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FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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USDA Issues Updated Guideline for Substantiating Animal-Raising Labeling Claims

The U.S. Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) has [issued](#) updated guidance on substantiating animal-raising and environment-related labeling claims on meat and poultry products. In the revised guideline, FSIS strongly encourages companies to use third-party certification to substantiate animal-raising and environment-related claims and emphasizes more robust documentation. The updated guideline also recommends that companies using "negative" antibiotic claims, such as "No Antibiotics Ever," implement routine sampling and testing programs to detect antibiotic use in animals prior to slaughter or obtain third-party certification that includes testing.

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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California Legislature Passes School Food Additive Ban

The California state legislature has [passed](#) a first-in-the-nation bill banning California schools from serving foods containing six

synthetic food dyes. The legislature unanimously approved the California School Food Safety Act ([AB 2316](#)), sending the bill to the governor’s desk for final approval. The law, which will take effect December 31, 2027, prohibits the use of Blue 1 and 2, Green 3, Red 40 and Yellow 5 and 6. The bill’s sponsor said in a statement that the bill “will empower schools to better protect the health and wellbeing of our kids and encourage manufacturers to stop using these harmful additives.”

Representative Introduces Bill Allowing Federal Agencies to Share Food Safety Details With States

U.S. Rep. Deborah Ross (D-N.C.) has [introduced](#) a bill that would allow federal agencies to share food safety information with state and local governments. In a news release, she said the Federal and State Food Safety Information Sharing Act would give the U.S. Food and Drug Administration (FDA) statutory authority to share information with state and local agencies, which it currently lacks because the information is considered proprietary. Ross highlighted communication between local and federal authorities that led to a nationwide recall of lead-contaminated applesauce. “In my home state of North Carolina, we saw how effective information sharing between federal and state agencies during a food safety crisis led to a food recall that saved lives in states across the country,” she said

Nebraska Governor Announces Initiatives Surrounding Lab-Grown Meat

Nebraska Gov. Jim Pillen has [announced](#) three initiatives that aim to protect the state’s agriculture industry and consumers from lab-grown meat. On August 30, 2024, Pillen signed an executive order creating strict guidelines for state agencies and contractors regarding obtaining lab-grown meat, and he also directed the Nebraska Department of Agriculture to initiate rulemaking surrounding lab-grown meat products, ensuring



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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.



products sold in stores are properly labeled and not marketed next to natural meat. Additionally, Pillen indicated he will work with state lawmakers in the upcoming legislative session to ban lab-grown meat in the state.

SEC Orders Keurig to Pay \$1.5M for K-Cup Recyclability Claims

The U.S. Securities and Exchange Commission (SEC) has [ordered](#) Keurig to pay \$1.5 million in a civil money penalty and to stop filing inaccurate reports with the commission as part of a settlement resolving claims that the company made inaccurate representations about the recyclability of K-Cup pods. *In the Matter of Keurig Dr. Pepper Inc.*, File No. 3-22100 (Securities and Exchange Commission, filed September 10, 2024).

According to the order, the matter involves statements Keurig made in its annual reports filed with SEC in 2019 and 2020. Beginning in 2016, the company reportedly performed tests of its pods at recycling facilities and tracked the progress of the pods throughout the recycling facilities. The testing showed that the pods could successfully be sorted from other materials early in the recycling process, however, two large recycling companies gave negative feedback regarding the commercial feasibility of curbside recycling. Keurig stated in reports that its testing validated that pods can be effectively recycled and did not disclose the recycling companies' negative feedback, the order said. "By not including this additional information, Keurig's statements about the conclusion to be drawn from the testing concerning recyclability of pods were incomplete and therefore inaccurate," SEC said.

Public Meetings on Traceability Records, Fruits and Vegetables Announced

The Reagan-Udall Foundation and the U.S. Food and Drug Administration will host a [virtual public meeting](#) on October 7,

2024, to hear comments from stakeholders on traceability process issues. Requests to speak must be submitted by September 30. In addition, the U.S. Food and Drug Administration will hold a [two-day meeting](#) on October 8-9 of the Fruit and Vegetable Industry Advisory Committee to discuss agency programs and services related to the produce industry. Public comments will be accepted until October 1.

LITIGATION

Court Dismisses Some Prime Sports Drink PFAS Claims

A federal court has dismissed some of a California plaintiff's suit alleging Prime Hydration LLC misleads consumers into believing its grape sports drink is healthy when it contains per- and polyfluoralkyl substances (PFAS). *Castillo v. Prime Hydration LLC*, No. 23-3885 (N.D. Cal., filed August 2, 2024). The plaintiff alleged independent testing found "material levels of PFAS" in the product. Prime Hydration moved to dismiss, alleging that the suit was an improper attempt to evade Proposition 65 and that the plaintiff's Consumer Legal Remedies Act (CLRA), Unfair Competition Law (UCL) and False Advertising Law (FAL) claims were not well-pled and failed under the reasonable consumer test.

The court denied the defendant's motion to dismiss on Prop. 65 grounds but granted dismissal of the plaintiff's CLRA, UCL and FAL claims with leave to amend. The court said the statements the plaintiff highlighted were too vague and general to mislead a reasonable consumer, noting that the products also list artificial sweeteners. "Thus, even if a reasonable consumer were to believe that emphasizing vitamins and electrolytes indicates that the Sports Drink contains healthy and natural ingredients, this belief would be dispelled by the artificial ingredients listed on the label," the court said. The court allowed the plaintiff's implied warranty of merchantability claims to proceed.

Lamar Jackson, Troy Aikman Dispute '8' Trademark

Retired Dallas Cowboys quarterback Troy Aikman and Baltimore Ravens quarterback Lamar Jackson are disputing the commercial use of their shared jersey number, 8. *Jackson v. FL101*, Opposition No. 91292546 (U.S.P.T.O., answer filed August 1, 2024). Jackson seeks trademarks for his Era 8 apparel line and “You 8 Yet?” restaurant services, and he recently opposed trademark applications from brewery FL101, which does business as Eight Brewing Co. and for which Aikman serves as a director. In his opposition filing, Jackson alleged Aikman’s “Eight” mark is likely to cause confusion with his own.

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