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Contact: Michael Robbins  
Phone: 202.838.3800  
Email: michael.robbins@moakgroup.com

**Plant Based Foods Association tells FDA that efforts to restrict “milk” labeling would be unnecessary, costly, and unconstitutional**

*In response to FDA inquiry on dairy names, an overwhelming majority of comments submitted support using the word milk on plant-based alternatives*

**San Francisco, CA**, - Today, ahead of the deadline for comment, the Plant Based Foods Association (PBFA) submitted comments on behalf of its 130 members to the Request for Information (RFI) from Food and Drug Administration’s (FDA) on the use of dairy names for plant-based alternatives.

PBFA also conducted a preliminary analysis of the comments posted so far by FDA and found that most people, at least 74%, are in support of using the term “milk” on the label of plant-based milks.

“We maintain that this entire exercise is a solution in search of a problem,” said Michele Simon, executive director of PBFA. “At a time when resources are scarce, our federal government should not be concerned with how “almond milk” is labeled. Aren’t there higher priorities, such as a safety of our food supply, for FDA to worry about?”

“Moreover, the marketplace disruption being pushed by the dairy lobby would hinder innovation, create untenable costs for our members, and ultimately be found unconstitutional, making the entire effort a waste of everybody’s time and resources. We encourage the FDA to abide by free market principles and not restrict labeling to unfairly favor the dairy industry,” she added.

PBFA’s comments make the following points:

**Consumers are not Confused and Current Labels are Clear**

According to FDA Commissioner Scott Gottlieb, the reason for the agency’s inquiry is that “consumers should be able to know at a quick glance what type of product they’re

purchasing ...”<sup>1</sup> In response, PBFA’s comments make clear that this is already the case: “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.”

According to research commissioned by PBFA and cited in its comments:

- More than four in ten households buy *both* plant-based and cow’s milk. This data-point was also confirmed by the dairy industry’s own recent research.<sup>2</sup>
- 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.
- 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 the stuff you put in your coffee, cereal, or smoothie.

### **Label Changes Are Very Costly and Would Stifle a Growing Market**

PBFA’s comments note that plant-based foods are no longer a niche market, with growth of plant-based milks at 9 percent, and all other dairy alternatives at 50 percent growth, over one year. This growing industry would be stifled should the FDA unfairly target plant-based foods.

PBFA commented, “If FDA were to require changes to the way that plant-based foods are labeled, the ensuing changes to manufacturer’s labels would prove to be a significant unexpected and unnecessary financial burden to most companies.” With labeling change costs ranging from \$50,000 to \$200,000 per SKU, PBFA notes that multiple PBFA members would have to pay more than \$1 million, each, to comply with rule changes. In addition, many PBFA members are small to medium sized companies for whom such massive costs could even put them out of business.

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<sup>1</sup> <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm621824.htm>

<sup>2</sup> <https://www.foodnavigator-usa.com/Article/2019/01/24/48-of-consumers-buy-dairy-and-plant-based-milks-reveals-IPSOS-survey>

## **Changing Labeling Laws Would Be Found Unconstitutional**

PBFA's comments also highlight several legal cases and First Amendment doctrine. The association notes: "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."

PBFA cites multiple court decisions, throwing out claims of consumer confusion, including a recent 9<sup>th</sup> Circuit case from last December, where courts "considered and dismissed lawsuits that claimed makers of milk alternatives were deceiving consumers." One judge noted that, *"it is simply implausible that a reasonable consumer would mistake a product like soymilk or almond milk with dairy milk from a cow."*

Even from a nutrition standpoint, courts have not been persuaded. As one just put it: *"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."*

## **FDA Should Support Innovation, Consumer Choice, and the Free Market**

PBFA's comment concludes by urging FDA to do the right thing:

"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.

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

To read the Plant Based Foods Association's complete submission to the Food and Drug Administration's RFI, please click [here](#).

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