



January 27, 2019

**Submitted online at [regulations.gov](https://www.regulations.gov)**

Commissioner Scott Gottlieb  
Food and Drug Administration  
5630 Fishers Lane, Rm. 1061  
Rockville, Maryland 20852

*Re: Use of the Names of Dairy Foods in the Labeling of Plant-Based Products; Docket ID: FDA-2018-N-3522*

Dear Commissioner Gottlieb:

The Plant Based Foods Association (PBFA) was founded in 2016 to represent the interests of companies producing plant-based meat and dairy alternatives. Today the association has grown to include 130 members, ranging from small start-up food companies to established brands to ingredient suppliers. Many of our members make and sell dairy alternatives, including plant-based milk, cheese, yogurt and ice cream. We appreciate the opportunity to submit these comments.

Companies selling dairy alternatives are using easy to understand, clear, descriptive and truthful language on labels. Our members and others in this category, are using common English words that consumers understand: milk, cheese, yogurt and butter. To our members, and to consumers, these words represent functionality, form and taste, not necessarily the origin of the primary ingredient. They also are using qualifiers such as “non-dairy”, “dairy-free”, “plant-based”, and / or “vegan” to make the labels clear.

Current Food and Drug Administration (FDA) standards of identity lag behind the rapid innovation now occurring across the food industry. FDA recognized this with its recently announced plan to “modernize” standards of identity, an effort that PBFA fully supports. We hope and expect that the results of FDA’s modernization effort will encourage the type of innovation currently taking place in the plant-based foods industry and elsewhere. Today’s consumers are searching for a range of options to meet their dietary, social, cultural, and taste preferences. Accordingly, we strongly encourage FDA to update its regulations to allow plant-based milk and other dairy alternatives to

continue using the term “milk” and similar terms, to reflect what is happening in the market place due to consumer demand and understanding.

### **Scope of the market**

The market for dairy alternatives, particularly plant-based milks, has grown exponentially over the last several decades and especially in recent years. For example, according to research from Mintel, “non-dairy milk sales have seen steady growth over the past five years, growing an impressive 61 percent since 2012”<sup>1</sup> while a Cobank review predicts slower growth of 15-25 percent projected by 2022.<sup>2</sup>

In addition, the variety of available dairy alternatives on the market has exploded. For example, the milk category, once made up of mainly soy and almond milk, now consists of a wide array of milks made from nuts, seeds and grains. PBFA member companies make milks made from almonds, cashews, walnuts, peanuts, hazelnuts, macadamia nuts, coconuts, peas, oats, rice, flax seed and pumpkin seeds. In recent years, dairy alternatives in other categories have become more popular, as consumers are seeking out options for themselves and their families.

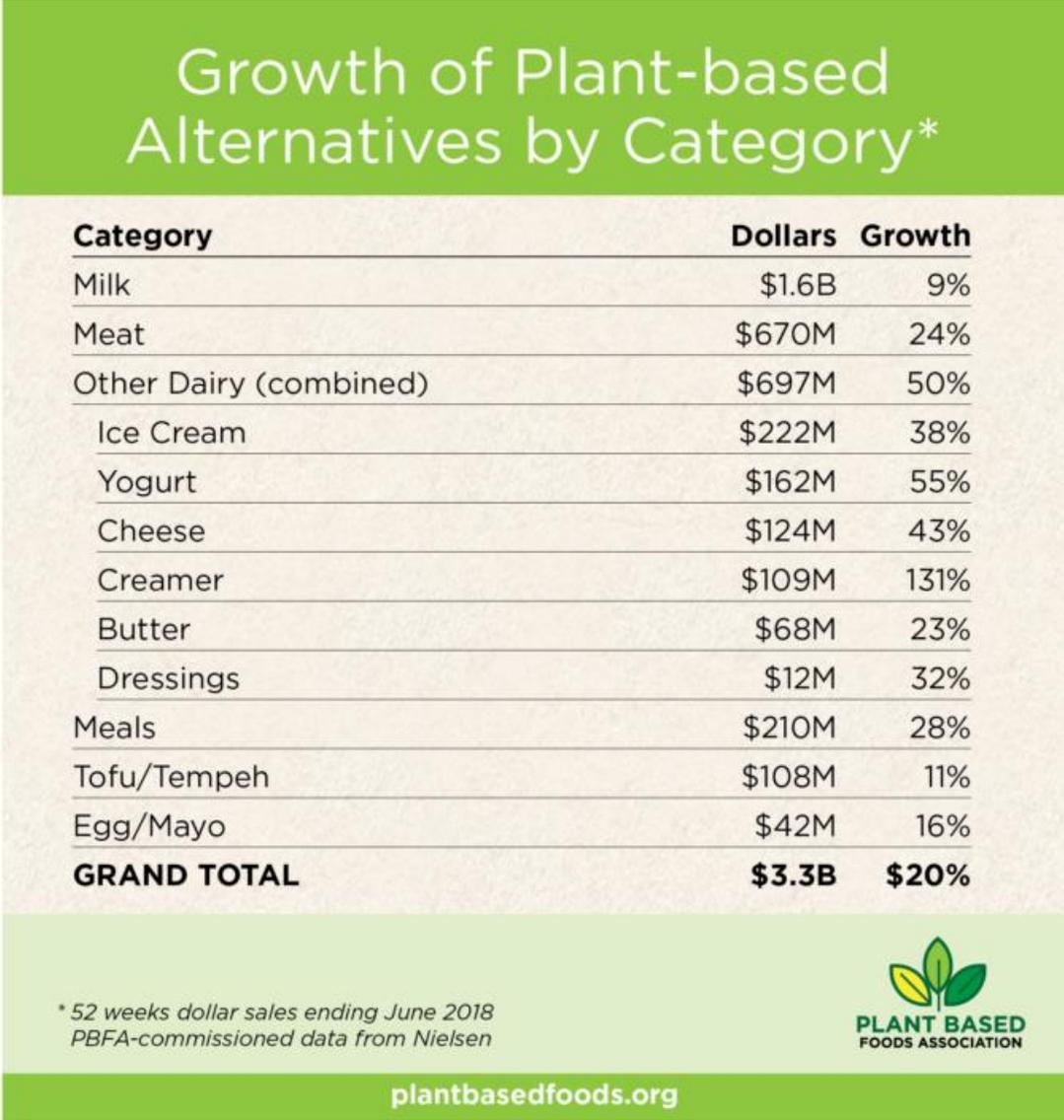
Here is how Mintel described this in its January 2018 report about the US market:

*While almond (64 percent market share), soy (13 percent market share) and coconut (12 percent market share) remain staples in the category, new non-dairy milk types are sparking excitement as consumers look to diversify their non-dairy milk repertoire. Indeed, new varieties have experienced fast growth in popularity as two thirds (63 percent) of those who have purchased pecan milk say they bought more pecan milk in 2017 than in 2016, while 58 percent of quinoa milk consumers say they bought more quinoa milk in 2017 than the year prior.*

*While almond, coconut and soy milks remain the most popular types of non-dairy milk, other nut and plant bases are gaining traction, including pecan, quinoa, hazelnut and flax milks. Both established and new brands are taking advantage of the growing non-dairy milk segment, innovating with alternative non-dairy bases. Innovation will be a catalyst to drive the category forward in 2018 as both mainstream bases like almond and alternative plant bases offer added functional benefits and unique flavors. We predict that new plant bases such as cashew and rice will allow new entrants into the non-dairy milk category to eventually surpass the soy milk segment, one of the first non-dairy milk segments to really take off with consumers,” said Megan Hambleton, Beverage Analyst at Mintel.<sup>3</sup>*

To better understand the breadth of the market, earlier this year, PBFA commissioned Nielsen to collect retail sales data to provide a snapshot of the annual growth and

revenue from all plant-based alternatives. The results of that data are reflected in the chart below.



Most relevant is the growth of plant-based milks at 9 percent, and all other dairy alternatives at 50 percent growth over one year. All signs indicate that these categories will continue to grow and expand.

According to our Nielsen data analysis, the milk alternative category at retail is comprised of an astonishing 65 brands making 627 plant-based milk products. Most retailers have a “private label” brand and are offering their own branded version plant-based milks. This category of products represents close to 16 percent of the total milk

alternative sales. In dollar figures, private label milks make up the third-largest selling “brand” at \$254 million in annual sales.

The plant-based cheese category has also seen tremendous growth, with product options ranging from shreds for melting on pizza, to spreadable cheeses, to high-end artisan options. Ingredient profiles also vary: ingredients range from nuts like cashews to coconut oil to soy. Our Nielsen data indicates that some 26 brands offer 190 types of plant-based cheese products. The data also shows an impressive 59 brands of plant-based ice cream, making 371 varieties, while in yogurt, 22 brands offer 147 varieties.

Creamers represent a particularly explosive category, with “barista” editions becoming very popular in cafés nationwide. Starbucks alone offers three variations of plant-based milks and proudly touts “custom crafted soymilk, almondmilk and coconutmilk”.

No longer only the purview of vegans or vegetarians, the industry has gone mainstream in every way imaginable. From retailers to food service, plant-based options are becoming more ubiquitous as consumer demand drives growth, with plant-based foods and beverages now available at every major retail outlet.

Moreover, many milk processors around the country pack both dairy and plant-based milks. Many businesses up and down the food chain: farmers, ingredient suppliers, processors, manufacturers, distributors, marketers, retailers, and others are benefiting financially from the boon in plant-based foods.

### **Marketing and Merchandising**

PBFA does not have hard data regarding marketing and merchandising of plant-based foods at retail. Anecdotally, we know that the manner in which plant-based foods are labeled and marketed is often dependent on brand positioning. Many brands use terms such as milk, yogurt, cheese, and cream, all with appropriate qualifiers such as “non-dairy,” “dairy-free,” “vegan”, and / or “alternative.” And, they are clear in their intent to convey to the consumer making the purchase that these options do not contain cow’s milk - as that is the primary reason that shoppers are choosing plant-based options.

The location within the retail store where these foods are sold varies greatly depending on the retailer, and to some extent, the brand. Most retailers sell plant-based milks in the refrigerated case alongside dairy milk. This was a marketplace decision originally made by retailers more than 20 years ago to help consumers easily locate these products and to support sales. Consumers generally look for dairy milk alternatives in a location where dairy milk is sold. Just as a consumer looking for lactose-free milk, or chocolate milk, would look in the refrigerated case containing plain dairy milk. In the current marketplace, consumers have access to a wide variety of milk options and current marketing practices in most stores have them displayed together in the store.

Plant-based cheese products can be found either where dairy cheese is sold, or sometimes in the produce aisle along with other plant-based food options. Yogurt alternatives are usually found displayed with dairy yogurt to help consumers more easily find them. The marketplace dictates how and where products are sold at retail.

### **Which Consumers Purchase Plant Based Foods and Why**

According to unpublished research conducted by the Plant Based Foods Association, a high number of households consume both dairy and non-dairy milks. Specifically, more than four in ten households report buying *both* plant-based and cow's milk. This data-point was also confirmed by the dairy industry's recent research that showed as many as 48 percent of consumers purchase both types of milk.<sup>4</sup>

In another way of making the point of mixed households, according to a 2017 USDA analysis, almost 90 percent of households who bought one or more milk alternatives also bought cow's milk.<sup>5</sup> A similar finding that "nine in ten households who purchase plant-based milk alternatives also buy cow's milk" was reported by CoBank.<sup>6</sup>

According to PBFA's consumer survey, taste preference was the leading reason for purchase of dairy milk alternative, with more than half of consumers reporting that they "like the taste" of plant-based milks.

Likewise, another report found that flavor was the number one attribute to drive purchase of plant-based milks.<sup>7</sup> Consumers are also seeking out plant-based dairy alternatives for a variety of other reasons including overall health, lactose intolerance, as well as concerns about the environment and animal welfare.

From the PBFA survey, more than half of consumers reported purchasing plant-based milks such as soy, almond and other nut milks, because they were a "healthy choice," while nearly 30 percent of consumers purchased these products due to lactose-intolerance. Concerns about animal welfare were cited by 27 percent of consumers as a factor influencing their purchase, while 22 percent noted that plant-based milks were "better for the environment".

PBFA's survey found that adults are the primary consumers of plant-based milks in the household, while children under 13 are significantly more likely to consume cow's milk. We also found that plant-based milks function much the same way as cow's milk and consumers use them as others may use cow's milk, with "on cereal" being cited as the leading use of plant-based milk, followed by "as a drink". However, plant-based milks were more likely to be used in "shakes and smoothies" while cow's milk was more likely to be used "for cooking".

## **Consumer Understanding of Labels**

American consumers are sophisticated and increasingly aware of the origin and ingredients of the foods they are consuming. Consumers who purchase plant-based foods are keenly aware of what they are purchasing and why they are making these choices. These shoppers state that they purchase plant-based milks for myriad reasons, including sustainability, health, concerns about allergies, ethics, variety and taste.

Our members' use of the term "milk" is not meant to diminish the value of cow's milk produced by dairy farmers, to confuse consumers, or to infringe on the good name of milk. Rather, our members believe that it is clear and appropriate to use terms that have been understood and accepted in the marketplace as the common and usual name for more than 30 years.

Plant-based foods that can be used directly in place of dairy-based products utilize the same over-arching terminology (e.g. milk, butter, cheese) because they serve the same purposes and are used in almost exactly the same way as their dairy counterparts. For example, a consumer who puts almond milk in their coffee instead of dairy milk is making a conscious choice to use one type of milk instead of another.

American consumers are well-informed about what plant-based milks are made from and what terminology they expect to see on labels. According to multiple studies, including PBFA's own survey, less than 1 in 10 purchasers of cow's milk or plant-based milk believe that plant-based milks contain cow's milk.<sup>8</sup>

According to our survey, the vast majority of consumers of both cow's milk and plant-based milk (64 percent for dairy drinkers and 71 percent for plant-based drinkers) agree that the term "milk" best identifies plant-based milk products. These consumers state that it "does the best job of setting correct product expectations," that "the term milk has already been adopted" and that "it gives a clue as to how the product should be used".

Alternative names for plant-based milks—such as "drinks" or "beverages"—are not preferred by consumers. These terms are more frequently associated with products such as soft drinks and alcohol than what you put in your coffee, cereal, or smoothie.

Consumers understand words in context. If FDA were to require the use of new terminology on plant-based foods, we believe that it's highly likely that this will result in more, not less, consumer confusion.

## **Consumer Understanding of Nutrition**

PBFA believes strongly that many of the questions in this RFI are based on misguided assumptions about optimum nutrition and consumer choice. There is widespread agreement among nutrition experts that the nutrients found in cow's milk products can be found in a variety of foods (including plant-based alternatives), and there is mounting

scientific evidence, as cited by mainstream organizations, that a proper diet based primarily on plant-based foods promotes optimal health.

For example, according to the American Heart Association: “Eating a mostly plant-based diet was associated with less risk of developing heart failure among people without previously diagnosed heart disease.”<sup>9</sup>

Also, according to the Academy of Nutrition and Dietetics, the nation’s leading organization representing nutrition professionals, those eating a mostly plant-based diet “are at reduced risk of certain health conditions, including ischemic heart disease, type 2 diabetes, hypertension, and certain types of cancer.”<sup>10</sup>

Finally, according to the U.S. federal government’s own 2015 Dietary Guidelines Advisory Committee’s report: “A diet higher in plant-based foods...and lower in calories and animal-based foods is more health promoting and is associated with less environmental impact than is the current U.S. diet.”<sup>11</sup>

Further, we do not share the concern implied by FDA’s questions regarding potential risk of poor nutrition due to differences between dairy products and plant-based alternatives. To the contrary, many consumers are seeking out plant-based milks and cheeses to avoid certain components of dairy such as saturated fat and cholesterol. In addition, many consumers cannot consume dairy due to allergies or intolerance. Approximately 65 percent of the population is lactose intolerant.<sup>12</sup>

### **PBFA voluntary standards**

Last year PBFA convened a Standards Committee to establish voluntary industry guidance for the labeling of plant-based milks. The resulting voluntary standard recommends that labels clearly identify the main ingredient as part of the word “milk” or be labeled as a “plant-based milk,” along with a clear disclosure of the main ingredient. We also recommend that the principal display panel contain the words “dairy-free” or “non-dairy,” as these were the phrases that were the most meaningful to consumers to connote that these products did not contain cow’s milk, as referenced above.

We have shared these standards, along with the results of our consumer survey, with the FDA. PBFA members, along with others in industry, participated in the standards development process. We believe that these guidelines suggest a clear and concise approach to labeling that allows flexibility while creating enough standardization across the category. PBFA intends to create similar voluntary standards for each of the other plant-based food categories as well.

### **Cost of Label Changes**

If FDA were to require changes to how plant-based foods are labeled, the ensuing updates to product labels would prove to be a significant and unnecessary financial

burden to our member companies. Changes to labels require far more than just changing packaging, as food companies have experienced with recent requirements to update the Nutrition Facts Panel.

Packaging changes necessarily involve several general areas of expertise and cost, each of which have direct and indirect costs, for example, but not limited to:

- 1) Design and Printing—design time including impact to overall designs, print plates, test runs, printer delays given mandated packaging changes across the industry, and waste of existing inventory;
- 2) Sales & Distribution Operations—there are hard distributor and retailer ‘switching’ costs to transitioning items that involve changes such as Statement of Identity, product name/naming convention, UPC/GTIN, Nutrition Facts, Ingredients list, which would likely be impacted by any potential changes. Direct costs include fees, disposition and replacement of wasted inventory. Incidental costs include the likelihood of trade partner error and delay;
- 3) Legal & Regulatory Review—professional review, revision, and approval involving lawyers, regulatory specialists and each of the third-party certifying bodies (e.g., USDA Organic, Non-GMO Project Verified).

Moreover, each area impacts the other so that multiple rounds of design, review and testing are almost always required. Indirect costs for all the above include management and staff time diverted from normal operations. Packaging changes can require six to 18 months, depending on factors. All these costs are directly multiplied by the number of items revised. PBFA members estimated that a company would incur costs ranging from \$50,000 to \$200,000 per SKU, not including staff time to manage the changes. Here, legal review would also be needed to ensure compliance with new FDA rules.

One member estimated for their company, the cost would be \$550,000 just in packaging updates alone. Adding in the cost of updating all of marketing materials (website, photography, product renderings, videos, truck wraps, trade show booths, etc.) it could go over \$1 million, for just this one company.

Another member offered a similar estimate. Based on about 50 SKUs, just to change the packaging would cost between \$300,000 and \$500,000, higher depending on the time frame for making the change if existing inventory could not be sold. Then to change all the marketing materials, this member estimates the cost to top \$1 million.

Moreover, the FDA is already requiring other labeling updates, presumably on an entirely different timetable, making the potential costs even higher and unpredictable.

The cost of making another label change would hit those companies who have worked to update the Nutrition Facts panel ahead of the compliance date the hardest.

### **Litigation and Labeling**

Several courts have considered and dismissed lawsuits that claimed makers of milk alternatives were deceiving consumers. For example, in one lawsuit, the court found that it's simply not true that shoppers confuse soymilk with milk that comes from a cow. The judge said:

*The plaintiffs also suggest that the word "soymilk" is misleading under section 343(a) because it implies that the product has a similar nutritional content to cow's milk. But a reasonable consumer (indeed, even an unsophisticated consumer) would not assume that two distinct products have the same nutritional content; if the consumer cared about the nutritional content, she would consult the label.<sup>13</sup>*

The judge acknowledged that the FDA has defined milk, but did not find that persuasive:

*Milk is indeed a food that that the FDA has standardized. See 21 C.F.R. § 131.110 (describing "milk" as from a cow and explaining the way it should be labeled). But the fact that the FDA has standardized milk does not categorically preclude a company from giving any food product a name that includes the word "milk." Rather, as the language of section 343(g) indicates, the standardization of milk simply means that a company cannot pass off a product as "milk" if it does not meet the regulatory definition of milk. Trader Joe's has not, by calling its products "soymilk," attempted to pass off those products as the food that the FDA has standardized (that is, milk). To the contrary, as already discussed, it is implausible that the use of the word "soymilk" misleads any consumer into believing the product comes from a cow. Soymilk, in short, does not "purport to be" from a cow within the meaning of section 343(g).<sup>14</sup>*

In another case that was dismissed with prejudice, the judge notes how FDA itself uses the word "soymilk" and how the FDA allows for using the "common or usual name" for such products:

*... the FDA regularly uses the term soymilk in its public statements, see, e.g., FDA Enforcement Report, 2011 WL 6304352 (Dec. 14, 2011); FDA Enforcement Report, 2007 WL 4340281 (Dec. 12, 2007), suggesting that the agency has yet to arrive at a consistent interpretation of §131.110 with respect to milk substitutes.*

*As the FDA has yet to prescribe a name for the Silk Products, the Court considers the "common or usual name[s]" for those foods. See 21 U.S.C. §*

343(i). FDA regulations provide that the common or usual name of a food "shall accurately identify or describe, in as simple terms as possible, the basic nature of the food or its characterizing properties or ingredients."

Here, the Court agrees with Defendants that the names "soymilk," "almond milk," and "coconut milk" accurately describe Defendants' products. As set forth in the regulations, these names clearly convey the basic nature and content of the beverages, while clearly distinguishing them from milk that is derived from dairy cows.<sup>15</sup>

The judge went on to note how implausible it is for consumers to be confused:

*Moreover, it is simply implausible that a reasonable consumer would mistake a product like soymilk or almond milk with dairy milk from a cow. The first words in the products' names should be obvious enough to even the least discerning of consumers. And adopting Plaintiffs' position might lead to more confusion, not less ...*

*The crux of the claims is that a reasonable consumer might confuse plant-based beverages such as soymilk or almond milk for dairy milk, because of the use of the word "milk." The Court finds such confusion highly improbable because of the use of the words "soy" and "almond." Plaintiffs essentially allege that a reasonable consumer would view the terms "soymilk" and "almond milk," disregard the first words in the names, and assume that the beverages came from cows. The claim stretches the bounds of credulity. Under Plaintiffs' logic, a reasonable consumer might also believe that veggie bacon contains pork, that flourless chocolate cake contains flour, or that e-books are made out of paper.<sup>16</sup>*

Finally, as recently as December 20, the 9<sup>th</sup> Circuit Court of Appeals upheld a district court decision to dismiss a lawsuit claiming that consumers were misled by almond milk. The court also addressed the question of using with word "imitation". That decision is remarkable for its relevance to the current FDA inquiry:

*Painter's complaint does not plausibly allege that a reasonable consumer would be deceived into believing that Blue Diamond's almond milk products are nutritionally equivalent to dairy milk based on their package labels and advertising. ... The district court correctly concluded that "[n]o reasonable consumer could be misled by [Blue Diamond's] unambiguous labeling or factually accurate nutritional statements."<sup>17</sup>*

The judge notes that almond milk is neither "imitation" nor a "substitute" under the federal definitions of those terms, and that it simply has a different nutrition profile:

*Nor can Painter plausibly allege that Blue Diamond's almond milk products are mislabeled in violation of federal law. Almond milk is not an "imitation" of dairy milk within the meaning of 21 U.S.C. § 343(c) and 21 C.F.R. § 101.3(e). Notwithstanding any resemblance to dairy milk, almond milk is not a "substitute" for dairy milk as contemplated by section 101.3(e)(1) because almond milk does not involve literally substituting inferior ingredients for those in dairy milk.*

*In addition, a reasonable jury could not conclude that almond milk is "nutritionally inferior" to dairy milk within the meaning of 21 C.F.R. § 101.3(e)(4), as two distinct food products necessarily have different nutritional profiles. As the district court concluded, it is not plausible that a reasonable consumer would "assume that two distinct products have the same nutritional content." <sup>18</sup>*

## **First Amendment Concerns**

The free speech clause of First Amendment to the U.S. Constitution protects companies that label their foods with truthful, non-misleading names. PBFA's legal analysis indicates that it's highly unlikely that efforts to ban certain words such as "milk" or to require pejorative qualifiers would survive a court challenge under the First Amendment's free speech clause, especially given all the previous case law where courts have thrown out claims of consumer deception. When a company engages in truthful, non-misleading speech, in order limit that speech, the FDA would have to demonstrate a "substantial government interest". If consumer confusion is that interest, several courts have already indicated that argument is not even remotely plausible.

In recent years, the Supreme Court has placed an even higher bar on government restrictions on "commercial speech". Thus it's highly unlikely that FDA action to disallow words such as "milk" or "yogurt", when accompanied by clear qualifying labels such as "non-dairy" or "plant-based" would be upheld as constitutional in an inevitable First Amendment legal challenge that would follow such action.

## **Conclusion**

Enacting new labeling rules would create unnecessary, confusing, and costly label changes that likely violate the First Amendment and would be struck down in court.

Ultimately, the question is whether current regulatory definitions can keep up with innovation. We are living in a time of rapid innovation in food and America is leading the way. Consumers are entitled to the benefits of this innovative American spirit and the delicious new plant-based offerings in the marketplace.

We urge the FDA to adopt policies that encourage this innovation, not stifle it, and that will allow consumers to make informed choices. Plant-based food producers offer options that consumers want and recognize. If those foods are forced to be identified by

obscure, contrived names that consumers are unfamiliar with, innovation will likely be stifled, and consumers will be deprived of the choices they deserve.

We respectfully request that FDA refrain from making any changes to its current labeling policy as our members are complying with current federal labeling guidelines by using “common and usual” terms with clear qualifiers that consumers understand.

The FDA has the unique opportunity to support this growing industry and the millions of American consumers who are voting with their dollars.

Our members are committed to working with FDA and look forward to finding a solution to this important issue. Thank you.

Sincerely,

*Michele Simon*

Michele Simon, JD, MPH

Executive Director

## REFERENCES

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<sup>1</sup> US non-dairy milk sales grow 61% over the last 5 years. (January 04, 2018). Retrieved December 26, 2018, from <http://www.mintel.com/press-centre/food-and-drink/us-non-dairy-milk-sales-grow-61-over-the-last-five-years>

<sup>2</sup> Milk Alternatives Gain Ground Hasten Change in Dairy Industry. (June 19, 2018). Retrieved December 26, 2018, from <https://www.cobank.com/corporate/news/milk-alternatives-gain-ground-and-hasten-change-in-dairy-industry>

<sup>3</sup> US non-dairy milk sales grow 61% over the last 5 years. (January 04, 2018). Retrieved December 26, 2018, from [www.mintel.com/press-centre/food-and-drink/us-non-dairy-milk-sales-grow-61-over-the-last-five-years](http://www.mintel.com/press-centre/food-and-drink/us-non-dairy-milk-sales-grow-61-over-the-last-five-years)

<sup>4</sup> Watson, E. (January 24, 2019). 48% of consumers buy both plant-based and dairy, reveals IPSOS study. Retrieved January 27, 2019, from <https://www.foodnavigator-usa.com/Article/2019/01/24/48-of-consumers-buy-dairy-and-plant-based-milks-reveals-IPSOS-survey>

<sup>5</sup> Stewart, H., & Cessna, J. (September 18, 2017). On Different Trajectories: A Look at Sales of Cow's Milk and Plant-Based Milk Analogs (United States, United States Department of Agriculture, Economic Research Service).

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<sup>6</sup> Laine, B. (June, 2018). Competition is Reshaping the Milk Business (Rep.). CoBank Knowledge Exchange.

<sup>7</sup> Not Milking It (2017 ed., Flavor Trends, Publication). Melville, NY: Comax Flavors.

<sup>8</sup> Watson, E. (October 12, 2018). Does almondmilk contain cow's milk? Not sure, say 16% of Americans, Yes, say 9%, No, say 75%. Retrieved December 26, 2018, from <https://www.foodnavigator-usa.com/Article/2018/10/12/Does-almondmilk-contain-cow-s-milk-Not-sure-say-16-of-Americans-Yes-say-9-No-say-75>

<sup>9</sup> American Heart Association Meeting Report Poster Presentation M2081 - Session: LB.APS.10. (November 13, 2017). Plant based diet associated with less heart failure risk. Retrieved from <https://newsroom.heart.org/news/plant-based-diet-associated-with-less-heart-failure-risk>

<sup>10</sup> Melina, V., Craig, W., & Levin, S. (2016). Position of the Academy of Nutrition and Dietetics: Vegetarian Diets. *Journal of the Academy of Nutrition and Dietetics*, 116 (12), 1970-1980. Retrieved January 4, 2019, from [https://jandonline.org/article/S2212-2672\(16\)31192-3/abstract](https://jandonline.org/article/S2212-2672(16)31192-3/abstract).

<sup>11</sup> Scientific Report of the 2015 Dietary Guidelines Advisory Committee (Advisory Report to the Secretary of Health and Human Services and the Secretary of Agriculture, Publication). (2015). United States Department of Agriculture, Agriculture Research Service.

<sup>12</sup> Lactose Intolerance: National Library of Medicine (US). Genetics Home Reference [Internet]. Bethesda (MD): The Library; Jan. 2, 2019; [reviewed May 2010]. Available from: <https://ghr.nlm.nih.gov/condition/lactose-intolerance#statistics>

<sup>13</sup> *Gitson v. Trader Joe's Company*, Case No. 13-1333 (N.D. Cal. Dec. 1, 2015)

<sup>14</sup> *Gitson v. Trader Joe's Company*, Case No. 13-1333 (N.D. Cal. Dec. 1, 2015)

<sup>15</sup> *Ang v. WhiteWave Foods Co.*, Case No. 13-CV-1953 (N.D. Cal. Dec. 10, 2013)

<sup>16</sup> *Ang v. WhiteWave Foods Co.*, Case No. 13-CV-1953 (N.D. Cal. Dec. 10, 2013)

<sup>17</sup> *Painter v. Blue Diamond Growers*, No. 17-55901 (9th Cir. Dec. 20, 2018)

<sup>18</sup> *Painter v. Blue Diamond Growers*, No. 17-55901 (9th Cir. Dec. 20, 2018)