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Hon Tim Whetstone MP
Minister for Primary Industries and Regional Development
By Email: Minister.Whetstone@sa.gov.au

Dear Minister,

Re: Labelling of alternative milk products.

I am writing regarding SADA's concern about the Food Standards Australia and New Zealand Code relating to the representation of certain products in the Australian Market place as "milk" or "milk products". Under intergovernmental arrangements regarding the Australia and New Zealand Food Standards Code, (the Code) enforcement of the Code is the responsibility of each signatory jurisdiction.

As a matter of general policy, the intergovernmental agreement (IGA) and the Code allow for the mislabelling of vegetable matter as milk is becoming a matter of increasing concern.

Because of the construct of the Code, South Australia was unable to respond to a complaint by SADA about the mislabelling of diluted almond juice as "Milk" in 2017. Since that time there has been no movement from any jurisdiction regarding this matter.

Supermarkets continue to have on sale products labelled 'Almond Milk', 'Soy milk' and 'Rice Milk'. Nothing in this letter is in anyway a reflection on the supermarkets and the service they provide to the Australian community. Products of this nature are available in many supermarkets across Australia.

The reason that these plant-based products can be labelled 'milk' is because of clause 1.1.1-13 of the Code which provides:

(4) If a food name is used in connection with the sale of a food (for example in the labelling), the sale is taken to be a sale of the food as the named food unless the context makes it clear that this is not the intention.

Example: The context within which foods such as "soy milk" or "soy ice cream" are sold is indicated by the use of the same "soy", indicating that the product is not a dairy product to which a dairy standard applies.

This interpretation is, in the opinion of SADA, letting both the dairy industry and the consumer down. It is clear that the intent in the code with regard to the term milk there is a strong focus on milk being a dairy product. The definition of milk (Standard 1.1.2-3) provides:

milk means:

- (a) the mammary secretion of milking animals, (emphasis added) obtained from one or more milkings for consumption as liquid milk or for further processing, but excluding colostrums; or*
- (b) (b) such a product with *phytosterols, phytostanols and their esters added.*

The definition is very similar in terms to the definition provided by the European regulations particularly relating to the product being a "...mammary secretion of milking animals...".

Standard 2.5.1.- 4 provides that, *“A food that is sold as ‘milk’ must be milk.”*

The reference to *“phytosterols, phytostanols and their esters”*, is a reference to products that are added to milk periodically for product enhancement such as a yoghurt etc.

Nevertheless, for the purposes of sub-clause (b) the product still has to be *“such a product”*, namely, milk.

With regard to products such as Cream and Butter Standard 2.5 is entitled *“Dairy Products”*. Each of the Standards under the heading have definitions that refer directly to milk. For example, Standard 2.5.5.-2 defines butter to mean *“a food that is derived from milk, and products obtained from milk...”*

Similarly, cheese:

cheese means:

(a) the ripened or unripened solid or semi-solid milk product, whether coated or not, that is obtained by one or both of the following processes:

- (i) wholly or partly coagulating milk, or materials obtained from milk, or both, through the action of rennet or other suitable coagulating agents, and partially draining the whey which results from such coagulation;*
- (ii) processing techniques involving concentration or coagulation of milk, or materials obtained from milk, or both, which give an end-product with similar physical, chemical and organoleptic characteristics as the product described in subparagraph (a)(i);*

Again, the reference is directly to **“milk”**.

But for the specific exemption a 1.1.1.13(4), the food standards expressly exclude a product is not derived from *“...mammary secretion of milking animals...”* being labelled as a cheese, yoghurt, cream, ice cream, butter or similar commonly used dairy title.

The provisions of 1.1.1-13, products such as almonds, nuts and beans and their derivative products such as *“Almond Milk”* and *“Soy milk”* would define in Standard 2.3.1. Fruit and Vegetables. Those products are specifically excluded from the definition of ‘milk’ and there is no reference, but for again in 1.1.1-13, in the Standards to those products being any form of *“milk”*.

A decision handed down by the European Court in the matter of *Verband Sozialer Wettberb v TofuTown.com GmbH* on the 14 June 2017 (C-422/16) relates to this very issue.

The court which noted that

“The term ‘milk’ shall mean exclusively the normal mammary secretion obtained from one or more milkings without either addition therefrom extraction therefrom.”

The court also considered the uses of milk product names such as *“whey, cream, butter, buttermilk, cheese and yogurt”* as *“Milk Products”*. The findings of the court were that products sold as butters, yoghurts, creams and the like must be derived from milk. There are very strong parallels to be drawn with the Australian and New Zealand Food Standards definitions and the European definitions including definitional wording.

The manufacturers of plant based '*milks*', rely on the title '*milk*', to promote their products as being an alternative to dairy and their marketing is critical of dairy but still embrace the dairy related title of '*milk*' because they know that it is as important to remain linked with the name milk.

For example: https://www.youtube.com/watch?v=gbP_IcRvFMA

It is time that Australia recognise what milk is and more importantly what it isn't.

SADA believes that it is time that the State and Commonwealth Governments revisited the Code with a view to having the Food Standards Australia and New Zealand Code amended to remove this anomaly.

Thank you for your attention to this matter. If you have any questions, please don't hesitate to contact Mr Andrew Curtis, SADA CEO.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'John Hunt', with a long horizontal flourish extending to the right.

John Hunt
President