



January 28, 2019

Dockets Management Staff (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20582

Re: Docket No. FDA-2018-N-3522; Use of the Names of Dairy Foods in the Labeling of Plant-Based Products; Notice; Request for Comments.

Edge Dairy Farmer Cooperative (Edge) and its nearly 800 Midwestern dairy farms appreciate the opportunity to comment on the labeling of plant-based products using dairy food names. The practice of using dairy names to label products that are not dairy is one that has gone on for far too long and should not be allowed to continue. The inaction of the Food and Drug Administration (FDA) against food products that do not conform to the Standards of Identity (SOI) for the dairy names found on their label is causing consumer confusion. Edge commends FDA's recent acknowledgement of this issue by Commissioner Gottlieb and this docket providing stakeholders an opportunity to comment. We urge FDA to take immediate action to rectify the current marketplace confusion and promote "honesty and fair dealing in the interests of consumers."¹

Dairy farmers across the country are proud of the nutritious milk, cheese, yogurt and other dairy foods they produce. These foods have an unmatched taste and nutrient profile that consumers love and have come to expect when purchasing dairy products. Farmers have been frustrated to see items appearing in stores that misuse dairy names, but do not contain any trace of dairy. This needs to stop and the dairy community feels strongly towards that end. The register is already filled with thousands telling FDA to act. Edge's very own farmers have contributed to the cause as evidenced by the 132 attached letters and the many more that commented directly on the register.² Farmers follow the rules they must to produce and market dairy foods and they simply want the other foods to do the same.

FDA regulations define milk as coming from a cow, not a plant. Milk is very clearly defined as: "the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows."³ Furthermore, the regulations require that dairy products be made using "milk" or a derived product from "milk." Imitation products that do not meet or fit within this definition should not be allowed to be labeled using "milk," "cheese" or "yogurt" for identification and likeliness.

The opening of this register acknowledges the fact that nuts, beans or other plants cannot produce milk and or any other dairy food. Through no fault but their own, FDA has allowed the

¹ 21 U.S.C. § 341.

² Edge Dairy Farmer Cooperative, January write in campaign letters (132) (Attachments B and C).

³ 21 CFR § 131.110.

argument to surface that dairy names can be used on products that only visually resemble true dairy foods because it is now a common or usual name. We understand that consumers need to know products based from their common or usual name, but we cannot allow it when leads to such a significant amount of consumer confusion.

“Milk,” “cheese,” “yogurt,” and other dairy names are established common and usual names for foods that are highly nutritious, healthy and flavorful. This is not the case across the variety of plant-based imitators. Some may be close, but they rarely meet the complete dairy nutritional profile by having a high protein content and many essential nutrients and vitamins. Through this comment period, FDA has sought out specific marketplace information on how consumers understand and perceive that.

In the short time provided by the FDA, multiple specific surveys were completed to grasp a better understanding of what today’s consumers believed to be true of dairy foods and plant-based products labeled with dairy names. With “milk” at the epicenter of this debate, Dairy Management Inc. and the National Dairy Council partnered to commission two separate consumer surveys to learn about consumers perceptions towards milk and its plant-based beverages.⁴ While these consumer surveys focused on consumer perceptions of “milk,” Edge partnered with the Wisconsin Cheese Makers Association and Dairy Farmers of Wisconsin to understand how consumers perceive cheese names on their non-dairy imitators.⁵ Each of these studies, which were completed by independent third parties, show considerable levels of consumer confusion in the dairy aisle.

Naysayers continue to argue that consumers in fact know exactly what they are purchasing with non-dairy products, these surveys demonstrate that is simply not the case. As one would expect, some consumers are better educated on the differences between dairy and non-dairy products than others, but this does not apply to everybody. Generally, consumers are driven to purchasing either dairy and plant-based imitators for nutrition and healthy qualities, but many do not understand they are not nutritionally comparable. Therefore, products that do not fit the standards of identity for dairy foods should not be labeled as such. Inaccurate labeling is simply not fair to the consumers who may be misled into purchasing nutritionally inferior products. The FDA must take immediate action.

Marketplace conditions are worthy of FDA enforcement.

The number of plant-based products using dairy names on the label have increased dramatically in recent years and is no longer a small, niche business. The lack of FDA action has led to an anything goes mentality in the marketplace. Dairy products are known for their great taste and many beneficial health qualities; consumers believe it and plant-based imitators take advantage

⁴ Dairy Management Inc. & IPSOS, *Consumer Perceptions: Dairy and Plant-Based Milk Alternatives* (Oct. 24, 2018) available at <https://www.usdairy.com/trends-and-initiatives/community-focus> (hereinafter DMI phase 1). Dairy Management Inc. & IPSOS, *Dairy and Plant-Based Milks Phase II* (Jan. 14, 2019) available at <https://www.usdairy.com/trends-and-initiatives/community-focus> (hereinafter DMI phase 2).

⁵ Ravel, *Study on Dairy Cheese and Plant-Based Foods that Mimic Cheese* (Jan. 17, 2019) (hereinafter Ravel) (Attachment A).

of it. What first started off as imitating milk has now expanded to imitating virtually every dairy food on the market including cheese, yogurt, and ice cream, among others.

FDA may have held off on enforcing the dairy product standards of identity at one point due to the limited nature of plant-based imitators, but that is no longer true. Plant-based products using dairy names is now a multi-billion-dollar industry. As of July 2018, plant-based imitation dairy products have surpassed \$2 billion in annual sales, which is a market worthy of FDA attention.⁶

Even though plant-based imitators lack the underlying profile of dairy products, they are increasingly infiltrating the dairy aisle and shelves in grocery stores across the United States. We recognize that every store is different but plant-based products are commonly found adjacent to or mixed in with dairy products. Newer or larger stores may be able to locate the plant-based products in different areas of the store but many older and/or smaller stores lack adequate space to do so especially if refrigeration is required. Many assume consumers fully comprehend purchasing decisions with respect to dairy and plant-based imitators but that is not the case and proximity in the store may very well play a part in that misunderstanding. (A. 4)

When consumers see both dairy and plant-based products next to each other using the same identifying dairy name, survey observations show labeling (and the nutrition expectation that go along with that label) are more likely to be involved in the decision to purchase a product. One survey showed the more prominent “milk” is on a plant-based beverage package, the more that product is associated with milk.⁷ Another survey demonstrated that even exclusive dairy product buyers can be duped into selecting plant-based products erroneously based on the products’ label. When presented with both dairy and non-dairy product options, one of every five customers that have no history of buying the non-dairy product selected it, telling us that plant-based labels do not clearly indicate the product’s actual ingredients.⁸ Both observations lead us to conclude that when consumers are faced with similarly labeled products using the same dairy terminology next to each other in the store, some consumers will mistakenly purchase imitation products. (A.4 & B.4)

Dairy names on plant-based product labels mislead consumers into believing dairy foods and plant-based imitators are nutritionally equivalent.

Plant-based products using dairy names violate what consumers have come to expect when purchasing products with dairy names. Consumers buy dairy and plant-based products for a variety of reasons, but nutrition and health are frequently cited as the main purchase criteria. Research tells us that consumers expect a nutritionally comparable product when a product is labeled as “milk” or as a cheese.⁹ However, plant-based foods do not have the same nutritional value as dairy products. Therefore, labeling them as “milk,” “cheese” or “yogurt” is misleading.

⁶ 2018 Retail Sales data for Plant-Based Foods, Plant Based Foods Association, <https://plantbasedfoods.org/consumer-access/nielsen-data-release-2018/>.

⁷ DMI phase 1, p. 10.

⁸ Ravel, p. 18.

⁹ DMI phase 1. Ravel, p 10, 11.

Nutrition and health are frequently top of mind when consumers purchase either milk and plant-beverages.¹⁰ However, most equate health to nutrition, so consumers are relying on their perception of nutritional benefit when buying milk or non-dairy counterparts.¹¹ Even though over half of consumers that buy plant-based milk imitators and about half of consumers that buy plant-based products that mimic cheese rely on nutrition and health to do so, they do not fully understand the nutritional differences between dairy and imitation products.¹² (B.1) This is alarming as the USDA National Nutrient Database for Standard Reference shows that no plant-based alternative meets the protein, calcium, potassium, and vitamin D available from milk.¹³

With a significant number of consumers purchasing plant-based imitators for nutrition and health reasons, it comes as no surprise that those consumers believe plant-based products are more than or equally nutritious as dairy.¹⁴ As one would expect, exclusive plant-based buyers and dual product buyers more frequently believe it to be true over exclusive dairy buyers. Over 60 percent of those consumers think plant-based beverages have the same nutritional content while another 20 percent aren't sure.¹⁵ The same holds true when asked the same of plant-based product that mimics cheese: Over 70 percent of consumers believe the plant-based product is at least as nutritious as cheese.¹⁶ (B. 2) These results are problematic and misleading as consumers think dairy foods and their plant-based imitators are nutritionally equivalent.

Consumers are being misled that plant-based products are good substitutes for dairy because consumers mistakenly equate plant-based products to dairy on nutritional grounds. A majority of adult consumers perceive plant-based beverages as good substitutes for milk with 92 percent of exclusive plant-based buyers and 80 percent of dual buyers agreeing.¹⁷ When asked if plant-based product that mimics cheese is a substitute for cheese, the results are consistent with over half of consumers believing it to be true.¹⁸ (B. 4)

The number one reason consumers believe food manufacturers label plant-beverages “milk” is because they are nutritionally comparable foods, but this is not true.¹⁹ (B. 4) Therefore when many consumers purchase plant-based beverages labeled milk they incorrectly believe they are getting a product that is nutritionally like milk. We do not argue this applies to all consumers, but the research shows that it is happening to a level of consumers that FDA needs to be concerned.

The use of dairy cheese names on plant-based imitators leads to incorrect food identification, confirming that plant-based labels do not suggest plant-based products are different and distinct from dairy products. When consumers were shown labels of plant-based foods that mimicked cheddar or mozzarella, about half of consumers mistook them as actual cheddar or mozzarella cheese. However, these same consumers accurately identified cheddar or mozzarella cheese over

¹⁰ DMI phase 1, p. 16, 17. DMI phase 2, p. 11, 12.

¹¹ DMI phase 1, p. 8.

¹² DMI phase 1, p. 16, 17. DMI phase 2, p. 11, 12. Ravel, p. 18.

¹³ USDA, National Nutrient Database for Standard Reference (Release 23) (April 2018).

¹⁴ DMI phase 1, p. 19. Ravel, p. 11.

¹⁵ DMI phase 1, p. 19.

¹⁶ Ravel, p. 11.

¹⁷ DMI phase 2, 13.

¹⁸ Ravel, p. 16.

¹⁹ DMI phase 1, p. 19.

90 percent of the time.²⁰ Furthermore, these labels probably do not clearly indicate their true non-dairy nature as one in five exclusive dairy purchasers actually selected a plant-based product that mimics cheddar or mozzarella instead of an actual cheddar or mozzarella, when they have no history of ever doing so before.²¹ (B. 4) Consumers do not understand the use of dairy names on plant-based product labels and it is deceiving consumers making purchases they may not intend.

Labeling food products according to the standards of identity does influence consumer perception towards those products. Labeling a drink “milk” versus “beverage” does make a difference. The research shows that if plant-based beverages were in fact labeled using the identifiers of “juice,” “drink,” or “beverage,” 40 percent of consumers would be less inclined to purchase that product. However, a majority of exclusive plant-based buyers would actually be more likely to purchase if labeled with those other identifying names.²² (B. 5) As applied to “cheese,” over 60 percent of total consumers and close to 40 percent of exclusive plant-based buyers would “not” or “probably not” buy “vegan cheese” labeled “cultured nut product.”²³ (B. 5) Clearly the use of dairy names on plant-based based products positively influence consumers perceptions towards those products.

There is significant uncertainty among consumers of what makes up plant-based products labeled with dairy names.

Plant-based products mimicking dairy are constituted of different ingredients and additives than dairy foods. However, a fair number of consumers mistake or do not know the main ingredients of plant-based products using dairy names. This is just one more example of how the use of traditional dairy names confuses consumers. When asked which ingredients were in plant-based product that mimics cheese, one quarter of consumers mistakenly indicated that milk was an ingredient and another quarter didn’t know what made up those products.²⁴ (C. 2)

Consumers also mistake the main ingredient for plant-based beverages imitating milk. Half of consumers think the plant itself is the main ingredient of plant-based beverages and another 20 percent don’t know what the main ingredient is.²⁵ (C. 2) What is more troubling is that one consumer study found that as many as 20 percent of adults aren’t sure whether plant-based beverages labeled as milk actually contain cow’s milk, and 10 percent think they do.(C. 2) Unfortunately, this particular study failed to account for what consumers believe to be true of the products’ nutritional value when they made the purchase.²⁶

While most dairy products have a limited number of additives, if any, plant-based products contain far more additives to attain a desired consistency, texture, and flavor comparable to dairy. Behind the leading the purchase drivers of nutrition and health, plant-based beverage

²⁰ Ravel, p. 9.

²¹ Ravel, p. 18, 19.

²² DMI phase 2, p. 16, 20.

²³ DMI phase 2, Appendix.

²⁴ Ravel, p. 7.

²⁵ DMI phase 2, p. 18.

²⁶ The International Food Information Council Foundation, *Consumers Attitudes About Labeling Cow’s Milk, Plant Based and Non-Dairy Alternatives*. October 2018. Available at <https://www.foodinsight.org/whats-in-a-name-types-of-milk-dairy-nondairy-alternatives-consumer-research>.

buyers cite several characteristics that indicate some do not really understand what makes up plant-based milk.²⁷ These consumers are attracted to plant-based beverages because it contains no additives (28% or 34%), no artificial ingredients (33% or 36%), no added sugars (29% or 41%), and it is all natural (54% or 58%).²⁸ (C. 3) This is similar to when considering consumers' feelings towards plant-based products that mimic cheese. Significantly more consumers would buy those products because it contains no additives or artificial ingredients.²⁹ The majority of consumers do acknowledge that some plant-based milks have added vitamins, emulsifiers, thickeners and sweeteners, but few believe that all plant-based milks have these.³⁰ (C. 3) Consumers are citing reasons to purchase a product that do not fit that product; therefore, they are not fully aware of the true composition of plant-based products using dairy names and they are often basing their purchasing decisions on misinformation.

Plant-based products using dairy names do not have the same nutritional profile as dairy foods, but consumers think they do.

Plant-based products using dairy names misleads consumers to believe plant-based products have the same nutritional content as dairy foods. Dairy foods such as milk and cheese are known by consumers for the high amounts of quality protein, vitamins, and other nutrients they provide. A significant majority of consumers believe plant-based products with dairy names actually have the same or more of these key nutrients than dairy. However, the USDA National Nutrient Database for Standard Reference shows that no plant-based alternative meets the complete protein, calcium, potassium, and vitamin D profile available from milk.³¹

Dairy foods have been a longstanding nutritional staple in American diets for decades. Consumers know and expect the many essential nutrients when they purchase milk, cheese or yogurt. Consumers commonly associate dairy as a good source of protein, calcium, vitamins and minerals.³² Unfortunately, consumers now also think that of the plant-based products that use dairy names. They believe, at just as of a high of rate as dairy, that those products are high in protein, calcium, and vitamins, when in fact that is not true across the spectrum of plant-based products.³³(D.1)

When popular plant-based beverages are directly compared to milk, an alarming number of consumers believe they have the same or a higher amount of the key nutrients for which dairy foods have always been known. Here is research regarding this point for three common plant-based beverages:

- 78 percent of adults think almond beverage has the same or more vitamins than milk. 77 percent believe it to have the same or more protein and 68 percent believe it to have the same or more key nutrients. In reality, according to the USDA Nutrient Standard

²⁷ DMI phase 1. DMI phase 2, p. 11, 12.

²⁸ (DMI phase 1, p.12 / DMI phase 2, p. 11) Parentheses refers to exclusive plant-based beverages purchasers in the respective studies.

²⁹ Ravel, p. 18, 20.

³⁰ DMI phase 2, p. 15.

³¹ USDA, National Nutrient Database for Standard Reference (Release 23) (April 2018).

³² DMI phase 1, p. 12. DMI phase 2, p. 11, 12.

³³ DMI phase 2, p. 14.

Reference, almond drink only has one-eighth of the amount of protein, doesn't even contain one of the essential vitamins and only has half of the amount of potassium as milk.

- Coconut-based beverage is also viewed superior to milk with 71% of adults believing it has the same or more vitamins. 62 percent think it has the same or more protein and 66 percent believing it has the same or more key nutrients. Consumer perceptions of coconut beverage show that “milk” as the identifier implies nutritious qualities as coconut beverage does not have any of milk’s key vitamins, significantly lacks comparable calcium, and lags milk’s protein content.
- Soy beverage is only plant-based beverage that comes close to being nutritionally comparable to milk because of added vitamins and nutrients. Three quarters of consumers believe it has the same or more protein than milk, when that is not true and is highly variable across types and brands of soy-based beverages.

Consumers also confuse accurate nutrient content for cheeses. One-third of consumers either don't know or think plant-based products that mimic cheese have more protein than cheese, even though those products have little to no protein. Significantly more plant-based buyers believe it to be the case, perhaps indicating they believe their food choice provides an adequate protein source when it does not.³⁴ (D.1) This demonstrates consumers associate certain nutrients to dairy names and are misled by plant-based product labels that do not reveal the product's true nature.

Consumers incorrectly believe plant-based products using dairy names foods help meet recommendations in the dietary guidelines.

Appropriately labeling non-dairy products could help Americans consume more nutrients of public health concern. As the research shows, we now know that the majority of adults believe that dairy milk and plant-based beverages share a similar nutritional content, while the USDA National Nutrient Database for Standard Reference shows they do not. The conclusion is obvious: A significant number of consumers do not understand that certain plant-based products lack the nutritional content of dairy products under the federal dietary guidelines. The 2015-2020 Dietary Guidelines for Americans tell us that most Americans under consume key nutrients such as vitamin D, calcium and potassium due to low intakes of dairy.³⁵ Milk and dairy products contain high amounts of each of those nutrients; non-dairy alternatives do not.

Whether dairy names are used on actual dairy foods or on their plant-based imitators, consumers understand those names to be highly nutritious and therefore interchangeable for nutritional needs. If consumers truly understood which products fit the nutritional profile to be included in the dietary guidelines' dairy group, soy-based beverages purchases should outpace nutritionally inferior beverages, like almond-based beverage, as they are primarily bought with nutrition in mind. However, almond-based beverage is more frequently purchased than soy-based beverage by over 20 percent.³⁶ (E.1) Furthermore, half of consumers say plant-based beverages should not

³⁴ Ravel, p. 12.

³⁵ U.S. Dept. of Health and Human Services and U.S. Dept. of Agriculture, *2015-2020 Dietary Guidelines for Americans*. 8th Edition. December 2015. Available at <http://health.gov/dietaryguidelines/2015/guidelines/>.

³⁶ DMI phase 1, p. 11. DMI phase 2, p. 10.

be allowed to be labeled “milk” if they do not satisfy the dietary guidelines’ dairy recommendations.³⁷ (E.2)

Regardless of the ongoing consumer confusion, consumers overwhelmingly have said that non-dairy products should not be able to use dairy names across three separate consumer surveys. In the most recent survey, over 60% of consumers stated that FDA should not allow non-dairy beverages use “milk” on their product labels compared to only 23% who think the opposite.³⁸ By over a two to one margin in both of the other two surveys, consumers have said “milk” should not be used to market non-dairy beverages if they are not a nutritionally similar substitute for milk or if the U.S. Dietary Guidelines don’t recommend them as a substitute.³⁹ Even one-third of exclusive plant-based purchasers say that “milk” should not be used on plant-based beverages if the U.S. Dietary Guidelines do not recommend it as a substitute.⁴⁰ The notion that FDA enforcement is only desired by the dairy community is simply incorrect as evidenced by these surveys. (E.2)

Further enforcement delay is detrimental to sound public policy.

Since FDA has allowed the practice of using dairy names on plant-based products to continue, imitation dairy products have expanded throughout the dairy case. Manufacturers of those products are taking advantage of the positive consumer perception dairy products have at the expense of those genuine products. Dairy farmers have invested millions of dollars over the years to market dairy products to consumers as healthy and nutritionally-satisfying foods. Milk and dairy products have been consistently branded as highly nutritious and able to meet the nutritional demand across several essential nutrients. As the above surveys have discussed, consumers do identify dairy products with those attributes. It is no secret why non-dairy product manufacturers have imitated dairy products and labeled them with dairy names. The inaccurate labeling with dairy names on non-dairy products is simply not fair to tens of thousands of farmers who invested in dairy standards. FDA allowing this free-riding to continue without any deterrence sets a bad precedent for public policy.

The development of many plant-based dairy imitation products has been made possible through new technologies, scientific discoveries, and food product research in recent years. As we move forward into the future, more and more innovative food products will be developed in and outside of the dairy case. Already, we are seeing foods created and manufactured through methods that were not imaginable only a few years ago. FDA needs, more than ever, to set a regulatory stage where both longstanding food staples and new foods will be able to succeed together. This starts by upholding the laws already on the books and disciplining those running afoul of FDA regulation. If FDA fails to do so, standards of identity, among the many other food product regulations, will be further challenged and ignored. The result will be an unpredictable regulatory environment for food capable of harming consumers who need convenient and honest

³⁷ DMI phase 2, p. 24.

³⁸ Nat. Milk Producers Fed., *New Poll: Consumers, by Nearly 3-to-1 Margin, Want FDA to End Misleading of Fake Milks*, News Release (Jan. 10, 2019) available at http://www.nmpf.org/files/files/Ipsos%20Poll%20Results%20_011019.pdf.

³⁹ DMI phase 2, p. 24. Politico & Morning Consult, National Tracking Poll #180736 (July 19-23, 2018), available at https://morningconsult.com/wp-content/uploads/2018/07/180736_crosstabs_POLITICO_POL24_DK-1.pdf.

⁴⁰ DMI phase 2, p. 7.

food product information. By not taking care of the issues today, it will be harder to tackle the challenges down the road.

Conclusion

Plant-based food manufacturers have gotten away with the misuse of nutritious dairy names for far too long. Consumers should not be misled about the nutritional content of non-dairy products with dairy names. It would be inappropriate and misguided for FDA to expand the existing standards of identity to allow current plant-based imitators to use dairy names to label their products.

Edge and our many dairy farmer members appreciate FDA leadership taking steps to rectify the current inappropriate use of dairy names on plant-based products. We believe this is a critical issue for American consumers as they try to make healthy and nutritious purchasing decisions for themselves and their families. Consumers need the best and most honest product information available on the label to make those purchases. As the above referenced consumer surveys clearly lay out, the dairy names being used on non-dairy product labels do not live up to the fair and honest information consumers need and expect. The practice of using dairy names on plant-based imitators must not be allowed to continue in the best interests of our American consumers. We urge the FDA to enforce the standard of identity for milk by enforcing against all current violators and deterring future standard of identity infringements.

Sincerely,



Aaron Stauffacher
Associate director of government affairs

Attachments:

Attachment A - Ravel, *Study on Dairy Cheese and Plant-Based Foods that Mimic Cheese* (Jan. 17, 2019).

Attachment B – Edge Dairy Farmer Cooperative, Write-in Letters, 1-61.

Attachment C – Edge Dairy Farmer Cooperative, Write-in Letters, 62-132.