



Consumer Federation of America

January 28, 2019

Scott Gottlieb, M.D.
Commissioner of Food and Drugs
U.S. Food and Drug Administration
Department of Health and Human Services
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

VIA ONLINE SUBMISSION

RE: Use of the Names of Dairy Foods in the Labeling of Plant-Based Products

Dear Dr. Gottlieb:

Consumer Federation of America (CFA) appreciates the opportunity to submit these comments in response to FDA's notice on Use of the Names of Dairy Foods in the Labeling of Plant-Based Products. CFA supports policies that make the healthy choice the easy choice for consumers, including policies that promote effective labeling. For this reason, CFA has supported policies such as front-of-package labeling requirements to help consumers to identify foods that contain artificial dyes or high levels of added sugars. CFA does not, however, support additional requirements that would restrict the use of terms like milk, yogurt, and cheese on labels of plant-based food products.

The Federal Food, Drug, and Cosmetic Act grants FDA general authority to prevent misleading labeling. *See* 21 U.S. Code § 343(a)(1). To avoid FDA sanctions, manufacturers of plant-based dairy substitutes, such as "soymilk," should have to use labeling that clearly indicates the product's principal ingredient (e.g. soy), and that makes clear, through prominent display of terms such as "dairy free," that the product does not contain milk from a cow. In practice, manufacturers have an incentive to avoid confusion because many consumers expressly seek out "dairy free" products for the reasons cited in FDA's notice—i.e. dairy allergies, lactose intolerance, health reasons, personal consumption habits such as a vegan diet, and taste. As a result, CFA is not aware of any products on the markets that pose a risk of misleading a consumer to buy a plant-based product that she believes is a dairy product. Moreover, at least one recent survey indicates that relatively few consumers confuse plant-based foods with dairy products.¹

Consequently, new labeling requirements to prevent consumer confusion regarding whether plant-based products contain dairy ingredients seem unwarranted. As the questions in the notice indicate, however, other rationales might support restricting the use of terms

¹ https://www.foodinsight.org/sites/default/files/Milk%20Nomenclature_PDF_1.pdf

like “milk” and “yogurt” in plant-based products. In particular, consumers might purchase a plant-based product—such as “soymilk” or “almond milk”—believing that the product contains the same nutrients as its dairy counterpart.

Short of comprehensive, front-of-package labeling, however, new requirements to address these alleged misperceptions seem likely to create as many problems as they solve. For one thing, assuming an equivalency between a plant-based product and its dairy counterpart is actually well-founded in some cases. Indeed, the 2015-2020 Dietary Guidelines for Americans includes fortified “soymilk” within the “dairy” category because it so resembles dairy milk in its nutritional profile. As the Guidelines explain, “[s]oy beverages fortified with calcium, vitamin A, and vitamin D, are included as part of the dairy group because they are similar to milk based on nutrient composition and in their use in meals.”² In light of this equivalency, mandating that manufacturers, for instance, replace “soymilk” with “soy beverage” on labeling, may drive some consumers away from a healthy source of nutrition.

Proponents of more restrictive standards of identity point to other plant-based products, such as almond milk, whose nutritional profiles diverge considerably from that of their dairy counterparts. One recent survey, for example, indicates that a significant number of consumers mistakenly assume an equivalence between the nutritional profile of some plant-based products and their dairy counterparts.³ This raises a concern that some consumers, including parents of small children, may be crafting diets that lack essential nutrients, such as protein, based on a misunderstanding of plant-based products’ nutritional profile. Proponents argue that restricting the use of terms like “milk” will increase consumer awareness of dairy milk’s nutritional profile, while at the same time calling attention to the lack of certain essential ingredients in plant-based competitors like almond milk.

Banning the use of terms like “milk” to describe these products, however, would do little to address consumers’ misunderstanding their nutritional profiles. For one, as previously mentioned, soymilk *does* have a similar nutritional profile to dairy milk. But more generally, soy and almond “beverage” would continue to be sold next to dairy milk in grocery stores, and popular reference to these products as “milk” will undoubtedly persist.

FDA could conceivably craft standards of identity to try to define “milk” products as only those having some minimum level of certain nutrients, but this would entail arbitrary line drawing and likely lead some consumers to make poorer choices. For example, a new “milk” standard of identity would presumably include chocolate and other “flavored” dairy products, since those products contain all of the essential nutrients found in other dairy milk. Concerns over their added sugar, however, have compelled many school districts to ban

² U.S. Department of Health and Human Services and U.S. Department of Agriculture. “Dietary Guidelines for Americans, 2015-2020.” Eighth Edition. December 2015, p.23, *available at*: <https://health.gov/dietaryguidelines/2015/guidelines/>. The Guidelines go on to explain that “other products sold as ‘milks’ but made from plants (e.g., almond, rice, coconut, and hemp ‘milks’) may contain calcium and be consumed as a source of calcium, but they are not included as part of the dairy group because their overall nutritional content is not similar to dairy milk and fortified soy beverages (soymilk).”

³ <http://www.nmpf.org/latest-news/press-releases/oct-2018/oct-30-nmpf-calls-out-plant-based-beverage-industry>

flavored milk from school cafeterias.⁴ For some kids, the protein and other nutrients in flavored milk may be worth the added trade-off, but for many others, an almond “beverage,” however watered down, makes for a healthier overall diet.

In general, a growing consensus of public health researchers supports the notion that shifting dietary patterns to more plant-based foods would provide major health benefits, as well as ease pressure on scarce land and water resources.⁵ This is not to say that dairy cannot or should not play an important part in a healthy diet. However, FDA should avoid enacting policies that turn consumers away from potentially healthful and accessible non-dairy options.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Gremillion', with a stylized, looping flourish at the end.

Thomas Gremillion
Director of Food Policy
Consumer Federation of America

⁴ See, e.g. <https://abcnews.go.com/Health/la-bans-flavored-milk-school-cafeterias-jamie-oliver/story?id=13849327>

⁵ See, e.g. <https://www.thelancet.com/commissions/EAT>