Defining “Meat”: Plant-based Meat Label Censorship in the United States

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What is plant-based meat?

- Emulates the appearance, taste and texture of animal-derived protein
- Entirely plant-based
- Examples:
  - Beyond Burger
  - Impossible Burger
  - Many varieties of plant-based ham, bacon, chicken and other meat alternatives
Fry Family Food Co.

**MEAT FREE**

**8 ORIGINAL HOT DOGS**
Infused with an authentic hickory smoke flavour.

Cooks in 8 MINS
High in protein, source of fibre, a non-GM product, onion and garlic free.

360 g (NET WT) Keep frozen

**MEAT FREE**

**4 GOLDEN CRUMBED SCHNITZELS**
Plant proteins are combined, seasoned and then coated in a golden crumb.

320 g (NET WT) Keep frozen

**MEAT FREE**

**CHICKEN-STYLE NUGGETS**
Rolled in a light crumb

380 g (NET WT) Keep frozen

**MEAT FREE**

**CHICKEN-STYLE STRIPS**

Keep frozen
Foothold in the market

• Increasingly popular among consumers
• Plant-based retail sales increased five times faster than total food sales in 2019
• Plant-based food retail sales reached $5 billion in 2019
  • Plant-based milk $2 billion
  • Plant-based meat $939 million
• “Mock meat” traditionally aimed at vegetarians and vegans
• New generation of “meaty” products appeal to omnivores and flexitarians
  • 95% of plant-based burger consumers had purchased a beef burger within the past year

Beyond Burger
Cell-cultured meat

• Made from actual animal tissue
• Cells extracted from an animal are grown in a laboratory culture
• Challenges remain in relation to regulatory approval and scaling up production
• In 2020, Singapore became the first country to commercialize cell-based meat and approve for human consumption
Comparative impacts of the meat and meatless industries

- Consumers increasingly motivated to eat plant-based meat – ethical, health and environmental concerns, changing taste preferences, curiosity
- Every year, the following are killed for food:
  - around 70 billion terrestrial animals
  - between 51 and 167 billion farmed fish
  - up to three trillion wild-caught fish
- Industrialized animal farming contributes to food-borne infections, antibiotic resistance, and zoonotic diseases
- Livestock accounts for 14.5% of all anthropogenic GHG emissions
  - Cattle produce around 65% of livestock emissions
- Carbon footprint of Impossible Burger is 89% smaller than a beef burger
State label censorship laws

• More than 20 states have introduced “truth in labeling” laws
• Restrict the use of certain descriptors (meat nomenclature) on product labels
• Statutory definition of “meat”: variations of “any edible portion of a livestock carcass”
• Deemed to be “misbranded” if labeled as meat but not derived from a livestock carcass
Disclaimers (Qualifiers)

- Meat nomenclature is permitted, provided the label includes a disclaimer that discloses the product is plant-based.
- Disclaimer must be: prominent/conspicuous/on the front of the package/same font, style and size as the identifiable meat term.
- Some statutes require additional terms, e.g. “meatless,” “meat-free,” “this product does not contain meat.”
- Use of image, depiction, or graphic of a livestock animal.
- “Imitation”
Cell-cultured meat and insect-based products

• Most statutes apply to plant-based and cell-cultured meat
• Several states include insect products in label censorship laws
• Viability of large-scale edible insect industry is still uncertain – will labeling laws support or undermine growth of this industry?
Rice...and other products

- Louisiana and Arkansas (top rice-producing regions) prohibit use of the word “rice” for rice alternatives

- Both states also prohibit “utilizing a term that is the same as or similar to a term that has been used or defined historically in reference to a specific agricultural product”

  – Arkansas Act 501 & Louisiana Act 273
Purpose of the statutes?

- Ostensibly – to prevent consumer confusion
- To stifle competition
- To protect animal agriculture industry

The law would “protect our cattle farmers from having to compete with products not harvested from an animal.”

– Mississippi Farm Bureau Federation President Mike McCormick
Lawsuits challenging label censorship laws: Arkansas

Turtle Island Foods, SPC v Soman

• Tofurky argued that Act 501 is unconstitutional – infringes First Amendment right to share truthful, non-misleading information about its products and actually creates consumer confusion

• Is Tofurky’s labeling protected commercial speech?

• 4-part Central Hudson test:
  1. Whether the speech at issue concerns lawful activity and is not misleading
  2. Whether the government has a substantial interest in regulating the speech
  3. Whether the regulation directly and materially advances the government’s asserted interest
  4. Whether the regulation is no more extensive than necessary to serve that interest

– Central Hudson Gas & Electric v Public Service Commission, 447 U.S. 557 (1980)
Lawsuits challenging label censorship laws: Arkansas

*Turtle Island Foods, SPC v Soman*

- “The State appears to believe that the simple use of the word “burger,” “ham,” or “sausage” leaves the typical consumer confused, but such a position requires the assumption that a reasonable consumer will disregard all other words found on the label. That assumption is unwarranted. The labels in the record evidence include ample terminology to indicate the vegan or vegetarian nature of the products. Additionally, there is no contention that any consumer or potential consumer was actually misled or deceived by Tofurky’s packaging, labeling, or marketing. Thus, the Court concludes that Tofurky is likely to prevail on its argument that, considering the label as a whole, an ordinary consumer would not be deceived about whether Tofurky’s products contain animal-based meat.”
  
  – *Turtle Island Foods, SPC v Soman*, U.S. District Court Eastern District of Arkansas Central Division, Preliminary Injunction Order, at 24-25

- “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.”
  

- **Held:** Tofurky’s claim likely to succeed – motion for preliminary injunction granted, preventing the state from enforcing Act 501
Turtle Island Foods, SPC & The Good Food Institute v Richardson

- Tofurky argued that SB 627 is “a content-based, overbroad, and vague criminal law that prevents the truthful sharing of information and impedes competition by plant-based and clean-meat companies in the marketplace.”
- Court considered:
  1. Threat of irreparable harm to plaintiffs
  2. State of the balance between this harm and the injury that granting the injunction would inflict on other party
  3. Probability the plaintiff would succeed on the merits
  4. Public interest
- Applied Central Hudson test
- Held: Tofurky unlikely to succeed – both parties conceded that the labeling complied with SB 627 and were not misleading, therefore plaintiffs failed to demonstrate irreparable harm. Injunction would cause the state irreparable harm – “would invade its sovereign authority to enact and enforce its own laws” (at 15). Motion for preliminary injunction denied.
Lawsuits challenging label censorship laws: Mississippi

**Upton’s Naturals Co. & the Plant Based Foods Association v Bryant et al.**

- Upton’s and PBFA argued that SB 2922 violates First Amendment right to engage in non-misleading speech – prevents them using the labels that are best understood by their customers

- **Outcome:** Mississippi Department of Agriculture *withdrew proposed regulations* to enforce SB 2922 – *introduced more favorable regulations*
Lawsuits challenging label censorship laws: Oklahoma

**Upton’s Naturals Co. & the Plant Based Foods Association v Stitt et al.**

• Upton’s and PBFA argue that Oklahoma’s Meat Consumer Protection Act violates First Amendment right to engage in non-misleading speech

• “…there is no legitimate reason for this oversized-warning requirement, which treats Plaintiffs’ healthy products like cigarettes or alcohol.”

  – Upton’s Naturals Co. & the Plant Based Foods Association v Stitt et al., Complaint for Declaratory and Injunctive Relief, at 2.
Lawsuits challenging label censorship laws: Louisiana

**Turtle Island Foods, SPC v Strain**

- Tofurky argues that Act 273 is unconstitutional – improperly censors truthful commercial speech and creates confusion

- “By censoring terms...that any reasonable consumer understands, the Act only creates needless consumer confusion. And it does so with the clear purpose of suppressing free market competition for the benefit of specific state-defined competitors.”

– *Turtle Island Foods, SPC v Strain*, Complaint for Declaratory and Injunctive Relief, at 2
The Court of Public Opinion
Do you agree or disagree?

<table>
<thead>
<tr>
<th>Item</th>
<th>Agree</th>
<th>Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Almond milk Should not be called milk</td>
<td>Agree</td>
<td>Disagree</td>
</tr>
<tr>
<td>The book is ALWAYS better than the movie</td>
<td>Agree</td>
<td>Disagree</td>
</tr>
<tr>
<td>A bar of Soap cannot be dirty</td>
<td>Agree</td>
<td>Disagree</td>
</tr>
<tr>
<td>A cupcake is a muffin, not a cake</td>
<td>Agree</td>
<td>Disagree</td>
</tr>
</tbody>
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Stephen Fry @stephenfry · 2d
Quite pleased with this one because, while far from perfect, it's the best I've managed so far with oat milk...
10:57 pm · 28/01/2020 · Twitter for iPhone

sonali @ssoonnaaliiii · 2d
Looks great
However, oat milk isn't milk

Stephen Fry @stephenfry · 2d
and peanut butter isn't butter, quince cheese isn't cheese, cream of coconut isn't cream... try as dairy farmers might, history and the nature of language development will decide

@otisoatmilk
The hidden forces driving meat labelling war

Australian industry attacks potential ban of ‘meat’, ‘milk’ labels for plant-based products

Sunfed Meats taken to Commerce Commission over labelling

EU court bans dairy-style names for soya and tofu

I want to eat a ‘veggie sausage’, not a ‘mycoproteinous food tube’

Phoebe-Jane Boyd

Lords find no evidence “vegetarian burgers” are misleading for consumers or the government to get tougher on the use... similar moves overseas are successful.
Concluding thoughts

- Plant-based meat holds great promise as a more ethical and sustainable alternative to animal protein
- Consumer, investor, and legislator support is required for continued growth of plant-based food industry
- FDA should proactively provide guidance and oversight of labelling – to ensure fair and consistent regulation
- Plant-based food companies have a responsibility to market products in a clear and transparent way
  - Plant Based Foods Association’s Plant-Based Meat Labeling Standards
Thank you!