR 101.4(a)(1). “Love” is not a common or usual name of an ingredient, and is considered to be intervening material because it is not part of the common or usual name of the ingredient.”

“Your Whole Wheat Bread (retail) product is misbranded within the meaning of section 403(g)(1) of the Act [21 U.S.C. 343(g)(1)] because it is **a food for which a definition and standard of identity has been prescribed by regulation, but it fails to conform to such definition and standard.** (emphasis added) The label states “whole wheat” and “slow rise breads from . . .” Therefore, it is represented as whole wheat bread for which a standard of identity exists under 21 CFR 136.180. Under the standard, the dough must be made exclusively from whole wheat flour. This product contains wheat flour and corn meal. Therefore, it does not meet the standard of identity for whole wheat bread.”

FDA’s recent enforcement action against this Massachusetts baker and granola maker for listing “love” as an ingredient in its product is a clear indication that the agency has the time and resources to also police the use of the term “milk” and other standardized dairy terms on the labels of plant-derived dairy imitators. We hope that the agency’s enforcement action against a small New England baker for misusing food labeling standards, innocuous though this violation might be, is a prelude to FDA taking action

against the myriad companies that manufacture hundreds of dairy imitators that also misappropriate federally-defined terms such as ‘milk’ and ‘yogurt.’

As you know, we have been engaged in on-going efforts to highlight similar deficiencies with the misleading use of the term “milk” on products made from nuts, grains, and seeds, yet no enforcement activity has taken place. NMPF has provided FDA this year with multiple examples of misbranded imitation dairy foods, mostly recently the artificial dairy beverage Blue Magic Cashew Milk. FDA’s labeling enforcement must be consistent. The agency needs to enforce the proper labeling of all products that are currently playing fast and loose with federal food standards.

Federal standards of identity exist for a number of foods, establishing a defined set of characteristics and nomenclature unique to those foods in order to protect consumers from false and misleading marketing of products masquerading as a standardized food. Any food product that uses a food name established by a standard of identity but does not conform to the essential characteristics established by that standard is by law misbranded (21 U.S.C. §343(g)).

A federal standard of identity has been long established for milk (21 CFR 131.110). As such, “milk” has been defined to specify that the term “milk” must only be used in conjunction with products that conform to the specific provisions of the standard – including being “the lacteal secretion... obtained by the complete milking of one or more healthy cows”.

Again, we urge FDA to take immediate regulatory action against dairy imitators with respect to applicable food labeling regulations, specifically as related to the use of an established standard of identity.

Respectfully,



James Mulhern  
President and CEO, National Milk Producers Federation

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