



September 22, 2016

Via Registered Mail

Competition Bureau
Place du Portage I
50 Victoria Street, Room C-114
Gatineau, Quebec
K1A 0C9

To Whom It May Concern:

Re: Dairy Farmers of Canada's false, misleading, and discriminatory advertising campaign disguised as public health announcements

I'm writing on behalf of Animal Justice, a national non-profit organization dedicated to securing legal protections for animals. Our organization is comprised of lawyers and other professionals with significant experience and expertise in laws that affect animals. I am also writing on behalf of six Canadian residents pursuant to the Competition Act.

Dairy Farmers of Canada is currently running the "Get Enough" advertising campaign, which both states and implies that consuming dairy is required to prevent colorectal cancer, hypertension, and osteoporosis. The sophisticated campaign uses strategic partnerships and fear mongering to encourage Canadians to consume dairy every day, even though this is neither necessary nor desirable to prevent these lifestyle diseases or otherwise.

About the Advertising Campaign

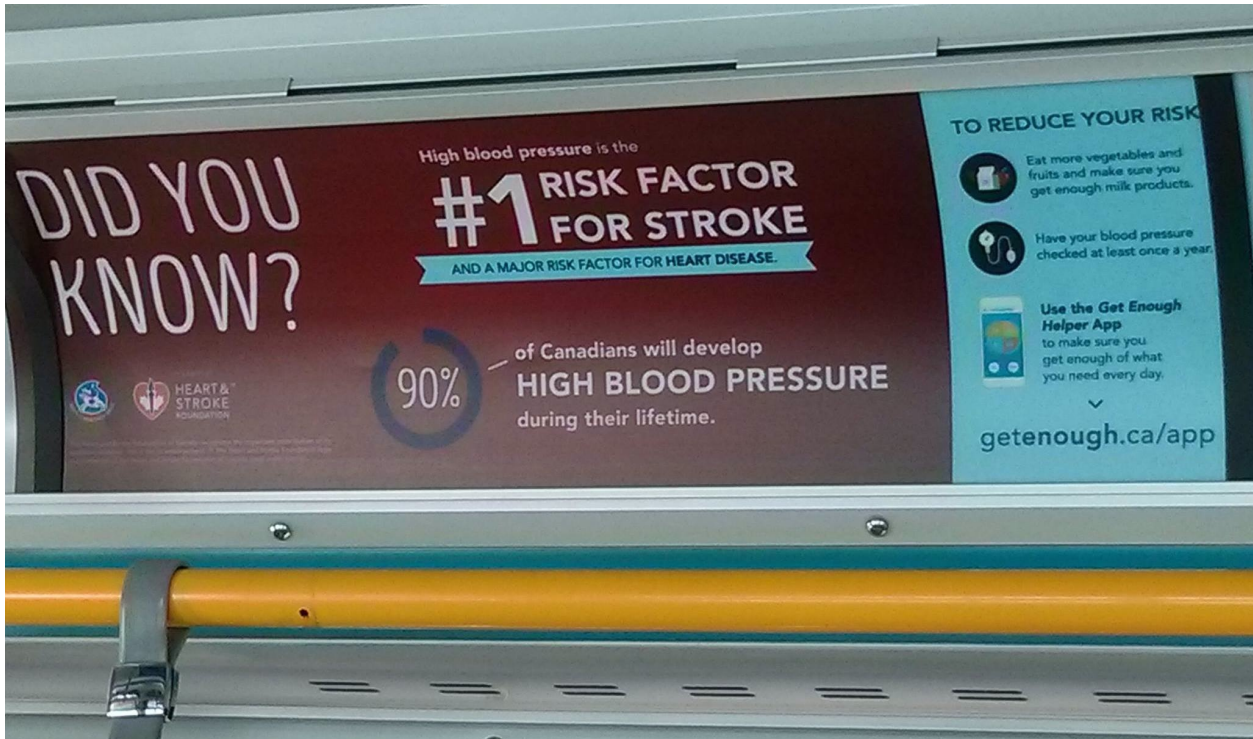
Dairy Farmers of Canada (DFC) has launched "Get Enough," a national, multi-faceted advertising campaign to promote milk and milk products by linking these products in consumers' minds with preventing three diseases: colorectal cancer, hypertension, and osteoporosis. According to DFC:

Three high impact mini-campaigns will be produced, each supporting a product and a cause: milk and colorectal cancer, yogurt and hypertension, and cheese and osteoporosis. The campaigns include newspaper ads, transit posters, bus shelter [sic] ads, bus kings and bus murals in major cities across Canada, as well as an online and social media campaign.¹

The DFC has partnered with Heart and Stroke Foundation, Osteoporosis Canada and Colorectal Cancer Association of Canada.

¹ Dairy Farmers of Canada, "Get Enough," online: <https://www.dairyfarmers.ca/news-centre/campaigns/get-enough>

According to the DFC, the campaign aims to “remind Canadians that it’s as important for adults as for children to consume enough milk products every day.”



One ad outright states that to reduce the risk of high blood pressure, stroke, and heart disease, consumers must “make sure [to] get enough milk products.”

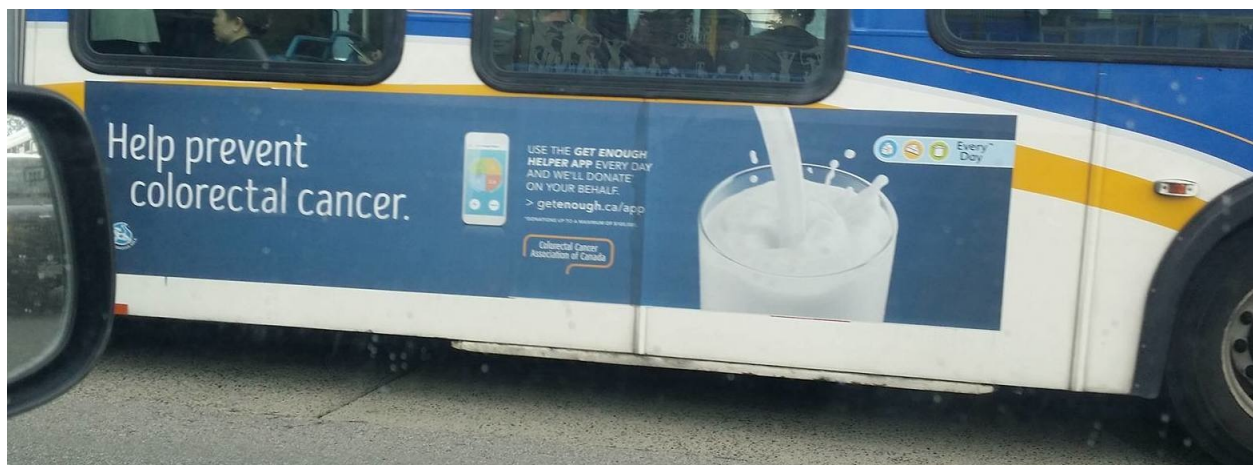
Another shows a large picture of yogurt alongside the prominent text “Help improve heart health.” The words Heart & Stroke Foundation are clearly visible, while name of their partner—the Dairy Farmers of Canada—isn’t included at all.



Another ad frightens consumers by saying colorectal cancer is the second deadliest cancer, then states that to reduce their risk of contracting colorectal cancer, consumers must get enough milk.



Another ad features a large glass of milk alongside the text “Help prevent colorectal cancer.”



Another ad features a wedge of cheese alongside the text “Help prevent osteoporosis.”



Together, the ads clearly communicate that in order to avoid colorectal cancer, hypertension, and osteoporosis, consumers must consume fluid cow’s milk, yogurt, and cheese. To not consume dairy, according to these ads, is to be at a higher risk for these serious diseases.

The Advertisements are False and Misleading in a Material Respect

Humans have no nutritional need for cow’s milk; large amounts of it are harmful

Dietitians are considered the leading experts on food and nutrition; Dietitians of Canada is a non-profit organization that strives to provide impartial, evidence-based health information to its professional members and the public.

According to Dietitians of Canada, it is not necessary to consume fluid cow’s milk, yogurt, or cheese to avoid colorectal cancer, osteoporosis, or heart disease. On the contrary, they state

that a vegan diet, which excludes dairy, “has many health benefits including lower rates of obesity, heart disease, high blood pressure, high blood cholesterol, type 2 diabetes and certain types of cancer.”²

Milk does not reduce the risk of colon cancer, or at least not any more than consuming a suitable amount of calcium-containing foods or supplements; at the same time, consuming milk increases the risk of prostate cancer in men, while consuming dairy in the form of cheese actually *increases* the risk of colon cancer.³

To reduce the risk of colon cancer, according to the Dietitians of Canada, consumers should actually: eat less red and processed meat, eat foods high in fibre, be physically active, try to maintain a healthy weight, limit alcohol, and avoid smoking and second-hand smoke.⁴

Although low-fat dairy may be part of a hypertension-reducing diet, *none of the ads specify that the dairy must be low-fat*. Moreover, consuming low-fat dairy isn't *required* to reduce hypertension; reducing hypertension requires adequate calcium, which is found in abundance in healthful leafy greens, beans, and tofu. The two dietary interventions recommended by Dietitians of Canada to control blood pressure are eating lots of fruits and vegetables and cutting back on sodium.⁵ According to Dietitians of Canada, a dairy-excluding vegan diet is associated with lower rates of high blood pressure.⁶

² Dietitians of Canada, “Eating Guidelines for Vegans,” online: <http://www.dietitians.ca/Your-Health/Nutrition-A-Z/Vegetarian-Diets/Eating-Guidelines-for-Vegans.aspx>

³ See Canadian physician Yoni Freedhoff's critique of the Dairy Farmers of Canada's previous ad campaigns that read like health advice, along with links to peer-reviewed sources. His displeasure with both these campaigns and those who trade their professional integrity for dollars is apparent when he concludes: “If you read anything sponsored by the Dairy Farmers of Canada you'll probably want to read the studies themselves before drawing any conclusions, and if Big Milk comes a' knockin' on your door asking you to write one of their medical advertisements tell them, ‘no thank you’ and while you might lose a few bucks of chump change (literally perhaps), at least you'll keep your ethics.” See: <http://www.weightymatters.ca/2009/10/milk-prevents-colon-cancer.html>.

⁴ Eat Right Ontario, “Lowering Your Risk for Colorectal Cancer,” online: <http://www.eatrightontario.ca/en/Articles/Cancer/Lowering-your-risk-for-colorectal-cancer.aspx#.V98mRYXL0fE>

⁵ Dietitians of Canada, “Blood Pressure,” online: <http://www.dietitians.ca/Your-Health/Nutrition-A-Z/Blood-Pressure.aspx>

⁶ Dietitians of Canada, “Eating Guidelines for Vegans,” online: <http://www.dietitians.ca/Your-Health/Nutrition-A-Z/Vegetarian-Diets/Eating-Guidelines-for-Vegans.aspx>

To prevent osteoporosis, Dietitians of Canada recommends getting enough calcium and vitamin D, limiting caffeine, alcohol, and sodium, and staying active.⁷ It suggests dozens of calcium-rich foods, including leafy green vegetables, tofu, beans, tahini (found in hummus), blackstrap molasses, and a variety of fortified plant-based beverages including soy, cashew, rice, almond, and coconut milks; dairy from cow's milk is not a preferred source.⁸

Dr. Walter Willett is Professor of Epidemiology and Nutrition and Chairman of Harvard's Department of Nutrition and Professor of Medicine at Harvard Medical School. Dr. Willett has published over 1,600 original research papers and reviews, primarily on lifestyle risk factors for heart disease, cancer, and other conditions, and is the world's most cited nutritionist.

According to Dr. Willett, dairy consumption doesn't prevent osteoporosis or reduce fractures. Moreover, he says, high dairy consumption is associated with increased risk of prostate and ovarian cancer. Given that high intake of dairy may be harmful and is not beneficial, Dr. Willett recommends limiting dairy consumption.⁹ Dr. Willett and his colleague Dr. David Ludwig recently wrote in the journal *Pediatrics*:

Humans have no nutritional requirement for animal milk, an evolutionarily recent addition to the diet. ... Adequate dietary calcium for bone health, often cited as the primary rationale for high intakes of milk, can be obtained from many other sources. Throughout the world, bone fracture rates tend to be lower in countries that do not consume milk compared with those that do. Moreover, milk consumption does not protect against fracture in adults, according to a recent meta-analysis.¹⁰

Dr. Willett himself doesn't consume cow's milk, and only has cheese and yogurt in moderation.¹¹

Dr. David Jensen is Canada Research Chair in nutrition, metabolism and vascular biology, a professor in the department of nutritional sciences, faculty of medicine at the University of Toronto, and scientist at the Li Ka Shing Knowledge Institute of St. Michael's Hospital. He has

⁷ Dietitians of Canada, "Eating Guidelines to Prevent Osteoporosis," online: <http://www.dietitians.ca/Your-Health/Nutrition-A-Z/Osteoporosis/Eating-Guidelines-to-Prevent-Osteoporosis.aspx>

⁸ Dietitians of Canada, "Food Sources of Calcium," online: <http://www.dietitians.ca/Your-Health/Nutrition-A-Z/Calcium/Food-Sources-of-Calcium.aspx>

⁹ See e.g. Yoni Freedhoff, "Drink Lots and Lots of Milk!" *Weighty Matters*, online: <http://www.weightymatters.ca/2006/11/drink-lots-and-lots-of-milk.html>

¹⁰ David S. Ludwig and Walter C. Willett, Three Daily Servings of Reduced-Fat Milk: An Evidence-Based Recommendation? *JAMA Pediatr.* 2013;167(9):788-789.

¹¹ Sharon Kirkey, "Drinking milk not essential for humans despite belief it prevents osteoporosis, nutritionist says," *National Post*, January 23, 2014, online: <http://news.nationalpost.com/appetizer/drinking-milk-not-essential-for-humans-despite-belief-it-prevents-osteoporosis-nutritionist-says>

been inducted into the Order of Canada for his work helping Canadians make informed food choices.

Dr. Jensen is vegan for health, environmental, and animal rights reasons, meaning he consumes no dairy whatsoever. In a recent Globe and Mail column about Dr. Jensen's dietary recommendations, dietitian Leslie Beck wrote:

Studies have shown plant-based eaters are thinner and have lower cholesterol and blood-pressure levels, a reduced risk of coronary heart disease, Type 2 diabetes and lower cancer rates – especially colorectal cancer.¹²

It's beyond dispute that there is no need for dairy in the human diet, and that diets that exclude dairy have health benefits, including—contrary to the DFC campaign—better blood pressure levels and lower colorectal cancer rates.

The advertisements are disguised as health recommendations

The DFC Get Enough ads are cleverly designed to come across as impartial health recommendations from recognized disease authorities. Nothing could be further from the truth. These are milk advertisements in disguise as public health announcements.

Dairy Farmers of Canada enjoys this veneer of authority not because these health organizations believe dairy is somehow special, but because it pays for the privilege. For example, the DFC is a “marquis” sponsor of the Heart and Stroke Foundation, listed above dozens of “presenting,” “collaborating,” “affiliate,” and “supporting” partners, including heavyweights such as Shoppers Drug Mart and Holt Renfrew.¹³

Dairy Farmers of Canada is concerned with selling dairy. It represents business interests. DFC does not give money to health organizations because it cares about human health; it is doing so to sell more dairy, and it understands giving money to these organizations in order to lure them into associating themselves with dairy products will be compelling to consumers. In fact, DFC has an annual marketing budget of \$80 million dollars.¹⁴

However compelling the ads may be, false advertising is illegal in Canada. Cow's milk is milk intended for baby cows, and it is not a required part of the human diet. Advertisements should not be permitted to masquerade as public health information.

¹² Leslie Beck, “Why the man who brought us the glycemic index wants us to go vegan,” *Globe and Mail*, Feb. 22, 2015, online: <http://www.theglobeandmail.com/life/health-and-fitness/health/the-not-so-simple-reasons-for-becoming-vegan/article23123391/>

¹³ Heart & Stroke Foundation, Our national corporate partners, online: http://www.heartandstroke.com/site/c.ikIQLcMWJtE/b.4389517/k.3AF2/Our_National_Corporate_Partners.htm

¹⁴ Dairy Farmers of Canada, “We Are Dairy Farmers: Presentation to the House of Commons Standing Committee on Agriculture and Agri-Food,” available on request.

The Ads are Racially and Ethnically Discriminatory

Cow's milk is not only a non-essential part of the human diet, but many humans cannot even digest it. According to the U.S. government's National Institute of Health:

Approximately 65 percent of the human population has a reduced ability to digest lactose after infancy. Lactose intolerance in adulthood is most prevalent in people of East Asian descent, affecting more than 90 percent of adults in some of these communities. Lactose intolerance is also very common in people of West African, Arab, Jewish, Greek, and Italian descent.¹⁵

In other words, adult humans are not designed to consume cow's milk, particularly not non-Europeans. Privileging cow's milk as a normal and natural part of the human diet when it is only humans of European descent who can even digest it is ethnocentric and racially exclusive.

Canadians for whom dairy is not part of their culinary traditions—and who cannot even digest dairy—should not be scared into believing they must either consume dairy otherwise they will become gravely ill. Such predatory and discriminatory fear-mongering should not be tolerated in a country like Canada where diversity is part of our national pride.

The Campaign is Anti-Competitive

Earlier this year, BBC Research—an international market research company—analyzed the milk alternatives market and found it to be an important and growing market.¹⁶ According to BBC Research:¹⁷

The global market for milk alternatives reached \$5.8 billion in 2014 and should reach nearly \$10.9 billion by 2019, reflecting a five-year compound annual growth rate (CAGR) of 13.3%. The soy milk category is expected to total \$4.4 billion and \$8 billion in 2014 and 2019, respectively, demonstrating a five-year CAGR of 12.5%. Almond milk as a category should reach \$886.8 million and \$1.8 billion in 2014 and 2019, respectively, moving at a five-year CAGR of 15.8%. Rice milk, the third-largest category, is expected to move at a five-year CAGR of 14.4%, growing from \$291.8 million in 2014 to \$571.9 million in 2019. Other milk-alternative categories, including coconut milk, oat milk and

¹⁵ U.S. National Library of Medicine, "Your Guide to Understanding Genetic Conditions: Lactose Intolerance," online: <https://ghr.nlm.nih.gov/condition/lactose-intolerance>

¹⁶ BBC Markets, "Global Markets for Milk Alternatives," March 2016, online: <http://www.bccresearch.com/market-research/food-and-beverage/milk-alternatives-markets-report-fod071a.html>

¹⁷ Got Plant-Based Milk? Milk-Alternatives Market Booming, Reports BCC Research, April 6, 2016, online: <http://www.marketwired.com/press-release/got-plant-based-milk-milk-alternatives-market-booming-reports-bcc-research-2112301.htm>

hemp milk, are in their budding stage. Relatively new in the market, they are projected to grow at a five-year CAGR of 15.9% because of their health benefits over regular dairy milk.

Asia-Pacific held the highest market share (50.4%) of the global milk-alternatives market in 2013. The North American market held the second-largest share (30.6%), with Europe, Middle East and Africa (EMEA) market accounting for remaining 19% market share.

In recent years, consumption of milk alternatives has steadily increased due to a growing number of vegans, and health concerns about the antibiotics and growth hormones often found in cow's milk. Lactose intolerance and milk allergy are key drivers for new product development, which is growing the market. Other factors for market growth include more consumers converting to dairy-free alternative diets, increased shelf life of alternatives, and continuous product innovation from manufacturers to meet consumers' evolving needs.

Consumers are choosing non-dairy options at an accelerating rate, and new options are entering the marketplace regularly. These innovative products shouldn't be hampered by dairy's market foothold, which it maintains not because it is nutritionally necessary or superior, but because the dairy industry uses unscrupulous and illegal marketing and lobbying strategies.

Dairy Farmers of Canada Should be Prosecuted

Section 52(1) in Part VI ("Offences in relation to competition") of the Competition Act prohibits "knowingly or recklessly make a representation to the public that is false or misleading in a material respect" in the course of promoting, directly or indirectly, a product.¹⁸

Section 74.01(1) in Part VII.1 ("Deceptive marketing practices") of the Competition Act deems representations made to the public that are "false or misleading in a material respect" to be reviewable conduct.

In determining whether a representation is false or misleading in a material respect, the general impression as well as the literal meaning must be considered.¹⁹ This general impression is created by the materials as a whole, including both words and imagery.

It is not necessary to prove that any person has in fact been deceived or misled for either offence to be made out.²⁰

¹⁸ R.S.C., 1985, c. C-34, s. 52.

¹⁹ *Competition Act*, R.S.C., 1985, c. C-34, ss. 52(4) and 74.03(5)..

²⁰ R.S.C., 1985, c. C-34, ss. 52(1.1) and 74.03(4)(a).

DFC's unethical marketing tactics have long been questioned by experts.²¹ This latest campaign is blatantly designed to prey on consumers with deceptive and misleading information. Their unscrupulous advertising must be prosecuted.

Conclusion

Dairy Farmers of Canada's "Get Enough" campaign induces consumers to consume dairy with the false information that not doing so will result in life-threatening diseases. The advertisements are disguised as public health recommendations from leading health authorities. It is ethnocentric and racially insensitive to insist everyone consume dairy when up to 90 percent of non-Europeans cannot even digest it.

Moreover, it is anti-competitive to allow dairy—cow's milk intended for baby cows—to retain an irrational foothold in the market in a time when dairy alternatives are exploding and poised for even more global growth. Canadian start-ups that manufacture dairy-free alternatives, like Daiya Foods, are unfairly harmed by such illegal and anti-competitive marketing.

We are able to assist you in investigating and prosecuting this illegal advertising.

Yours truly,

Anna Pippus, B.A., J.D.
Director of Farmed Animal Advocacy
Animal Justice

²¹ There are countless examples, including: Anne Kingston, "Have we been milked by the dairy industry?" *Macleans*, April 22, 2015; Alissa Hamilton, "Got Milked: What You Don't Know About Dairy, the Truth about Calcium, and Why You'll Thrive Without Milk," *Collins*, April 21, 2015; Yoni Freedhoff, "More Questionably Legal Claims Made by the Dairy Farmers of Canada," *Weighty Matters*, August 4, 2015; Carly Weeks, "The power of dairy: Milk marketing's reach has moved from school lunches onto sports fields," *Globe and Mail*, April 26, 2015.