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FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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Petition Seeks FDA Rulemaking Requiring Declaration of Animal-Derived Ingredients

The Animal Legal Defense Fund (ALDF) and a coalition of 16 other organizations and individuals have submitted a [petition](#) for rulemaking calling on the U.S. Food and Drug Administration (FDA) to require that products containing animal-derived ingredients to be labeled with a disclaimer and to identify the species in the disclaimer. In an issue summary, ALDF said a disclaimer “would successfully resolve the current confusion consumers have about which products contain animal ingredients, and which ingredients themselves are animal-derived.” “Whether a food product contains animal-derived ingredients — and if so, which animal(s) those ingredients come from — is a material fact. For religious, moral, food safety, and allergen concerns, consumers have a significant interest in the disclosure of animal-derived ingredients,” the group said.

California Bans Octopus Farming

California Gov. Gavin Newsom has signed into law the Oppose Cruelty to Octopuses (OCTO) Act. [AB 3162](#) prohibits octopus

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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farming on land and water and the sale of farmed octopuses in the state. California is the second state to enact such a law, after Washington. Similar legislation has been introduced in Hawaii and the U.S. Senate.

Congresswoman Reintroduces Toxic Free Food Act

U.S. Rep. Rosa DeLauro (D-Conn.) has reintroduced the [Toxic Free Food Act](#), which would require the U.S. Food and Drug Administration (FDA) to change its regulations regarding ingredients "Generally Recognized as Safe" (GRAS) and make food additives subject to FDA approval and oversight. "The GRAS loophole allows companies to decide themselves whether additives are safe to add or not, skirting FDA oversight and allowing for potentially dangerous chemicals to reach market. That cannot stand," DeLauro said in a statement.

FDA's Unified Human Foods Program Takes Effect

The U.S. Food and Drug Administration (FDA) has announced that its unified Human Foods Program has taken effect. FDA said the update is "the single largest reorganization in the agency's modern history," affecting more than 8,000 employees and touching nearly every facet of the agency. "The work has really only begun," FDA leaders said in a statement. "We are hopeful this modernization and reorganization will enhance transparency and trust in the agency as we work together both inside and outside the FDA to better meet our country's shared public health goals."



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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.



LITIGATION

Texas Tofurky Suit Survives Dismissal Bid

A Texas federal court has denied a motion to dismiss a suit brought by Tofurky and the Plant Based Food Association (PBFA) challenging the constitutionality of an amendment to state law governing the labeling of analogue and cell-cultured meat products. *Turtle Island Foods Inc. v. Abbott*, No. 23-1032 (W.D. Tex., filed September 23, 2024). The plaintiffs filed the lawsuit in 2023 after the state legislature amended the Texas Health and Safety Code to add provisions concerning food labels for “analogue” and “cell-cultured” meat products.

While the state argued that the amendment clarified food-labeling requirements, the plaintiffs alleged that the amendment institutes “an unreasonably burdensome and protectionist trade barrier that contravenes and is preempted by federal law and imposes vague standards.” The plaintiffs alleged the amendment violates the 14th Amendment's Due Process Clause and the First Amendment, is preempted by federal law, and violates the dormant Commerce Clause by discriminating against out-of-state producers and imposing excessive burdens on interstate and foreign commerce. While the district court found the plaintiff's claims against Gov. Greg Abbott were barred by sovereign immunity, the court allowed their claims against other state officials to proceed.

The court dismissed part of the plaintiffs' claims relating to cell-cultured meat after finding Tofurky lacked standing because it alleges it sells 100% plant-based meat products and has not alleged any injury relating to the portions of the amendment related to cell-cultured meat. The court similarly dismissed PBFA's claims relating to cell-cultured meat products.

Court Enjoins California Food Company From Selling Certain Foods

The U.S. District Court for the Eastern District of California has entered a consent decree of permanent injunction against Rizo Lopez Foods Inc., which has been linked to a multistate listeriosis outbreak. The U.S. Food and Drug Administration

(FDA) said in a news release that the injunction prohibits the company and the company's co-owners from manufacturing and selling certain food products until it complies with the Federal Food, Drug, and Cosmetic Act, federal regulations and other requirements. The permanent injunction follows a multi-year, multistate outbreak of *Listeria monocytogenes* infections linked to the company's queso fresco and cotija cheeses. FDA said a federal investigation of the outbreak identified 26 cases of illness occurring across 11 states, including 23 hospitalizations and two deaths.

Consumer Challenges Accelerator Energy Drink's 'Zero Preservatives' Claim

A New York plaintiff has alleged A Shoc Beverage misleads consumers about the amount of preservatives in its Accelerator Active Energy drinks. *Montera v. A Shoc Beverage, LLC*, 24-7281 (S.D.N.Y., filed September 26, 2024). The plaintiff points to labeling on the side panel of the product packaging that states "0 Preservatives," noting that the ingredient list includes citric acid, which acts as a chemical preservative, as the most prominent ingredient.

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