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FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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LEGISLATION, REGULATIONS & STANDARDS

FDA Announces Draft Guidance for Sodium Reduction Efforts

The U.S. Food and Drug Administration (FDA) has issued draft guidance that would support reducing the average individual sodium intake by about 20% of consumer intake levels prior to 2021. In a [news release](#), FDA said the voluntary sodium reduction targets would support reducing the average individual sodium intake to about 2,750 mg/day; prior to 2021, consumer intake averaged about 3,400 mg/day. “Reducing sodium in the food supply has the potential to be one of the most important public health initiatives in a generation,” FDA Deputy Commissioner for Human Foods Jim Jones said in a statement.

Public Meetings on Chemicals in Food, Codex Food Labeling Announced

The U.S. Food and Drug Administration has announced that it will hold a [public meeting](#) to discuss U.S. positions at the next session of the Codex Committee on Food Labelling. The meeting, held October 9, 2024, will include discussions of food allergen labeling, food information on products sold in e-commerce,

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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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labeling of alcohol beverages, *trans* fats, sustainability labeling claims and a definition of “added sugars.”

The Food and Drug Administration will hold a September 25 [public meeting](#) to discuss systemic processes for conducting post-market assessments of chemicals in food, including “ingredients considered generally recognized as safe (GRAS), food additives, color additives, food contact substances, and contaminants.”

LITIGATION

California Startup Challenges Florida Cultivated Meat Ban

A California cultivated-meat company has filed a lawsuit challenging the constitutionality of Florida’s cultivated-meat ban. *UPSIDE Foods, Inc. v. Simpson*, No. 24-0316 (N.D. Fla., filed August 12, 2024). UPSIDE Foods Inc. alleged Florida’s SB 1084—which prohibits the manufacture, distribution and sale of cultivated meat—violates the U.S. Constitution’s Supremacy Clause because it is preempted by federal laws regulating meat and poultry products. The company argues that it seeks “the opportunity to distribute its product to willing consumers, so that those consumers can decide for themselves whether UPSIDE’s product is worth eating.”

Lawsuit Alleges Soda Contains Brominated Vegetable Oil

A consumer has filed a putative class action alleging The Giant Co. sells orange soda “unfit for its intended use because it contains Brominated Vegetable Oil” (BVO). *Daniels v. Giant Co. LLC*, No. 24-1363 (M.D. Penn., filed August 13, 2024). The U.S. Food and Drug Administration revoked the regulation allowing the use of BVO in food in July 2024.



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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.



“[B]ecause the facts concern a safety-related deficiency in the Product, Defendant was under a continuous duty to disclose to Plaintiff and the members of the Classes the true nature of the Product and to disclose the Product contained a substance known to cause adverse health effects,” the complaint alleges. “Considering most major soda brands have already removed BVO from their products due to its toxicity, Defendant knew, or reasonably should have known, that this information is material to reasonable consumers, including Plaintiff and Class Members, when they make their purchasing decisions, yet Defendant did not disclose this material information.” The plaintiff’s claimed causes of action include negligent failure to warn, fraudulent concealment and strict products liability.

Appeals Court Upholds Ruling for USDA in Challenge to Perdue Labeling

The U.S. Court of Appeals for the D.C. Circuit has upheld a lower-court ruling for the U.S. Department of Agriculture (USDA) in a lawsuit brought by the Animal Legal Defense Fund (ALDF) challenging the department’s approval of labeling on Perdue poultry products. *Animal Legal Defense Fund, Inc. v. Vilsack*, No. 23-5009 (D.C. Cir., entered August 9, 2024). ALDF alleged that USDA violated the Poultry Products Inspection Act and Administrative Procedure Act when it approved labels for Perdue’s “Fresh Line” chicken and turkey products. ALDF claimed that the labels were misleading because while the product packaging showed birds freely roaming outside, the animals were raised strictly indoors. When USDA declined the group’s request to disapprove the labels, ALDF sued. A lower court dismissed the suit, finding the group lacked standing to challenge the department’s actions. The D.C. Circuit agreed, holding that ALDF failed to show that the alleged harm is ongoing or likely to recur.

Clif Bar & Co. Agrees to Revise Labeling in \$12M Settlement

A California federal court has given preliminary approval to a \$12 million settlement resolving consumer claims that Clif Bar & Co. misled consumers into thinking its products were healthy when they contained a large amount of added sugars. *Milan v. Clif Bar & Co.*, No. 18-2354 (N.D. Cal., entered July 12, 2024). The plaintiffs' complaint centered on classic Clif Bars and Clif's Kid ZBars, which was sold in packaging featuring phrases such as "Nourishing Kids in Motion" and "Nutrition for Sustained Energy." As part of the settlement, Clif agreed to revise its labeling to exclude "Nutrition" on its original Clif Bars as well as "Nutritious" or "Nourishing Kids in Motion" on Clif Kid ZBars.

Dunkin' Donuts Franchise Sued for Alleged Coffee Injury

A man has filed a lawsuit alleging that an inadequately secured lid on a coffee cup sold by Newburyport Donuts Inc. caused him to receive "serious burn injuries." *Rothberg v. Newburyport Donuts Inc.*, No. 2477CV00847-A (Mass. Super. Ct., filed August 15, 2024). The man alleges that an employee of a franchise of Dunkin' Donuts owned by Newburyport Donuts Inc. "failed to properly secure the lid of the coffee," and "upon service to Plaintiff, the improperly or inadequately secured lid came off the coffee resulting in the coffee to spill on Plaintiff's lap." The plaintiff alleges he has "endured a great expense for medical treatment," lost wages and lost "capacity for the enjoyment of life" and seeks compensatory damages.

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