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ISSUE 830 | NOVEMBER 8, 2024

FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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LEGISLATION, REGULATIONS & STANDARDS

U.S. Codex Office to Hold Meeting on Positions for Codex Alimentarius Commission

The U.S. Codex Office will hold a [public meeting](#) on November 14, 2024, to receive public comments on agenda items and U.S. positions for the Codex Alimentarius Commission, held November 25-30, 2024, in Switzerland. Issues to be discussed include the work of various Codex Committees, including those on Food Additives, Food Hygiene, Spices and Culinary Herbs, Pesticide Residues and Food Labeling. The public meeting will also accept comments on the Codex Strategic Plan 2026-2031 and discuss implementation efforts from the 2020-2025 strategic plan.

LITIGATION

Listeria-Related Recalls Prompt Proposed Class Actions

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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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Boar's Head, Treehouse Foods and BrucePac face proposed class actions following a series of *Listeria*-related recalls. *Harper v. Boar's Head Provisions Co. Inc.*, No. 24-0860 (E.D. Cal., filed October 21, 2024); *Bryant v. Bruce Packing Company, Inc.*, No. 24-5636 (E.D. Penn., filed October 23, 2024); *Browne v. Treehouse Foods Inc.*, No. 24-7578 (E.D.N.Y., filed October 30, 2024). Two of the plaintiffs allege they consumed products from the companies—Boar's Head Beef Salami and Marketside Caesar Salad from BrucePac—and became ill. The third plaintiff alleged she purchased products from Trader Joe's that were subject to the warning that they possibly contained *Listeria*. They allege the companies failed to warn of the presence of listeria in their products.

Consumer Sues Badia Spices for Cinnamon Powder Lead Contamination

A New York woman has filed a proposed class action alleging Badia Spices, Inc., failed to disclose to consumers the presence of lead in its cinnamon powder product. *Gittens v. Badia Spices, Inc.*, No. 24-7965 (S.D.N.Y., filed October 18, 2024). The plaintiff pointed to testing from *Consumer Reports'* laboratory purportedly finding the product contains levels of lead exceeding New York's limit for a recall. "There is no need for Defendant's Products to contain lead. Other spice and powder makers are able to make spice products without the lead levels in Badia's products," the plaintiff said.

Jury Awards \$5B in Punitive Damages in 'Alkaline' Water Suit

A Nevada jury awarded \$5 billion in punitive damages to a group of 15 plaintiffs who alleged they had liver damage from Real Water's "alkaline water" product, according to [Law360](#). *Brown v. Affinitylifestyles.com Inc.*, No. A-21-831776-B (8th Jud. Cir. Ct. (Nev.), entered October 23, 2024) The verdict, which also includes \$230 million in compensatory damages, is reportedly the largest to date against the company and follows earlier jury



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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.



awards of \$3 billion and \$129 million. “Juries in a handful of earlier trials have heard that somewhere in the company’s ‘alkalinizing’ process, invented by a person without a chemistry degree, the toxic chemical hydrazine was produced,” *Law360* reported.

Proposed Class Action Targets Ginger Ale ‘Natural Flavor’ Claims

Keurig Dr Pepper faces a proposed class action alleging it mislabels its Schweppes and Canada Dry ginger ales by failing to disclose that they contain artificial flavors. *Elliot v. Keurig Dr. Pepper, Inc.*, No. 24-0364 (E.D. Cal., filed October 29, 2024). The plaintiff alleges the products are labeled as if they were solely naturally flavored but contain artificial flavoring, highlighting statements such as “Natural ginger flavor,” “Natural flavors,” “Naturally flavored” and “Naturally flavored with other natural flavors” in the complaint. “These labels are both intentionally misleading and unlawful under federal and state law because they omit the material fact that the Products contain artificial flavoring and the Products’ characterizing flavor is simulated and reinforced by artificial flavoring,” she alleges.

Subway Misrepresents Amount of Meat on Steak & Cheese Sandwiches, Woman Alleges

A New York woman has filed a proposed class action alleging Subway misleadingly advertises the amount of meat in its Steak & Cheese sandwich. *Tollison v. Subway Restaurants Inc.*, No. 24-0495 (E.D.N.Y., filed October 28, 2024). The plaintiff alleges the company uses photos in its ads that make the sandwich look as if it contains 200% more meat than the actual sandwiches consumers receive. She alleges the ads are “unfair and financially damaging to consumers, as they are receiving a product that is materially lower in value than what is being represented.”

Food Lion, Parent Company Sued for BVO in Orange Soda

Food Lion and its parent company face a consumer's putative class action alleging that they failed to disclose the potential adverse health effects of brominated vegetable oil (BVO), a food additive used in Food Lion's Omazing Orange Soda product.

Daniels v. Ahold Delhaize USA, Inc., 24-0876 (M.D.N.C., filed October 22, 2024). The U.S. Food and Drug Administration removed BVO from the food additive regulation allowing for its use in food items in July 2024. The plaintiff alleges that she bargained for a product that was safe to consume and was deprived of the basis of that bargain, noting the potential health consequences of consuming BVO. "No reasonable consumer would expect the Product, a citrus flavored beverage, to cause neurological symptoms, hypothyroidism, and depression," she argues. "Due to the negative health effects associated with prolonged consumption of BVO containing products, Plaintiff must undergo periodic medical testing to detect and protect themselves from future injury or illness."

Dole Whip Labels Mislead on Artificial Ingredients, Consumer Alleges

A California consumer has filed a proposed class action alleging Dole Food Co. falsely claims that its Dole Whip products contain no artificial ingredients. *Aguilar v. Dole Food Co., Inc.*, No. 24-2305 (C.D. Cal., filed October 30, 2024). The plaintiff alleges that each of the products are made with citric acid, an artificial food preservative, and xanthan gum, and he would not have bought the products had he known they contained artificial ingredients.

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

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