

FDA Draft Guidance Signifies Acceptance of the Term “Milk” to Describe Plant-Based Alternatives

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The Food and Drug Administration (FDA) has released draft guidance for the labeling of plant-based milk alternatives, which could have a significant impact on the way these products are marketed and sold. The proposed guidance suggests that manufacturers and distributors of increasingly popular oat, almond, cashew, soy and other milk alternatives should be allowed to use the term “milk” to describe their products despite the fact these products have no actual dairy content.

The FDA outlined in the draft guidance that it is considering allowing the use of the term “milk” to describe these popular alternatives because most consumers understand the differences between plant- and animal-produced milk due to the growth in popularity of plant-based milk alternatives. The term “milk” has been colloquially used to refer to the byproduct made when water is combined with a tree nut, legume, seed or grain. The market for non-dairy milk alternatives has continually grown over the past decade, with the use of the term “milk” to describe these products increasingly commonplace.

But, the FDA does note that if plant-based milk alternatives are labeled as “milk” despite containing no dairy, consumers should be made aware of the nutritional differences between the plant-based milk and cow’s milk. As such, the FDA recommends that plant-based milk makers include a statement on their label clarifying the differences between their product and cow’s milk. One example given by the FDA is the addition of language on the label saying “contains lower amounts of Vitamin D and calcium than milk.”

The FDA draft guidance comes five years after the FDA began gathering comments on the issue and after years of lawsuits over the use of the term “milk” to describe non-dairy milk alternatives. The use of the term “milk” to describe these products has drawn complaints from the dairy industry, which argues that the term should only apply to animal milks. The proposed rule is not final, and companies do not have to follow draft guidance, but many food companies follow FDA guidelines closely. The FDA will accept comments on the draft guidance until April 23, 2023.

Although the FDA draft guidance does not put an end to the fight over the use of the term “milk” to describe dairy-free milk alternatives, it does signify increasing acceptance of the term. For businesses impacted by this draft guidance, it is recommended that they consult an experienced food and beverage attorney to decrease the risk of litigation and make sure their product label complies

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