



January 28, 2020

Representative Anna Eshoo
Chair, Health Subcommittee
Committee on Energy and Commerce
2125 Rayburn House Office Bldg.
Washington, DC 20515

Representative Michael Burgess, M.D.
Ranking Member, Health Subcommittee
Committee on Energy and Commerce
2322 A Rayburn House Office Bldg.
Washington, DC 20515

Dear Chairman Eshoo & Ranking Member Burgess:

I write today to express opposition to H.R.778, the DAIRY PRIDE Act, which is the subject of a hearing of the House Energy and Commerce Committee's Health Subcommittee on January 29, 2020, entitled "Improving Safety and Transparency in America's Food and Drugs."

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 170 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.

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, with qualifiers to distinguish them from their animal-derived alternatives. These terms are readily understood by consumers as representative of the products functionality, form and taste, not necessarily the origin of the primary ingredient. Qualifiers such as "non-dairy," "dairy-free," "plant-based," and / or "vegan," along with the ingredient and nutrition facts panel, make the contents labels clear.

FDA has recently announced plans "modernize" standards of identity, an effort that PBFA fully supports. We 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 have urged FDA 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 marketplace due to consumer demand and understanding.

PBFA voluntary standards

In 2018 PBFA convened a Standards Committee to establish voluntary industry guidance for the labeling of plant-based milks. The resulting voluntary standards were announced later that year. The standards recommend 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.

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.

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 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

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.

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

We urge the subcommittee to reject proposals such as the DAIRY Pride Act that stifle innovation. If plant based 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.

Thank you for your consideration of PBFA's concerns.

Sincerely,

Michele Simon

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