



THE
GOOD FOOD
INSTITUTE

Soy Milk or Bean Beverage: Producers' First Amendment Right to Label Their Products

Jessica Almy

Policy Director

On the menu today

- The Good Food Institute
- Soy milk + other plant-based milks
- Labeling issues
- GFI's rulemaking petition to FDA





THE
GOOD FOOD
INSTITUTE



Creating a more healthy, humane, and sustainable food supply by...

- Fostering Innovation
- Supporting Innovation
- Corporate Engagement
- Institutional Engagement

GFI is a non-profit organization. We're 100% supported by gifts and grants.

“Without severe cuts in consumption, agricultural emissions will take up the entire world’s carbon budget by 2050...

Shifting global demand for meat and dairy products is central to achieving climate goals.”

—Royal Institute of International Affairs
(Chatham House)

Livestock – Climate Change’s Forgotten Sector

Global Public Opinion on Meat and Dairy Consumption







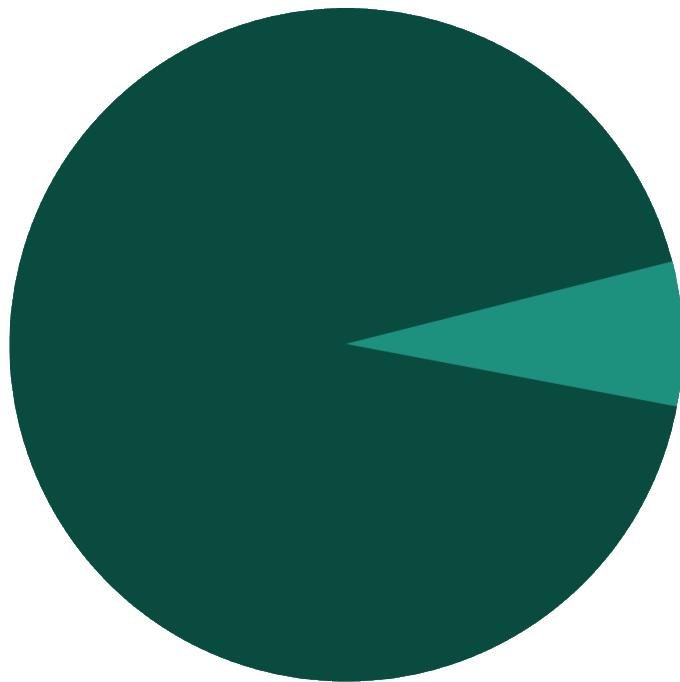
“American cities were drowning in horse manure [and plagued by] flies, congestion, carcasses, and traffic accidents.”







\$24.5 B



MILK INDUSTRY

\$2 B



The government's clumsy approach



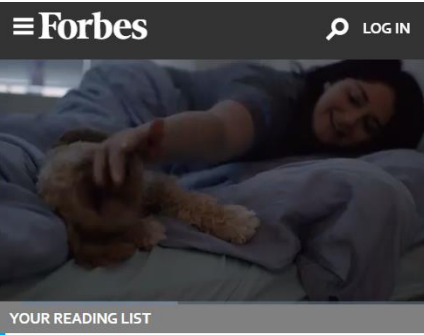
- USDA uses the terms consumers use and understand
- FDA insists on “lacteal secretions,” but does not (typically) enforce

Effect of uncertainty

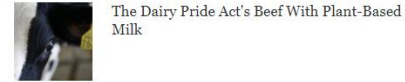
“now...identifies the product as soy drink instead of ‘soy milk’”

Background from OC

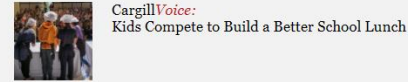
Fong Kee Tofu Co., Inc. is the manufacturer of various tofu and soy products, including soft tofu, firm tofu, fried tofu, soy bean cake, and soy bean drink. Soy beans, the major raw ingredient used in all of the firm's tofu/soy products, are received from out-of-state. Finished products are only distributed locally to the firm's customers including restaurant and grocery stores. The San Francisco district has conducted four inspections over four consecutive years. The past three inspections resulted in an untitled letter to the firm in 2011, a warning letter to the firm in 2012, and a regulatory meeting held with the firm in 2013. At the most recent inspection at this firm, conducted between March 19 and April 8, 2014, SAN-DO has documented significant repeat violations of both Current Good Manufacturing Practices as well as recurring food labeling violations. At the current inspection in April 2014, the firm had made voluntary corrections to one labeling violation from the January 2013 inspection; the sweetened soy drink label now contains a nutrition facts panel and identifies the product as soy drink instead of “soy milk.” It is noted that the non-sweetened version of the “soy milk” product was observed to be filled into bottles with a label that identifies the product as “soy milk,” lists “sugar” as an ingredient, and does not have the nutritional facts panel. However, the firm stated that they have about (b) (5) bottles with the old label and plan to



YOUR READING LIST



The Dairy Pride Act's Beef With Plant-Based Milk



CargillVoice:
Kids Compete to Build a Better School Lunch



PODCAST: Basic Outfitters Wants To Solve Your Underwear Problem

Active on Facebook



Rachel Maddow Ends August As No. 1 In Cable News

APR 6, 2017 @ 10:53 AM 3,953 12 Stocks to Buy |

The Dairy Pride Act's Beef With Plant-Based Milk

 **Christina Troitino**, CONTRIBUTOR
I cover the big business and economics behind food and drink. [FULL BIO](#)
Opinions expressed by Forbes Contributors are their own.

TWEET THIS

 milk sales have dropped 11% over the last year

 any plant-based dairy product that uses the term "milk" on its packaging would be considered mislabeled



Article on the Dairy Pride Act pending in Congress



Soy Milk signage in Senate cafeteria

Consumer confusion—*really?*

“No reasonable consumer could be misled by [Blue Diamond’s] unambiguous labeling and factually accurate nutrition statements.... By using the term ‘*almond* milk,’ even the least sophisticated consumer would know instantly the type of product they are purchasing.”

Painter v. Blue Diamond Growers, Civ. No. 17-2235 (C.D. Cal. May 24, 2017).

Plaintiffs’ claim of confusion over Silk soymilk, almond milk, and coconut milk labels “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.” *Ang v. WhiteWave Foods Co.*, Case No. 13-cv-1953 (N.D. Cal. Dec. 10, 2013).

See also Gitson v. Trader Joes, Case No. 13-cv-01333 (N.D. Cal. Oct. 4, 2013).



Request that the FDA issue regulations clarifying how foods may be named by reference to the names of other foods.

Docket Folder Summary [View all documents and comments in this Docket](#)

Docket ID: FDA-2017-P-1298 Agency: Food and Drug Administration (FDA) Parent Agency: Department of Health and Human Services (HHS)

[+ View More Docket Details](#)

Primary Documents [View All \(3\)](#)



Citizen Petition from The Good Food Institute

Comment Period Closed

Aug 29, 2017 11:59 PM ET

Other Posted: 03/02/2017 ID: FDA-2017-P-1298-0001



Supplement from The Good Food Institute

Comment Period Closed

Other Posted: 08/29/2017 ID: FDA-2017-P-1298-0064



Acknowledgement Letter from FDA DDM to The Good Food Institute

Comment Period Closed

Other Posted: 03/02/2017 ID: FDA-2017-P-1298-0002

Supporting Documents [View All \(2\)](#)

Attachment A Sovfoods Association of North America. Summary of Consumer Research re Citizen Petition...

[Take a Tour!](#)

[Sign up for Email Alerts](#)

113

Comments Received*

[Tweet](#)

[Share](#)

[Email](#)

*This count refers to the total comment/submissions received on this docket, as of 11:59 PM yesterday. Note: Agencies review all submissions, however some agencies may choose to redact, or withhold, certain submissions (or portions thereof) such as those containing private or proprietary information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. This can result in discrepancies between this count and those displayed when conducting searches on the Public Submission document type. For specific information about an agency's public submission policy, refer to its website or the Federal Register document.

GFI's regulatory petition

- Purpose: Clarity on terms like “soy milk”
- Proposal: Amend 21 C.F.R. § 102.5 to explicitly allow compound names



*Treeline nut
cheese*

GFI's regulatory petition

Rationale:

- These are the terms that consumers use.
- The proposed approach is consistent with the FDCA and FDA practice.
- Restricting producers from using compound names would violate the First Amendment.

Selected cases

- *Generally, Central Hudson v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980).
- *See also*
 - *Sorrell v. IMS Health*, 31 S. Ct. 2653 (2011);
 - *Pearson v. Shalala*, 164 F.3d 650, 655 (D.C. Cir. 1999).
- *Ocheese Creamery v. Putnam*, 851 F.3d 1228 (11th Cir. 2017).

Where do we go now?

- FDA should grant GFI's petition
- Defeat Dairy Pride Act
- Ensure plant-based producers are on equal footing with conventional animal agriculture



T H E
GOOD FOOD
I N S T I T U T E

gfi.org
[@GoodFoodInst](https://twitter.com/GoodFoodInst)

Jessica Almy, Policy Director
jessicaa@gfi.org