



LEGISLATION, REGULATIONS & STANDARDS

Agriculture Committee Introduces 2018 Farm Bill

The U.S. House of Representatives' Agriculture Committee has introduced the [Agriculture and Nutrition Act of 2018 \(Farm Bill\)](#). The bill includes provisions on farm policy, regulatory reform, animal health and specialty and organic crops. According to the committee's [highlights](#), "One of the most consistent complaints policymakers hear from farmers and ranchers is about burdensome regulations. The farm bill streamlines and reduces regulatory burdens. For example, the bill includes commonsense reforms to the onerous and conflicting Endangered Species Act (ESA) consultation process regarding pesticide registration activities to ensure agricultural producers have access to the safest and most efficient modern crop protection tools." The bill would also establish a National Animal Disease Preparedness and Response Program, modeled on "the highly successful Plant Pest and Disease Management and Disaster Prevention Program."

EU Proposes "New Deal for Consumers"

The European Commission has proposed changes to directives governing food safety, marketing and distribution. According to

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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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an [EU news release](#), the proposal would update the General Food Law, “which dates back from 2002 and thus needs an update,” and “will give citizens greater access to information submitted to the European Food Safety Authority [(EFSA)] on approvals concerning the agri-food chain.” The EU proposes to create a registry of commissioned studies available to the public and predicts that Member States will be more involved in EFSA’s governance structure and scientific panels. The proposal also [reportedly](#) targets “[dual foods](#),” or foods marketed across the continent but produced and sold with ingredients of reduced quality in some areas.

Additional details on the New Deal for Consumers, including proposed rules on collective redress, appear in Shook’s [Product Liability Bulletin](#).

OEHHA Seeking Comments on Two Chemicals for Prop. 65

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) is [accepting](#) public submissions of information relevant to the assessment of carcinogenicity of two chemicals—gentian violet and N-nitrohexamethyleneimine—that the agency is considering for inclusion on the Safe Drinking Water and Toxic Enforcement Act (Prop. 65) list. Hazard identification materials for each of the chemicals will be presented at meetings of OEHHA’s Carcinogen Identification Committee. Public comments will be accepted through May 21, 2018.

USDA Codex Meeting Announced

The Office of Trade and Foreign Agricultural Affairs of the U.S. Department of Agriculture (USDA) will host a [public meeting](#) on May 31, 2018, to provide information about the agenda items and U.S. positions for the meeting of the Executive Committee of the Codex Alimentarius Commission to be held in Rome, Italy, on July 2-6, 2018. Public comments may be submitted before the meeting.

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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.

USDA Proposes Changes to National Poultry Improvement Plan

The U.S. Department of Agriculture (USDA) has proposed multiple amendments to the National Poultry Improvement Plan, including changes to committee participation and testing procedures for avian influenza, typhoid and other diseases. Public comments will be accepted through May 9, 2018.



LITIGATION

SSB-Tax Advocacy Groups Seek to Amend Washington Initiative

The American Heart Association, Childhood Obesity Prevention Coalition and Anti-Hunger and Nutrition Coalition have filed a lawsuit to appeal and amend the ballot title and summary of an initiative that would ban Washington’s local governments from levying new taxes on sugar-sweetened beverages (SSBs). *In re Ballot Title & Summary for Initiative No. 1634*, No. 18-2-01924-34 (Wash. Super. Ct., filed April 9, 2018). The petition alleges that after Seattle’s SSB tax took effect January 1, 2018, beverage industry groups filed the initiative in an attempt to stop other jurisdictions from adopting similar taxes. The petition also alleges that the ballot title and summary are “misleading and prejudicial” because they purport to ban new taxes on “groceries,” a measure that the advocacy groups predict would be “disfavored” by voters.

Kombucha Maker Alleges Rival Products Gain Unfair Market Advantage

The maker of Kombucha Dog beverages has filed lawsuits against Trader Joe’s Co. and other kombucha producers alleging the companies misrepresent the amount of alcohol and sugar in their products and violate federal and state laws regulating the sale of alcohol beverages. *Tortilla Factory, LLC v. Trader Joe’s Co.*, No. 18-2977; *Tortilla Factory, LLC v. Better Booch, LLC*, No. 18-2980; *Tortilla Factory, LLC v. Makana Beverages, Inc.*, No. 18-

2981; and *Tortilla Factory, LLC v. Rowdy Mermaid Kombucha, LLC*, No. 18-2984 (C.D. Cal., filed April 9, 2018).

According to Tortilla Factory's complaints, kombucha's post-bottling fermentation can cause it to develop an alcohol content of 0.5 percent or more by volume, subjecting it to regulation under federal law, including Alcohol and Tobacco Tax and Trade Bureau regulations that govern production, labeling and distribution. The complaints assert that independent testing revealed that the defendants' products contain between 1.0 and 2.7 percent alcohol but are either labeled as containing "Less than .05% alcohol by volume" or carry no alcohol warning label. As a result, the plaintiff alleges, its competitors can market and sell their products to minors, distribute their products through "less expensive and broader" grocery distribution channels and avoid state alcohol-beverage taxation. In addition, the complaint asserts the competitors' beverages contain more sugar than stated on the labels, giving the companies unfair advantage in the "health-sensitive" marketplace.

Claiming false advertising under the Lanham Act and California law along with unfair competition, the plaintiff seeks injunctive relief, corrective advertising, restitution, disgorgement, damages and attorney's fees from all defendants.

Panera Failed to Fix Data Breach, Lawsuit Alleges

Panera Bread Co. faces a putative class action alleging that a data breach exposed the personal data of thousands of customers to hackers, increasing their risk of fraud and identity theft. *Boykin v. Panera Bread Co.*, No. 18-2461 (N.D. Ill., filed April 5, 2018). The complaint alleges that the company failed to protect the personally identifiable information of Panera's My Rewards card and My Panera app users, including names, credit and debit card numbers, expiration dates and verification codes, email addresses, telephone numbers and birth dates.

In August 2017, a "white-hat hacker" apparently accessed the information and notified Panera about the potential security breach. Although Panera reportedly told the hacker it was developing a solution, the complaint alleges that the hacker "checked it every month or so" and ultimately contacted the

publisher of *Krebs on Security* in 2018 to bring attention to the issue. The plaintiffs assert that in the meantime, Panera took no steps to warn customers of the possible breach and “failed to implement or maintain reasonable security procedures.”

Claiming violations of the Illinois Personal Information Protection Act, the Illinois Consumer Fraud and Deceptive Practices Act, intrusion upon seclusion, breach of contract, negligence and the right of privacy, plaintiffs seek class certification, equitable relief, restitution, disgorgement, damages and attorney’s fees.

Putative Class Alleges Deceptive Labeling of Fruit and Vegetable Snack Bars

A consumer has filed a putative class action alleging That’s It Nutrition deceptively labels and advertises its snack bars’ ingredients by using collective names for the fruits and vegetables they contain. *Medina v. That’s It Nutrition, LLC*, No. 18-2022 (E.D.N.Y., filed April 4, 2018). The complaint alleges that That’s It fruit bar labels list generic names rather than specific ingredients; for example, one bar’s label lists “apples” without specifying whether the ingredient is apple powder, puree or some other processed form of the fruit. “If the defendant began the bar production process with whole intact fruits, the ingredient list would indicate the presence of an additional binding ingredient such as a gel, pectin, juice concentrate or syrup, needed to keep the individual fruit matter together,” the complaint asserts.

The label representations, which include “That’s it,” “All Natural,” “No Preservatives,” “Raw,” “No Purees or Juices,” “2 ingredient snack,” “Just Fruit” and “Fruit is all we use,” “promote the products as being directly made from ingredients which have been converted into the final product” instead of being highly processed, the complaint alleges. Claiming violations of New York consumer-protection laws, breach of warranties, fraud and unjust enrichment, the plaintiff seeks class certification, injunctive relief, monetary damages and attorney’s fees.

Essay Recommends Research Into Effects of Microplastics in Soils, Freshwater

In an essay for *Science*, a researcher argues that current evidence suggests microplastic contamination is widespread on land and in freshwater and calls for additional research into the effects of microplastics on human health and agricultural practices. *Science's* sister publication *Science Advances* also published a study examining organic fertilizer's role in spreading microplastics in the environment.

According to the essay, researchers have found microplastic contamination in freshwater animals, clams, fish and birds, but research is limited on similar contamination in terrestrial environments. "Soils may act as an important long-term sink for microplastics," the researcher asserts. "This has been demonstrated via the presence of plastic microfibers and fragments in sewage sludge that is widely applied on vast expanses of agricultural land. Other large-scale sources of microplastics in soils are the weathering and disintegration of protective plastic sheeting (plasticulture) over agricultural fields and the fragmentation of plastic litter and plastic items in landfills."

MEDIA COVERAGE

Advocacy Group Targets DJ Khaled's Alcohol-Related Social-Media Posts

After advocacy groups asserted that DJ Khaled promotes alcohol brands to minors on social media, the music producer has reportedly reduced the number of his posts that mention alcohol. The complaint also alleged that Khaled failed to disclose his endorsement relationship with the brands, which include Diageo's Ciroc vodka and Sovereign Brands' Belaire sparkling wine. The contested posts include a Snapchat video of Khaled pouring alcohol into a bowl of cereal and an Instagram post featuring alcohol bottles displayed behind Khaled. Reportedly, many of Khaled's followers are minors and he is the national spokesperson for educational nonprofit Get Schooled.

Several news sources reported that Khaled’s posts may violate federal law—including Federal Trade Commission rules governing branded content—and industry self-regulation standards, as the Distilled Spirits Council of the United States prohibits alcohol ads appearing on platforms in which at least 28 percent of the audience is under 21. Diageo, which reportedly ended Snapchat advertising after the U.K. Advertising Standards Authority ruled that Captain Morgan posts featuring a cartoon pirate appealed to minors, told news outlets that it was “working to ensure any issues are appropriately addressed.”

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