United States Senate
WASHINGTON, DC 20510

May 25, 2012

Dr. Margaret A. Hamburg, Commissioner
Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

Dear Commissioner Hamburg:

We are writing to express our concerns regarding the haphazard enforcement efforts of the Food and Drug Administration ("FDA") to prevent the misbranding of certain food items that are imitations of standardized dairy products.

As you well know, it has become increasingly commonplace to find products on the market that use the names of standardized dairy products, such as "milk," "cheese," "ice cream," and "yogurt," when in fact those products do not meet the legal standards of identity as established under FDA regulations.

Federal standards of identity are established to promote honesty and fair dealing in the interest of consumers. Dairy product standards contain provisions regarding both permitted and prohibited ingredients, as well as proper manufacturing procedures to protect product identity.

It is clear from scattered enforcement actions that the FDA understands these terms should not be used in such a manner for imitation dairy products. [See enclosures.] However, given the increasing prevalence of mislabeled imitation dairy products, FDA enforcement has not been sufficient.

We are concerned that without more consistent, effective action, these misleading labels will become even more prevalent and further erode the meaning of these dairy terms. This practice unfairly allows non-dairy products to imply nutritional equivalence to dairy products and to potentially mislead consumers as to the true nutrient content or quality of these imitation products.

While consumers may choose imitation dairy products for a variety of reasons—including personal preference, health, religion, or beliefs—it is inappropriate for manufacturers of these products to violate the law and continue to mislead consumers by capitalizing on dairy terminology for standardized foods. Imitation dairy products should be allowed on the market only when accurately labeled.

It is important that the FDA take appropriate and immediate action against these expanding categories of misbranded and mislabeled products. We look forward to working with you on this important dairy issue.

Sincerely,

Dan Coats
U.S. Senator Dan Coats

Richard G. Lugar
U.S. Senator Richard Lugar

Kirsten E. Gillibrand
U.S. Senator Kirsten Gillibrand

Enclosures