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ARCHIVES

LEGISLATION, REGULATIONS & STANDARDS

Vermont Governor Signs Law Banning PFAS from Cosmetics

Vermont Gov. Phil Scott has signed into law a bill banning several chemicals including per- and polyfluoroalkyl substances (PFAS) from cosmetics and personal care products. SB25 prohibits manufacturers from making, selling or distributing any cosmetic or menstrual product containing PFAS, phthalates, formaldehyde, mercury and lead, among other chemicals. The portion of the law pertaining to cosmetics takes effect January 1, 2026.

ASA Targets Supplement Companies' Social Media Ads Making Prohibited Claims

The United Kingdom's Advertising Standards Authority (ASA) has upheld challenges to a series of dietary supplement social media ads. ASA banned ads from three companies—Spectrum Awakening, Aspire Nutrition and The Drop Supplements Ltd.—that made claims about the prevention, treatment and cure of

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developmental language disorder, autism and ADHD. ASA said Spectrum Awakening did not respond to its inquiries, noting it was concerned by the company's "lack of response and apparent disregard for the Code." ASA also banned ads from The Clean Supps LLC, doing business as Inno Supps, and Happy Koala, doing business as Happy Mammoth, for making prohibited weight-loss claims. ASA found the ads through its Active Ad Monitoring system, which uses AI to search for online ads that might break its rules.

Microbial Contamination Prompts Sunscreen Foundation Recall

Suntegrity Skincare has voluntarily recalled nine lots of its Suntegrity Impeccable Skin Sunscreen Foundation after finding a higher-than-acceptable amount of mold in some tubes, the company said in a notice released by the U.S. Food and Drug Administration (FDA). Suntegrity reportedly found Aspergillus Syndowii—which can cause allergic skin reactions, primary fungal skin infections and eye infections—in Lot 115BU and decided to recall additional lots as a precaution, though test results of the additional lots have not found similar amounts of mold.

EU Dietary Supplement Working Group Releases First Report

A working group made up of the leaders of 26 EU countries' food safety authorities has issued a report identifying 13 substances used in dietary supplements that the group asserts should be prioritized for future regulation. The Heads of European Food Safety Agencies was formed to establish a common approach for management and assessment of substances with a nutritional or physiological effect used in food and food supplements, which are not fully harmonized within the EU. Of the 117 substances reviewed, the group identified 13 substances that purportedly pose a risk to consumers, reportedly finding that "their intake through food supplements greatly exceeds normal intake from a balanced and varied diet." The list includes coumarin in plant preparations, melatonin, piperine and tryptophan.

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ABOUT SHOOK

Shook, Hardy & Bacon attorneys counsel consumer product manufacturers on FDA, USDA and FTC regulatory compliance and risk management issues, ranging from recalls and antitrust matters to facility inspections, labeling, marketing, advertising, and consumer safety. We help these industries develop early legal risk assessments to evaluate potential liability and develop appropriate policies and responses to threats of litigation or product disparagement.

The firm's lawyers also counsel manufacturers on labeling audits and a full range of legal matters such as U.S. and foreign patent procurement; licensing and technology transfer; venture capital and private financing arrangements; joint venture agreements; patent portfolio management; research and development; risk assessment and management; records and information management issues and regulations; and employment matters, including confidentiality and non-compete agreements.

LITIGATION

Miracle Moo Faces Proposed Class Action

A New York man has filed a proposed class action alleging Miracle Moo Inc. misleads consumers into believing that its bovine colostrum dietary supplements provide science-backed benefits. *Mosseri v. Miracle Moo, Inc.*, No. 24-3414 (S.D.N.Y., filed May 2, 2024). The plaintiff takes issue with marketing claims that the products have “scientific validation,” are “powered by science” and are “clinically dosed” to “enhance immunity,” as well as claims related to gut health, inflammation, hair growth and more. He alleges that Miracle Moo does not cite any studies to support its claims and points to the company’s lack of comment in a Truth in Advertising article about bovine colostrum product claims as suggesting that the company lacks its purported scientific support.

Beard Guyz Products Challenged for “Natural” Labeling

A plaintiff has alleged that Universal Beauty Products Inc. misleads consumers into believing its Beard Guyz products are "natural" despite containing synthetic ingredients. *Dilanyan v. Universal Beauty Prods., Inc.*, No. 24-5200 (C.D. Cal., filed June 20, 2024). The products at issue, which include beard wash, beard oils and other beard maintenance products, are allegedly falsely and misleadingly labeled as either “Made with Natural Ingredients” or “Natural” but contain artificial ingredients such as citric acid and glycerin.

California Consumer Alleges Probiotics Co. Makes Deceptive Gas, Bloating Claims

A California woman has filed a proposed class action alleging Zenwise LLC lacks the scientific evidence to support marketing

claims that its probiotic dietary supplement is a fast-acting solution for gas and bloating. *Scott v. Zenwise LLC*, No. 24-4673 (C.D. Cal., filed June 2, 2024). An expert physician allegedly reviewed the scientific literature on the product's ingredients and evaluated the company's advertising claims, purportedly finding issue with Zenwise's "Clinically Proven" claims that the product contains "fast acting probiotics" that can work "in Hours." Existing research has not shown that the DE111 probiotic strain used in the product relieves gas and bloating, the plaintiff alleges, and probiotics by nature are not fast-acting.

Suit Alleges RiseWell Children's Toothpaste Contains PFAS

RiseWell LLC is facing claims that its Kids Mineral Toothpaste is marketed as "natural" and "safe to swallow" while containing per- and polyfluoroalkyl substances (PFAS). *Watkins v. Risewell LLC*, No. 24-3529 (N.D. Cal, filed June 11, 2024). Plaintiffs from California and New York have filed a proposed class action alleging that independent testing of the product showed that the toothpaste contains over 188 parts per billion of PFAS. "For reference, when researchers found 250 parts per trillion PFAS in kale, over 750 times less than what was found in the Product, they described being 'stunned' by the 'high levels' of the compounds," the plaintiffs assert.

Fish Oil Supplements 'Worthless,' Consumer Alleges

A California consumer has filed a putative class action against Nordic Naturals, alleging the company's fish oil capsules are marketed with misleading health claims. *Clark v. Nordic Naturals, Inc.*, No. 24-4058 (N.D. Cal., filed July 3, 2024). The plaintiff alleged that consumers buy the product because they believe it supports heart health but cited recent studies finding that fish oil supplements do not actually promote heart health. "In fact, the most recent study on fish oil supplements found that

taking these products can be harmful to heart health," the plaintiff alleges.

SCIENTIFIC / TECHNICAL

EWG: 75% of Sunscreens Fall Short of Adequate Protection

Three-fourths of the nearly 1,700 sunscreens tested by the Environmental Working Group (EWG) for its 2024 Guide to Sunscreens reportedly fall short of providing adequate protection, with some products containing ingredients that could allegedly pose health risks, according to an announcement in which the organization calls on the U.S. Food and Drug Administration (FDA) to review sunscreen ingredients. Industry groups have pushed back on the report, including the Personal Care Products Council, which said in a statement that the guide "misleads consumers into assuming sunscreen products are unsafe, thereby jeopardizing public health."

Journal Retracts Controversial 2013 Article Questioning Herbal Products' Integrity

The editor of *BMC Medicine* has retracted a 2013 article that used DNA barcoding analysis to test herbal products on the marketplace for quality and authenticity. In a retraction note, the journal said that an investigation by the University of Guelph found evidence of data fabrication in relation to the article and that the editor no longer has confidence in the presented data. In its reporting on the announcement, *Neutraceuticals World* said the 2013 article stirred up controversy within the industry for its methodology and prompted the New York Attorney General's Office to issue cease-and-desist letters to manufacturers and investigate several manufacturers and retailers for documentation relating to the supply and manufacture of herbal ingredients.

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