



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
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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
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Tillamook County
Creamery Association
United Dairymen
of Arizona
Upstate Niagara
Cooperative, Inc.
Zia Milk
Producers, Inc.

October 26, 2017

Dr. Scott Gottlieb
Commissioner
US Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Dear Commissioner Gottlieb:

The National Milk Producers Federation (NMPF) was pleased to see your recent statements ([FDA statement on nutrition information](#), [Wall Street Journal October 10th, WSJ Global Food Forum](#)) reflecting FDA's renewed interest in assuring Americans have important and accurate information on food labels to make food purchasing decisions. Whether it is the redesigned Nutrition Facts label or claims that product manufacturers make on their packaging, a wholesale and comprehensive review by FDA will truly benefit the future overall health and well-being of consumers.

In addition to nutrition labeling and label claims, NMPF would also like to call attention to the importance that the name of the food on a package plays in conveying significant nutrition information to the consumer about a product.

Standards of identity – defined compositional characteristics and/or manufacturing parameters unique to specific foods – were designed to maintain the integrity of food products, to ensure that foods meet the expectations of the consumer, and to promote honesty in the marketplace. 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. The name of the food, among other specific information, is required by FDA regulations to appear on the Principal Display Panel (PDP) of all packaged foods.

A federal standard of identity has been long established for milk (21 CFR 131.110), and NMPF has been engaged in on-going efforts to highlight to FDA various misbranded imitation dairy products that are co-opting the names of standardized dairy products (e.g., soy milk, almond milk, etc.). Despite our entreaties, FDA has yet to take significant enforcement action.

It is important to emphasize, specifically as it is related to non-dairy alternatives, the manufacturers of plant-based imitation dairy products use nomenclature associated with standardized dairy products (e.g., "milk" or "yogurt") to mislead consumers into

thinking the imitation products contain the same amounts of protein, vitamins, and minerals as the standardized dairy products. NMPF recently surveyed plant-based imitation dairy beverages sold in grocery stores in the Washington, D.C. metropolitan area, and then compared the nutrition facts panels of these products with that of 1% milkfat real milk, including the nine essential nutrients for which milk is the #1 source in children's diets¹. The results of this comparison demonstrated that of the 244 beverages examined: (1) none of these products is nutritionally equivalent to real milk or delivers those nine essential nutrients as real milk does; and (2) unlike real milk's consistent nutrient package, there was extremely wide variation both within and among the various categories of plant-based beverages.

Consumers rely on visual cues from the front of the package (the product imagery, style of packaging, nutrient claims) **and the name of the food** to make inferences about the nutrient content of the product. Given their physical state, similar packaging and merchandizing, vignettes and images on the label, recommended uses, label claims (e.g. "as much calcium as milk"), along with the inclusion of the term "milk" in the name of the product on the PDP, consumers are being misled into thinking these imitation beverages are nutritionally equivalent to dairy milk. The nutritional inferiority and deceptive labeling tactics have been recognized by pediatricians and public health scientists², by the most recent *Dietary Guidelines for Americans*³ and the advisory committee⁴, by dietitians⁵, and even by those within the plant-based beverage industry⁶.

It is clear that many consumers misunderstand the true nutrient package presented by imitation dairy products. A 2015 Mintel survey of over 1000 consumers, when asked for their reasons for consuming non-dairy "milks", identified nutrition as the #1 reason, recorded in 49% of the responses. But, as the evidence shows, plant-based milk imitators are uniformly less nutritious than milk.

The #3 reason in the survey that consumers opted for non-dairy "milks", recorded in 37% of the responses, was that they thought it was a good source of protein. And yet, several of the leading plant-based milk alternatives, "almond milk" (currently ~70% of the imitation dairy beverage market, based on sales volume) and "rice milk", for example, have virtually no protein (≤ 1 gram per serving). Real milk, in contrast, has 8 grams of naturally-occurring protein per serving.

¹ D.R. Keast, V. L. Fulgoni, T. A. Nicklas, et al. (2013) Food sources of energy and nutrients among children in the United States: National Health and Nutrition Examination Survey 2003-2006. *Nutrients* 5, 283-301.

² S. Singhal, R. Baker, and S. Baker (2017) A comparison of the nutritional value of cow's milk and non-dairy beverages. *Journal of Pediatric Gastroenterology and Nutrition* 64, 799-805.

³ U.S. Department of Health and Human Services and U.S. Department of Agriculture. *2015–2020 Dietary Guidelines for Americans*. 8th Edition. December 2015. Available at <http://health.gov/dietaryguidelines/2015/guidelines/>.

⁴ Dietary Guidelines Advisory Committee. *Scientific Report of the 2015 Dietary Guidelines Advisory Committee*. February 2015.

⁵ S. Rossman, "Got milk? This is the kind you should be drinking" USA Today. February 28, 2017. Available at <https://www.usatoday.com/story/news/nation-now/2017/02/28/got-milk-kind-you-should-drinking/98322592/>.

⁶ B. Avery, "Class actions target alt-milk nutritional standards" BevNet. February 8, 2017. Available at <https://www.bevnet.com/news/2017/class-actions-target-alt-milk-nutritional-standards>.

The lack of enforcement by FDA of the long-standing labeling provisions of various standards of identity for milk and dairy products and other pertinent federal labeling regulations has led to rampant consumer fraud related to the inferior nutrient content of these non-dairy products compared to their true dairy counterparts.

Time and time again, FDA has cited a lack of personnel and resources to address the flagrant and ever-escalating labeling violations. But to be frank, that excuse has never rung true. In February 2010, FDA sent warning letters to 17 food companies in a single day notifying them of their violation of federal laws through false or misleading label claims, and an open letter to the food industry made it clear that accurate food labeling to improve nutritional information for consumers was an agency priority. That one effort made a dramatic difference in the labeling and marketing of a host of food products.

Now is your time to make a clear statement against the inaccurate and misleading labels commonly associated with the plant-based dairy imitators. The names of non-dairy alternatives must reflect current regulations and standards of identity, and should not mislead consumers as to the true nutrient value of the product. NMPF again urges 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, and we would be happy to provide you with examples of labels to illustrate our concerns.

We would be happy to provide any additional information you may need so that we can assist the agency in furthering your nutrition initiatives and providing accurate information on food labels.

Respectfully,



James Mulhern
President & CEO

cc: S. Ostroff, OFVM
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