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LEGISLATION, REGULATIONS & STANDARDS

Comment Periods Extended for Genome Editing in Plants and Animals

The U.S. Food and Drug Administration (FDA) has announced an extension to its comment periods for information on the use of genome editing techniques in animals and in plant varieties used for human or animal food. Comments on FDA's draft guidance, "Regulation of Intentionally Altered Genomic DNA in Animals," and on the use of genome editing techniques to produce new plant varieties will be accepted until June 19, 2017.

Canada Proposes Ban on PHO by Summer 2018

Canada has announced a proposal to ban the use of partially hydrogenated oils (PHO) in food by adding them to the agency's "List of Contaminants and Other Adulterating Substances in Food" by summer 2018. That deadline would bring Canada in line with the United States, where food manufacturers have until June 2018 to remove PHO from their products. The agency's goal is to reduce *trans* fats for most Canadians to less than one percent of their total energy intake, which is expected to lead to a reduced risk of heart disease. Health Canada proposes defining PHO in their food and drug regulations as fats and oils that (i) "have been hydrogenated, but not to complete or near complete saturation" and (ii) "have an iodine value (IV) greater than 4." The proposal would identify PHO as a food adulterant if present at any level.

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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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The agency will continue to consider additional information or comments on the proposal through June 21, 2017.



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Italy Proposes New COOL Rule for Pre-Packaged Foods

Italy has reportedly proposed new legislation that would require food manufacturers to include country-of-origin labeling (COOL) on all pre-packaged food labels or face fines of up to €18,000. Under the proposal, food-product labels must list an Italian address for the food's production facility or indicate that the food is made outside of the country. Italy's COOL initiative for dairy products takes effect April 18, 2017, and a similar initiative for pasta products is pending. *See Food Navigator*, April 10, 2017.

LITIGATION

Asahi Facing False-Source Putative Class Action

A consumer has filed a projected class action alleging Asahi Beer U.S.A., Inc. misleads customers into believing that Asahi Super Dry beer is made in Japan despite being produced in Canada. *Panvini v. Asahi Beer U.S.A., Inc.*, No. 17-1896 (N.D. Cal., filed April 5, 2017). The plaintiff claims that although most of the Asahi Dry beer sold worldwide is brewed in and exported from Japan, the product sold in the United States is made in Toronto, Canada. The complaint alleges that Asahi misleads consumers by using Japanese lettering on labels and packaging and by describing it as the "most popular high-quality beer in Japan." Claiming violations of California's consumer-protection statutes, the plaintiff seeks injunctive and equitable relief, restitution, damages and attorney's fees.

Kerrygold Files Trademark Suit Against Wisconsin Maker of Irishgold Butter

The Irish distributor of Kerrygold butter won an emergency restraining order against a Wisconsin creamery after alleging the creamery backed out of an agreement to process Kerrygold locally and later created its own nearly identical product, "Irishgold," infringing Kerrygold's trademark. *Ornua Foods N. Am., Inc. v.*

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.



Eurogold USA LLC, No. 17-0510 (E.D. Wis., filed April 10, 2017). A Wisconsin federal court granted the order after finding Ornuia Foods, Kellygold’s maker, likely to win the trademark case it filed on the merits.

After Kerrygold became the top-selling imported butter in the United States, Wisconsin removed Kerrygold butter from stores under a statute requiring all butter sold in the state to bear either a Wisconsin or federal grade mark. After the ban, Ornuia Foods began working with Wisconsin state officials and defendant Old World Creamery to process the Irish-made butter a second time, making it eligible for a state grade mark. The suit claims that during contract negotiations but after Ornuia disclosed its product specifications, Old World formed a new business entity called Eurogold then told Ornuia it would package butter for another Irish company instead. The *Chicago Tribune* reported that Old World had developed a “workaround” to sell Irish butter in Wisconsin under the Irishgold name but illustrated the story with a photograph of Kerrygold butter. The complaint claims Irishgold packaging bears font and illustrations of black and white cows “identical or substantially identical” to those on Kerrygold packaging.

Ornuia claims federal trademark infringement and dilution, unfair competition and false advertising, unfair competition and misappropriation and seeks an injunction and attorney’s fees.

Torchy’s Tacos Sues Competitor for Infringement of “Damn Good Tacos”

Texas chain Torchy’s Tacos, which uses the tagline “Damn Good Tacos” in its restaurants and merchandising, has filed suit against Colorado restaurant Dam Good Tacos for trademark infringement, claiming consumer confusion. *Success Foods Mgmt. Group, LLC v. Dam Good Systems, LLC*, No. 17-0842 (D. Colo., filed April 5, 2017). Asserting that it registered the “Damn Good Tacos” trademark in 2008, Torchy’s alleges federal trademark infringement, unfair competition, and violation of the Colorado Consumer Protection Act, and it seeks injunctive relief, damages and destruction of Dam Good Tacos’ infringing URLs, email addresses and all packaging, promotional and advertising materials.

Cornell Addresses Criticisms of Food and Brand Lab Director Brian Wansink

Cornell University has issued a statement concluding that alleged statistical errors in studies authored by Brian Wansink, director of the university's Food and Brand Lab, "did not constitute scientific misconduct." Known for his work focused on how ads, packaging and other factors influence eating behavior, Wansink reportedly attracted criticism after he published a blog post about how his lab conducted statistical analysis in one study. A group of outside researchers then ran their own analysis on the data, purportedly documenting 150 errors in four papers published by Wansink's group.

According to Cornell, the internal investigation has resulted in the implementation of new research procedures at the Food and Brand Lab. "These strict procedures are designed not only to prevent the type of oversights and errors noted here from occurring in the future, but also to create a convenient system for anonymizing and cataloguing data so that this background information can be easily and routinely shared with fellow researchers anywhere in the world," said Wansink in response to the investigation. "I welcome careful review, and I look forward to continuing the conversation about food perception and eating habits through the great work of the Food and Brand Lab for many years to come." *See The Chronicle Review*, March 17, 2017.

EFSA Reassessment Finds No Safety Concern for Use of Acacia Gum

The Panel of Food Additives and Nutrient Sources added to Food, a branch of the European Food Safety Authority (EFSA), has conducted a reassessment on the effects of acacia gum used in food products and reportedly found 30,000 milligrams per person per day to be well-tolerated. The scientific opinion apparently found no carcinogenic or other adverse effects of acacia gum, which is "unlikely to be absorbed intact and is slightly fermented by intestinal microbiota," at the refined exposure assessment for the reported uses of the ingredient as a food additive.

Burger King Ad Invoking Google Home Stirs Up Attention

A Burger King advertisement featuring a prompt for Google Home, a voice-powered digital-assistant device, has caught media attention as an interesting but flawed method of incorporating artificial intelligence into a food-marketing campaign. The 15-second ad features a Burger King employee noting the ad is too short to explain the ingredients, stating Google Home's trigger, "OK, Google," and asking, "What is the Whopper burger?" When triggered, Google Home recites the answer from Wikipedia, which functioned as expected when viewers first saw the spot. As the ad caught attention, however, pranksters began editing the Wikipedia page, removing the actual ingredients and replacing them with "toenail clippings," "cyanide" and "medium-sized child," among others. Further, Burger King did not collaborate on the project with Google, which quickly disabled Google Home devices' responses to the ad. *See New York Times, NPR, and Reuters, April 12, 2017.*

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