



October 20, 2016

Mr. Adam G. Ciongoli
General Counsel
Campbell Soup Company
One Campbell Place
Camden, NJ 08103

Via Electronic Mail

Dear Mr. Ciongoli,

On behalf of the International Dairy Foods Association (IDFA) and its members, I am writing to express our serious concerns regarding the potential positioning of Campbell Soup Company's (Campbell's) new Bolthouse Farms Plant Protein beverages. Our members recently became aware of these new products through an article in *Food Business News*, which featured an image of the products' labels. ^{1/} The statement of identity depicted on the labels identifies the products as "Plant Protein Milk" with the qualifier "Non Dairy Plant-Based Milk."

As discussed below, these labels are problematic. Quite simply, the statement of identity for these products cannot include the word "milk" because they do not satisfy the Food and Drug Administration's (FDA's) standard of identity for milk. We understand from the news article that Campbell's will not release these new products until later this year. Our intent in sharing our concerns with you is to provide Campbell's an opportunity to address these issues before officially launching the product line.

Plant Protein Beverages Cannot Be Positioned as "Milk"

The Bolthouse Farms Plant Protein beverages are represented as "milk," but do not conform to the standard of identity for milk. Under the Federal Food, Drug and Cosmetic Act (FFDCA), a food is misbranded if it purports to be or is represented as a food for which a definition and standard of identity exist and the food does not conform to that definition and standard. ^{2/} When no standard of

^{1/} Monica Watrous, Campbell Soup refreshes approach to innovation, *Food Business News* (Aug. 1, 2016), available at http://www.foodbusinessnews.net/articles/news_home/Business_News/2016/08/Campbell_Soup_refreshes_approa.aspx?ID=%7B970CC84D-73E7-47BD-8DB5-5B76882C3301%7D.

^{2/} FFDCA § 403(g); 21 U.S.C. § 343(g).

identity exists, the food must be identified instead using a “common or usual name” or, if none exists, an appropriately descriptive term. ^{3/}

FDA has made clear that foods named using a standardized term are misbranded when the foods fail to conform to that standardized term. In 2011, FDA issued a Warning Letter to CytoSport, Inc., informing the company that its “Chocolate Muscle Milk Protein Nutrition Shake” and Vanilla Crème Muscle Milk Light Nutritional Shake” products were misbranded because they purported to be milk by prominently featuring the word “MILK” on the labels when the products did not contain milk and contained numerous ingredients not permitted by the standard of identity for milk. ^{4/} FDA also issued a Warning Letter to Lifesoy, Inc alerting the company that the agency did not consider the term “soy milk” to be an appropriate common or usual name because the company’s soy beverages did not contain milk, as defined in 21 C.F.R. § 131.110. ^{5/} In addition, FDA stated that a product labeled “Greek Yogurt Butter” was misbranded because “butter” was not an appropriately descriptive term or phrase to describe the product, which included an ingredient not permitted in the standard of identity for butter at 21 U.S.C. § 321(a)).

Here, the name “Plant Protein Milk” and descriptor “Non Dairy Plant Based Milk” are similarly not permitted because the Plant Protein beverages do not conform to the standard of identity for milk. FDA has defined milk as “the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows.” ^{6/} It must contain at least 8 ¼ percent milk solids not fat and at least 2 ¼ percent milkfat. ^{7/} The Plant Protein beverages do not even minimally resemble this standard of identity. They do not contain any milk from cows (or from other animals referenced in other standards of identity), any milk solids, or any milkfat; rather, the Plant Protein beverages are made with 100% pea protein. ^{8/} Furthermore, pea protein is not an ingredient permitted in milk. Like the foods identified in FDA’s Warning Letters referenced above, the Plant Protein beverages cannot include the term “milk” in the statement of identity because they do not satisfy the standard of identity of milk. Thus, the beverages would be misbranded if Campbell’s positions them as “Plant Protein Milk” or “Non Dairy Plant-Based Milk.”

As you know, FDA’s standards of identity serve several important functions – they uphold the integrity of food products, ensure products are consistent with consumer expectations, and promote honesty in the marketplace. For instance, when consumers see products labeled as “milk,” they assume the product has the same nutritional profile as the standardized food milk and that it will function the same way as milk. When products labeled as “milk” do not meet the standard of identity, consumers are misled – their expectations are not met and the integrity of milk and milk products is undermined. We, therefore, respectfully request that Campbell’s revise the product labels to remove the word “milk” and accurately describe the beverage.

^{3/} 21 C.F.R. § 101.3(b).

^{4/} FDA Warning Letter from Darlene Almogela, Director, Compliance Branch, FDA, to Mr. Michael Pickett, Chief Executive Officer and President, CytoSport, Inc. (June 29, 2011).

^{5/} FDA Warning Letter from Alonza E. Cruse, District Director, FDA Los Angeles District, to Mr. Long H. Lai, Lifesoy, Inc. (Aug. 8, 2008). See also FDA Warning Letter from Paul J. Teitell, District Director, Cincinnati District, to Adam P. Mueller, President, Minerva Dairy, Inc. (Oct. 9, 2014). (explaining that a “Greek Yogurt Butter” products was misbranded because “butter” was not an appropriately descriptive term or phrase to describe the product, which included ingredients not permitted in the standard of identity for butter at 21 U.S.C. § 321(a)).

^{6/} 21 C.F.R. § 131.110(a).

^{7/} *Id.*

^{8/} See Watrous, *supra* note 1.

Because there is neither a standard of identity nor a common or usual name for Campbell's Plant Protein beverages, they should be identified using a term that appropriately describes the product. 9/ For example, these products could be accurately identified as "Plant Protein Beverage," "Plant Protein Drink," "Pea Protein Beverage," or "Pea Protein Drink" because these terms accurately describe the product and inform customers as to the nature of the product they are purchasing.

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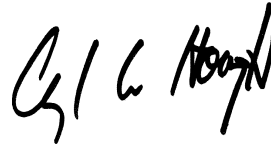
In sum, the Plant Protein beverages are not appropriately labeled to identify the nature of the product. The statement of identity for these products cannot include the word "milk" because the products do not satisfy the Food and Drug Administration's (FDA's) standard of identity for milk.

We hope the information in this letter has provided you with an understanding of our position. We are happy to discuss any questions you may have.

Sincerely,



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National Milk Producers Federation
202-220-3543



Clay Hough
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Cc: Kelly Johnston, Vice President, Government Affairs

9/ See 21 C.F.R. § 101.3(b).