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What's in a Name?: On Filberts, Hazelnut Milk, Shredded Wheat and Food Identity Standards

"Earth & Table" Law Reporter



Defying a family trend around our dining table, I refused to call *oleomargarine* by its shorthand substitute, *butter*, in my early teens. I abhorred its fake butter taste on toast or corn-on-the-cob. Chastised as a finicky eater, I became a butter purity activist in my tiny domain of one.

Food names matter, neuro-psychologically. As Apicius, an early Roman gourmand put it, "We eat first with our eyes."

Scientists theorize that "the smells and flavor of cooking were likely a prime factor in the development of language."^[1] The fact that most animals "evolved a mouth that is situated close to their brain is presumably no coincidence."^[2]

Novel foods—such as the plant-based, heme-bleeding *Impossible Burger* now in vogue—challenge ingestion paradigms. Deciding what to even call them requires intense branding, marketing and pairing with established

foods—in order to entice a skeptical audience to consume new foodstuffs for the first (second and third) time.

A food identity culture war is roiling. "Traditional" meat and dairy producers watch market shares erode as "plant-based" products invade their sacrosanct grocery store display cases. Some clamor for stricter federal food identity standards to protect them from emulor competition. Using *hazelnut milk* as a litmus test example, this post examines this bulging mouthful of a fraught topic.

Filberts or Hazelnuts?

The Willamette Valley of Oregon is the center of United States' hazelnut production. The state grows 99% of our nation's output. Well before the current brouhaha over food naming conventions, what to call them—*hazelnuts* or *filberts*—proved divisive.

Referring to scientific names is precise, but they are not memorable. Yet, they can relate fascinating "origin" stories on their own. A case in point are Oregon hazelnuts. They are largely derived from a *Barcelona* cultivar of *Corylus avellana*, introduced into the United States from Europe in 1885 by Felix Gillet, a California pioneer nurseryman and horticulturist. In 1903, George Dorris planted the first commercial hazelnut orchard in Springfield, Oregon, with more than 200 *Barcelona* hazelnut trees.^[3] The Dorris Ranch is now a nature preserve and living history farm.^[4]

Oregon State University is a powerhouse of hazelnut research and patenting. In honor of the Dorris family legacy, OSU inventors named a newly patented *Corylus avellana* plant exhibiting special resistance to eastern filbert blight as the *Dorris* variety. Its lineage includes a cross of the *Barcelona* cultivar.

While hazelnuts are also indigenous, *Corylus americana* never caught fire commercially like the *Barcelona* cultivar. In fact, eastern filbert blight is caused by a native fungal parasite of the wild American hazelnut.^[5] That blight effectively prevented an eastern U.S. hazelnut growers' market from taking root. Eventually, it spread to Oregon. A *Daviana* hazelnut variety—imported from England in the 1870s and widely planted as a pollinizer for the *Barcelona* cultivar—is highly susceptible to eastern filbert blight and its Oregon planting is no longer recommended.

The *avellana* epithet of the European hazelnut tree is itself telling. In ancient times, it was originally thought (by Pliny the Elder) to be derived from Abellina in western Asia, "allegedly the present valley of Damascus." Hence, filberts were believed to have emanated from the Middle East. Their actual European passageway is more convoluted. Recent scientific scholarship traces the epithet back to the towns Avella and Avellino in Campania, a region in southwestern Italy where hazelnuts were widely cultivated in Roman times. From there, *Corylus avellana* spread to modern day Spain and France.[\[6\]](#)

The easier-to-remember *filbert* name gained early ascendancy in American commerce. The name is reputedly derived from the French Catholic saint, St. Philibert of Jumièges. His feast or celebration day is August 20th. Hazelnuts are ready to be harvested around then.

Filbert recipes dominated the cookbook lexicon through the mid-twentieth century. The leading, but unsung cookbook of that era is *Helen Brown's West Coast Cook Book*—championed by the legendary James Beard upon its publication in 1952. An Oregon native, Beard exclaimed that it is "one of the most delectable books of regional cookery, in its true sense, that I have ever read."

Hazelnuts do not appear in the index in the *West Coast Cook Book*, but *filberts* do. Helen Evans Brown describes them in glowing terms:

Filberts are the latest, and one of the most delicious nuts to come out of the West. California tried cultivating filberts, but without any marked success. The [Pacific] Northwest tried it, and now the Northwest filberts are rivaling the almonds and walnuts of California. Filberts are terrific—their flavor is considered by many connoisseurs to be the very finest of the nuts.[\[7\]](#)

A sea change in *filbert* naming occurred in 1981, when the Oregon Filbert Commission conformed to an English naming convention and adopted the *hazelnut* appellation. In 1989, the Oregon legislature crowned the hazelnut (*Corylus avellana*) as the state's official nut. Lost in this Oregon marketing dust is our country's wild counterpart, *Corylus americana*.

Hazelnuts are now generally packaged and sold as a commodity product. While consumers do not seek out a specific variety of hazelnuts to purchase (at least yet), they pay more money for *organic* hazelnuts.

Shredded Wheat, Hazelnut Milk and Consumer Expectations

Whether the American public realizes it or not, food names are federally regulated. The Food and Drug Administration's general standard of food identity provides that:

The common or usual name of a food, which may be a coined term, shall accurately identify or describe, in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients. The name shall be uniform among all identical or similar products and may not be confusingly similar to the name of any other food that is not reasonably encompassed within the same name. 21 C.F.R. 102.5.

Exactly what is a "common" or "usual" name of food? The Supreme Court grappled with this issue over the term *shredded wheat*. *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111 (1938) examines the interplay between patent and trademark rights and how it impacts our public domain food vocabulary.

In 1895, Henry Perky obtained a U.S. patent for "Bread and Method for Preparing Same." The invention process converted entire wheat berries into a "porous or shred-like form to constitute, without other shortening or aeration, bread of especially light and wholesome character." The company acquiring these patent rights referred to this product as *shredded wheat*. It gained commercial success in 1901, eventually being manufactured by "The Shredded Wheat Company" (later acquired by the National Biscuit Company in 1930).

Kellogg's began selling "Shredded Wheat" breakfast cereals in the 1920s. The *shredded wheat* making patent rights had expired in 1912. National Biscuit Company sued Kellogg's, claiming trademark rights in the name and the shape of the product. The Supreme Court held that that name (and pillow shape) had long since entered the public domain:

The plaintiff has no exclusive right to the use of the term "Shredded Wheat" as a trade name. For that is the generic term of the article, which

describes it with a fair degree of accuracy; and is the term by which the biscuit in pillow-shaped form is generally known to the public. Since the term is generic, the original maker of the product acquired no exclusive right to use it. As Kellogg Company had the right to make the article, it had also, the right to use the term by which the public knows it. * * * Ever since 1894 the article has been known to the public as shredded wheat.

Pouring hazelnut milk over your shredded wheat raises the ire of some in the dairy industry and elsewhere. The Code of Federal Regulations specifically defines *milk* as "the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows." See 21 C.F.R. 131.110(a). But wait. There's more. The CFR's include detailed requirements for nonfat dry milk, evaporated milk, heavy cream, light cream, sour cream, half-and-half and so on. This spate of rules underscores the significance of *milk* to the American palate.

In September 2018, FDA Commissioner Scott Gottlieb addressed a dairy industry concern that "the labeling of some plant-based products may lead consumers to believe that those products have the same nutritional attributes as dairy products." The FDA is trying to "better understand consumers' expectations of these plant-based products compared to dairy products."^[8]

How does common usage develop? Existential dialogue about the *taste* of freshly caught lobster illustrates consumer expectations. This excerpt is from Book Three of Karl Ove Knausgaard's epic autobiographical novel of modern life in Norway, *My Struggle*:

[W]hile we were eating, Solvi looked at Dad and said:

"Imagine you catching this lobster yourself. It tasted *delicious*."

"It really was delicious," Grandma said.

"Nothing tastes as good as lobster," Dad said. "But we can't know if it tastes the same for all of us."

Solvi stared at him.

"What do you mean by that?"

"I know how it tastes to *me*," Dad said. "But I have no idea how it tastes to you."

"It tastes like lobster, of course," Solvi said.

Everyone laughed.

I didn't understand what they were laughing about. What they said was right. But I laughed too.

"But how can you know that lobster tastes the same to me as it does to you?" Dad asked. "For all you know, it could taste like jam to me."

Solvi was about to say something, but held back, looking down at the lobster, then up at Dad. She shook her head.

"I don't understand," she said. "The lobster's there. And it tastes of *lobster*. Not jam!"

The others laughed again. I knew Dad was right, but I didn't know exactly why. For a long time I sat musing. It was as if I was constantly on the point of understanding, but then as I was beginning to comprehend, it slipped from my grasp. The thought was too big for me.[\[9\]](#)

We cannot really know what other people are tasting. The experience is totally subjective. But we do find common ground in using the same words as others for what we decide to purchase, chew and swallow.

Whatever may be gleaned from the FDA's ongoing study of a consumer *milk* expectations, existing vocabulary and common usage appear to quell confusion about whether one is about to ingest cow's milk or a plant-based substitute. A hazelnut milk fan effusively states in her blog:

I'm not sure that I can do it justice with words alone, but imagine the most beautifully rich and somewhat decadent milk tinged with a deep, roasted hazelnut flavour and smooth, creamy texture. This milk is queen of all homemade nut milks and even though it has a very distinct flavour and colour, I couldn't imagine it not working anywhere [!] would normally use plain milk.[\[10\]](#)

This ode to hazelnut milk is instructive. When the author refers to cow's milk, she uses the adjective *plain* milk to make her point clear. While *nut* milks share mouth-appeal characteristics of cow's milk, they do so with different smell, flavor and taste profiles. Your gustatory senses are hard to fool. The use of efficient adjectival qualifiers circumvents potential consumer confusion.

In a nutshell, the bottom line of this post is: Don't buy *nut* milk if you're asked to pick up some *plain* milk at the local grocery store on your way home from work. Capisce?

[1] G. Shepard, *Neurogastronomy: How the Brain Creates Flavors and Why It Matters* (2013), p. 231 (paperback edition).

[2] C. Spence, *et al.*, "Eating with our eyes: From visual hunger to digital satiation," *Brain and Cognition* 110 (2016) 53-63.

[3] See <http://oregonhazelnuts.org/about/>.

[4] See <https://www.eugencascadescoast.org/listing/dorris-ranch-living-history-farm/1031/>.

[5] T.J. Molnar, *et al.*, "Developing Hazelnuts for the Eastern United States," from *Proc. VIth Intl. Congress on Hazelnut*, *Acta Hort.* 686 (2005).

[6] The quoted material in this paragraph is from P. Boccacci and R. Botta, "Investigating the origin of hazelnut (*Corylus avellana* L.) cultivars using chloroplast microsatellites," *56 Genet. Resource Crop Evol.* 851-859 (2009).

[7] *Helen Brown's West Coast Cook Book*, p. 279 (1952).

[8] See <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-modernizing-standards-identity-and-use-dairy-names>

[9] Karl Ove Knausgaard, *My Struggle (Book Three: Boyhood)* (original Norwegian copyright 2009).

[10] See <https://tohercore.com/how-to-make-homemade-roasted-hazelnut-milk/>.