

EXECUTIVE SUMMARY

INNOVATION ROUNDTABLE:

MARKET INNOVATION AND PLANT BASED FOODS: THE ROLE
OF LAW IN A CHANGING FOOD LANDSCAPE

MAY 26, 2016

RESNICK PROGRAM
FOR FOOD LAW AND POLICY



UCLA | SCHOOL OF LAW

ABOUT THE RESNICK PROGRAM FOR FOOD LAW AND POLICY

The Resnick Program for Food Law and Policy studies and advances breakthrough solutions for improving the modern food system. Based at UCLA Law, the Resnick Program is a think tank focused on developing key legal and policy strategies, timely research, and practical tools to foster a food system that benefits both consumers and the environment. Covering a wide range of local, national, and global food policy topics and issues, the program seeks solutions in support of a food system that embodies the values of equity, transparency, and good governance.

INNOVATION INITIATIVE

The Resnick Program promotes opportunities for law and public policy to contribute to the innovative food sector. Often represented by healthy, equitable, and sustainable food start-ups and inventions, this new market and its entrepreneurs is generally mission-driven and socially-oriented. In 2016 the Resnick Program convened a number of roundtable discussions with entrepreneurs, policymakers, and stakeholders to identify the legal and policy hurdles that can hinder commercial growth. Based on those discussions, the Resnick Program and the Food Law and Policy Clinic are developing legal tools and strategies to assist and advise food innovators as they navigate the US food system.

BACKGROUND

The food sector is witnessing a substantial shift in consumer interest in plant-based diets. Millennials, in particular, are keen to expand the quality and quantity of plant-based foods they consume. More generally, Americans are increasingly aware of the social, environmental, and financial costs of diets heavy in animal protein and are beginning to seek out foods that are healthier, more sustainable, and animal-friendly as well. Investors have taken note—pouring millions into new companies that promise to revolutionize the marketplace and urging existing market players to start shifting from animal proteins to plant proteins. In brief, the food landscape is changing, and changing fast. But is our regulatory and legal system prepared for this change?

UCLA's Roundtable Series on Food Innovation and the Law

With the aim of better understanding the law and policy hurdles facing innovative food companies working in the plant based foods space, the Resnick Program for Food Law and Policy at UCLA Law and George Abe, Faculty Director of the Strategic Management Research Program at UCLA Anderson School of Management, hosted a roundtable discussion on May 26, 2016, titled, *Market Innovation and Plant Based Foods: The Role of Law in a Changing Food Landscape*. The discussion was the second in a series hosted by UCLA Law and the UCLA Anderson School of Management on food entrepreneurship. The goal of this collaboration is to facilitate food entrepreneurship by identifying opportunities for law and public policy to contribute to the development of a more dynamic and innovative food sector.

This second roundtable convened a group of 16 individuals engaged in mission-oriented plant-based food businesses, academic scholarship, and the law.

The attendees were:

- **George Abe**, Lecturer and Faculty Director, UCLA Anderson School of Management
- **Emilie Aguirre**, Academic Fellow, Resnick Program
- **Gareth Asten**, Acre Venture Partners
- **Ethan Brown**, Founder, Beyond Meat
- **Taimie Bryant**, Professor of Law, UCLA Law
- **Rebecca Cross**, Counsel, Davis Wright Tremaine LLP
- **Paula Daniels**, CA Water Commissioner
- **Matt Dunaj**, Director of Accounting, Earth Island/ Follow Your Heart
- **Christina Erickson**, Attorney and Activist
- **Ann Gentry**, Founder & CEO, Real Food Daily
- **Kim Kessler**, Policy and Special Programs Director, Resnick Program
- **Nicole Landers**, Co-Founder, Community Healing Gardens
- **Cheryl Leahy**, General Counsel, Compassion Over Killing
- **Michael Roberts**, Executive Director, Resnick Program
- **Miyoko Schinner**, Founder, Miyoko's Kitchen
- **Michele Simon**, Executive Director, Plant Based Foods Association

ROUNDTABLE DISCUSSION

The roundtable discussion illuminated the challenges facing (and unifying) plant-based food entrepreneurs, and the role of law in both creating and rectifying those challenges. Labeling and marketing were identified as primary concerns, and potential solutions were also discussed.

UCLA School of Law Professor Taimie Bryant and Michele Simon, Director of the Plant Based Foods Association, set the stage by focusing on how lawyers and academics are integral to the struggles that food entrepreneurs face. Bryant described a recent case where the Cultured Kitchen, a vegan food producer, was involved in a labeling dispute with the California Department of Food and Agriculture (CFDA). Since there are no regulations or guidelines for the production of vegan foods under the current CFDA regulatory framework, the Cultured Kitchen had to change its label for its non-dairy cheeses, or invest in a kitchen that would meet the department's requirements for dairy food operations. Bryant, as an academic observing how the existing regulatory structure is not appropriate for some food innovators, calls on lawyers—in this case, animal lawyers—to represent clients like the Cultured Kitchen to effect change for vegan businesses more broadly. The specific ways in which lawyers can intercede on behalf of plant-based food companies were subsequently outlined by Michele Simon, who identified marketing power, political power, and Food and Drug Administration (FDA) definitions of food, as three main law and policy hurdles for plant-based food vendors.



Founder Miyoko Schinner of Miyoko's Kitchen's in a clever ad campaign. Image source: <http://miyokoskitchen.com/about-us/>

As the Cultured Kitchen (and many of the roundtable attendees) found out, the FDA has standards of identity that define certain foods and have not been updated to include recent food innovations, especially plant-based food innovations. Many of the labeling challenges plant-based food vendors must overcome stem from these rigid definitions and can lead to unfair and unnecessary regulation. Working around these labeling laws also presents a marketing challenge, as Miyoko Schinner of Miyoko's Kitchen shared. Miyoko's Kitchen, purveyor of vegan cheeses that cannot, by definition, be called cheeses, launched a clever campaign recasting common "cheese" idioms (e.g. "the big cheese") as "cultured-nut product" idioms (e.g. "the big cultured-nut product" and even "Who cut the cultured-nut product?"). Despite this effort, consumers searching for cheese products and companies online were not able to easily find Miyoko's products.

In addition to labeling challenges, plant-based companies are also disadvantaged in terms of marketing power compared to the animal industry. The animal industry has access to several congressionally authorized checkoff programs that pool together industry funds, allowing participating commodity boards to generically market and advertise their agricultural products. Widely recognizable campaigns like "Beef: It's What's for Dinner" and "Pork: The Other White Meat" are direct products of checkoff promotional efforts. Needless to say, a communal pool of congressionally authorized funds for marketing innovative plant-based foods such as cultured cheeses and plant-based meats does not exist. Animal products are also artificially cheap because of subsidies that animal farmers receive, either directly, as with the dairy price support program, or indirectly, via commodity crop subsidies used to grow animal feed, such as soy and corn. To level the playing field, so to speak, some roundtable participants suggested eliminating these subsidies. The reality, however, is that the animal industry possesses far greater political power and representation than the burgeoning plant-based foods industry.

Participants weighed in with ideas on ways to address this imbalance. For example, Ethan Brown of Beyond Meat, Ann Gentry of Real Food Daily, and Cheryl Leahy of Compassion Over Killing identified consumers' perception of plant-based foods as a major force, if not the lynch-pin, of the success and popularity of the plant-based foods industry. Part of the Beyond Meat mission is to redefine how consumers think of meat, by focusing on the proteins that make up the meat, rather than where those proteins come from. A new marketing campaign for Beyond Meat emphasizes professional athletes who choose Beyond Meat rather than animal meat, and might help to combat the notion that protein can

only come from animals. Ann Gentry wondered how to tap into the specific decisions and experiences that go into the making of a consumer who is open to plant-based products, and why some refuse to consider vegetarian and vegan options at all.

The consensus was that the animal industry looms large in the public mind as the only viable option for food, a belief fueled in part by the marketing and political power of the animal industry. Changing consumers' determination to eat animal meat and products is thus a necessary step, albeit a slow process.

Michele Simon of the Plant Based Foods Association posited if offering a subsidy benefiting plant-based farmers would be enough -- instead, subsidies for the animal industry may need to be eliminated entirely. If plant-based foods and animal products were comparable in cost, Ann Gentry suggested that the consumer would be able to decide what to purchase in a more objective way. Ethan Brown noted that Beyond Meat was also targeting school lunch programs as another way to promote cultural change by introducing children to plant-based foods at an early age. Other ideas included collective marketing, or a check-off program for plant-based foods, and increasing focus and attention on the negative impacts of conventional agriculture. In terms of immediate opportunities for action, Cheryl Leahy suggested lawyers could investigate animal-industry company contracts for violations.

Discussion then turned to innovative ag tech for plant-based farmers. Venture capitalist Gareth Asten highlighted an interest by venture capitalists in investing in plant based companies. He has found on the production end that while farmers want to make sustainable decisions they usually end up opting for the most cost-effective route. Developments in ag

tech, such as a platform for pricing transparency, will allow farmers to share seed and other data with each other, and will allow them to make more informed production decisions.

Along these lines, models are also in development that can demonstrate more profit over time for farmers who grow protein rather than raise cattle or other animals. It is clear that the transition to less meat and more plants will require both producer and consumer interest. These technological developments suggest that there is a growing interest in plant-based foods and sustainability on many levels. Even 'Big Food' has started to take notice of this movement—the roundtable occurred right at the time that Justin's, a maker of organic nut butters and peanut butter cups, was acquired by food industry giant Hormel, which left some participants wondering how mission-oriented plant-based companies define success, and how to remain true to that mission while facing acquisition.

Closing sentiments on the future of the plant-based food industry were optimistic, with a sense that the conversation among entrepreneurs, food innovators, and lawyers needs to continue. The May 26th Roundtable discussion succeeded in highlighting the types of legal and regulatory issues that many plant-based food start-ups are likely to encounter, particularly in the areas of labeling and marketing, and allowed plant-based companies with similar missions to see how others have problem-solved.