



FARM AND RANCH FREEDOM ALLIANCE

P.O. Box 809
Cameron, Texas 76520
www.farmandranchfreedom.org

January 6, 2011

Mike Konkle
General Manager, Dairy MAX
2214 Paddock Way Drive
Suite 600
Grand Prairie, TX 75050

Dear Mr. Konkle:

We demand that DairyMax immediately remove its website materials and halt its radio advertisements undermining legal sales of raw milk. As a regional Dairy Promotion Board, DairyMax's materials advocating against raw milk sales are not consistent with the Dairy Promotion Program regulations under 7 CFR Section 1150. In addition, the website materials include false and misleading information that defame a perishable food product.

I. DairyMax's website materials and radio ads undermine legal sales of raw milk in Texas

The statements on DairyMax's website are clearly intended to prevent people from drinking raw milk, even though the sale of raw milk by licensed dairies is legal in Texas. DairyMax's webpage on raw milk begins with the statement that consuming unpasteurized milk may be a serious health risk. The page continues with statements about the risks of drinking raw milk, several of which are false or misleading as discussed below. The page also includes the false statement that there are no health benefits to drinking raw milk.

In addition, in the last two weeks, we have had reports of radio ads on stations in Austin, Waco, Houston, and Dallas that similarly discourage people from drinking raw milk. At least some of those ads state that they are sponsored by DairyMax.

II. This campaign violates the regulations governing the Dairy Promotion Program

DairyMax, as a regional Board, is governed by 7 CFR § 1150.153:

§ 1150.153 Qualified State or regional dairy product promotion, research or nutrition education programs.

...

(b) In order to be certified by the Secretary as a qualified program, the program must:

(1) Conduct activities as defined in §§1150.114, 1150.115, and 1150.116 that are intended to increase consumption of milk and dairy products generally;

...

(6) Not use program funds for the purpose of influencing governmental policy or action.

The referenced sections state:

§ 1150.114 Promotion.

Promotion means actions such as paid advertising, sales promotion, and publicity to advance the image and sales of, and demand for, dairy products generally.

§ 1150.115 Research.

Research means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for dairy products.

§ 1150.116 Nutrition education.

Nutrition education means those activities intended to broaden the understanding of sound nutritional principles, including the role of milk and dairy products in a balanced diet.

DairyMax's website materials and radio ads that allege that raw milk is not safe and has no nutritional benefits do **not** qualify as promotion, research or nutrition education activities "that are intended to increase consumption of milk and dairy products generally." To the contrary, they are clearly intended to decrease consumption of a specific segment of the milk industry, namely the raw milk industry. There is no legal basis for doing so, particularly given that raw milk is legal for sale in Texas. There are dozens of licensed raw milk dairies in Texas whose businesses are being harmed by DairyMax's actions.

In addition, the ads appear intended to influence government policy since they only began running in Texas after the introduction of HB 75/ SB 237 to improve consumer access to raw milk, further violating the federal regulations.

DairyMax's actions are particularly disturbing given that several raw milk farmers have paid the \$.15 per hundredweight Checkoff fee for many years, and the National Dairy Council has recently sent letters to other raw dairy farmers demanding that they too pay the Checkoff fees. Pursuant to the regulations, DairyMax should be using a portion of the Checkoff to promote and conduct research on raw milk, not to attack it.

The website materials and advertisements, even if they were truthful, violate federal regulations governing the Checkoff program.

III. DairyMax has made false and misleading statements

In addition, several of the statements on the DairyMax website are false and misleading:

- 1) It is false to say that “85 outbreaks of human infections resulting from consumption of raw milk were reported from 1998-2008 to the U.S. Centers of Disease Control and Prevention (CDC). These outbreaks included 1,614 illnesses, 187 hospitalizations and 2 deaths.” To the contrary, the CDC data for 1998-2008 shows that there were 63 outbreaks attributed to raw milk that resulted in 1,177 illnesses, 72 hospitalizations, and **no** deaths.
- 2) When combined with the (false) CDC data about illnesses from raw milk, the section about the safety of pasteurized milk misleads consumers to believe that no illnesses have occurred from pasteurized milk. As you know from reviewing the same database you cite on raw milk, *pasteurized* milk and milk products have been associated with well over two thousand illnesses and three deaths between 1998 and 2008. Of course, to put both pasteurized and raw milk in context, the CDC recently released estimates that 47.8 million illnesses, 127,839 hospitalizations and 3,037 deaths are attributed to foodborne illnesses every year. Foods associated with foodborne diseases include hot dogs, strawberries, potato salad, alfalfa sprouts, tomatoes, spinach, grilled chicken, lettuce-based salads, lasagna, shrimp dishes, eggs, bean dip, doughnuts, pears, etc. It is unreasonable to suggest that a food be banned because it “can” be harmful, when the facts show that any food can be harmful.
- 3) It is misleading to say that pasteurization is necessary for dairy food safety and that pasteurized milk has never been found to cause any disease. The illnesses, hospitalizations and deaths associated with pasteurized milk and dairy products, as listed in the CDC database, attest otherwise.
- 4) It is misleading to say that pasteurization does not affect the taste or nutritional value of milk and dairy product. Cooking a food, of course, changes its taste and nutritional value. Ask anyone if they think a cooked strawberry tastes the same as a fresh strawberry, or cooked lettuce the same as fresh lettuce. Consumers of raw milk consume it because they taste the difference and, based on their own research and informed view, believe it is nutritional superior.
- 5) The statement that “No scientific evidence finds that drinking raw milk prevents or cures any diseases or illnesses. ... There are no health benefits from drinking raw milk that cannot be obtained from drinking pasteurized milk that is free of disease-causing bacteria” is also false. Studies in Europe have found that drinking raw milk protects against asthma and allergies. See Riedler, J. et al. 2001. Exposure to farming in early life and development of asthma and allergy: a cross-sectional survey. *Lancet* 358:1129-33. Perkin, M.R. and D.P. Strachan. 2006. Which aspects of the farming lifestyle explain the inverse association with childhood allergy? *J Allergy Clin Immunol.*

117(6):1374-8. Perkin, M.R. 2007. Unpasteurized milk: health of hazard? Clinical and Experimental Allergy 37:627-630.

DairyMax is disseminating false and misleading statements to the public relating to a perishable food product, in violation of Texas law.

We demand that DairyMax remove its website materials and halt its radio advertisements undermining legal sales of raw milk in Texas within 10 days of receipt of this letter.

Sincerely,

Judith McGeary, Esq.
Executive Director
Farm and Ranch Freedom Alliance

cc: Dana Coale, Deputy Administrator, USDA-AMS-Dairy Programs, 1400 Independence Avenue, SW, Washington, DC 20050