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FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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UK Labour Party Intends to Ban Energy Drink Sales to Children

The UK Labour Party has signaled that it intends to ban the sale of highly caffeinated energy drinks to those under the age of 16 should it prevail in the country's July 4, 2024, general election.

On June 10, the party released its [Child Health Action Plan](#), which states that energy drinks containing more than 150 mg of caffeine per liter will be banned for sale to those under 16 "as it has become clear to health and education experts that the current caffeine labelling system is failing to prevent young children from purchasing these drinks." The plan also includes banning "junk food" advertising to children and limiting the targeting of school children by fast food restaurants' marketing.

Tara Flour Does Not Meet GRAS Standard, FDA Determines

Tara flour does not meet the Generally Recognized As Safe (GRAS) standard and is an unapproved food additive, the U.S. Food and Drug Administration (FDA) [announced](#) in an agency memo. FDA began evaluating the regulatory status of tara flour following about 400 adverse event reports filed related to a Daily

Shook offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

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Harvest leek and lentil crumble product. The company identified the ingredient as a possible contributor to the illnesses, although FDA did not identify enough evidence to determine that tara flour caused the outbreak. After its evaluation, the agency concluded that insufficient data exists to classify tara flour as GRAS.

California School Food Additive Bill Passes State Assembly

A bill that would ban public schools from serving foods containing certain synthetic food dyes and titanium dioxide has passed the California State Assembly by a 59-0 vote. [AB 2316](#) would ban Red Dye No. 40, Yellow Dyes No. 5 and 6, Blue Dyes No. 1 and 2 and Green Dye No. 3. Since its introduction, the bill has been amended to provide an exemption for food items sold as part of a school fundraising event. If passed, the law would take effect July 1, 2025.

FDA Proposal Would Exempt Some Cottage Cheese From Traceability Requirements

Certain cottage cheese products would be exempt from the requirements of the Food Traceability Rule under a [proposal](#) from the U.S. Food and Drug Administration (FDA). FDA announced its intention to consider exempting cottage cheese regulated under the Grade "A" Pasteurized Milk Ordinance (PMO) from the rule's requirements. FDA said the PMO "represents the most current science-based knowledge and experience concerning the safe production and processing of Grade 'A' milk products, including cottage cheese." FDA will accept comments on the proposed exemption until September 12.



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ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.



Claims Trimmed in Fireball Malt Beverage Complaint

A Florida federal court has dismissed some claims filed against Sazerac Co. Inc. in a putative class action alleging that miniature-sized bottles of a malt beverage sold as Fireball Cinnamon confused consumers who believed they were purchasing Fireball Cinnamon Whisky. *Puig v. Sazerac Co. Inc.*, No. 23-0856 (M.D. Fla., Ft. Myers Div., entered June 18, 2024).

Sazerac sells small bottles of Fireball Cinnamon Whisky and Fireball Cinnamon with similar labels—"identical colors, themes, fonts, graphics, and other matter, such as the Fireball Dragon logo, the iconic red cap, and 'charred' label edges," according to the complaint—but Fireball Cinnamon does not include "Whisky" on its label. The court found that, due to federally mandated alcohol rules, the plaintiff could not argue that the use of the Fireball brand name was misleading, but he is permitted to argue that the bottle similarities can mislead consumers. The court dismissed portions of the complaint challenging the font and size of the alcohol content, finding that those, too, are mandated by federal rules.

The court denied part of Sazerac's motion to dismiss the plaintiff's Florida Deceptive and Unfair Trade Practices Act claim, declining to agree with the company's assertion that a label cannot be misleading "when it identifies and describes the product accurately." Instead, the court noted, "it makes no difference if the statements are 'technically or literally true'" if they are "likely to mislead reasonable consumers." The court dismissed the complaint without prejudice and allowed for the filing of an amended complaint within 14 days.

Jury Awards Plaintiffs \$3.1B in Alkaline Water Suit

A Las Vegas jury has awarded nearly \$3.1 billion in damages to a group of five children and three adults who alleged that drinking Real Water's alkaline water caused severe liver damage, [Law360reported](#). *Wren v. Affinitylifestyles*, No. A-21-831169-B (Nevada 8th Jud. D. Ct., Clark Cty., entered June 15, 2024). The jury awarded \$3 billion in punitive damages and \$89.75 million in compensatory damages to the plaintiffs. The plaintiffs' attorney told the jury that somewhere in the "alkalinizing" process, hydrazine, a toxic chemical, was produced. The case marks the second major verdict in 2024 against Real Water; in February, another Las Vegas jury found the company liable for \$129 million in damages for similar claims.

Lawsuit Targets Whole Foods Deposit Fee Labeling

A New York consumer has filed a proposed class action alleging Whole Foods fails to adequately identify product deposit fees in addition to retail prices. *Silberstein v. Whole Foods Mkt. Grp., Inc.*, No. 24-4229 (E.D.N.Y., filed June 14, 2024). The plaintiff alleges Whole Foods prominently displays retail prices "while effectively concealing additional 'deposit' fees," noting that one product's \$2 deposit fee "is so small that it could practically fit inside the decimal point between the dollar and cent figures of the product's 'retail price.'" After shopping at a New York Whole Foods and reviewing his receipt, the plaintiff said he was "shocked" to discover \$6 in container deposit fees for the purchase of three Ronnybrook Farms products, which he alleged increased the total cost of the products by 50%.

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