



LEGISLATION, REGULATIONS & STANDARDS

U.K. Launches Consultation On Allergen Labeling

The U.K. Food Standards Agency has opened a [public consultation](#) on labeling allergens on prepared food products. The [consultation](#) applies to foods “prepacked on the premises in anticipation of an order, before being offered for sale,” such as “fresh (uncooked) pizzas from the deli counter,” “boxed salads,” “hot foods such as rotisserie chicken or wedges,” and “foods that are pre-weighed and packed such as cheese or meats from a delicatessen counter or baked goods from an in-store bakery.” The consultation closes March 29, 2019.

The *New York Times* also [addressed](#) food allergen labeling, asserting that regulations in the United States are incomplete. The author notes that label statements indicating the possibility of traces of allergens are unregulated, leading to inconsistent messages, and some common allergens are not noted at all, such as sesame.

The Lancet Issues Report On Obesity, Undernutrition And Climate Change

The Lancet Commission has issued a [report](#) on “The Global Syndemic,” a combination of “three pandemics—obesity, undernutrition, and climate change.” The report was intended to focus on obesity as the Commission did in similar reports issued in [2011](#) and [2015](#), but the authors apparently found the roles of undernutrition and climate change to be key in understanding global obesity during the process of preparing the report and

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ultimately expanded its scope. The Commission's recommendations to improve "The Global Syndemic" include implementing stronger laws at national and lower levels, strengthening accountability systems and "creating sustainable and health-promoting business models," such as "eliminat[ing] or redirect[ing] subsidies away from products that contribute to The Global Syndemic." The Commission also suggested that governments "reduce the influence of large commercial interests in public policy development ... so that governments can implement policies in the public interest that benefit the health of current and future generations, the environment, and the planet."

Nebraska Bill To Define Meat As Animal-Derived Reintroduced

Nebraska State Sen. Carol Blood has reintroduced her bill to define "meat" as a product derived from animals following a withdrawal of her previous bill. The updated proposal would define meat as "any edible portion of any livestock or poultry carcass or part thereof and does not include insect-based, plant-based, or lab-grown food products." The bill would also include advertising or selling "an insect-based, a plant-based, or a lab-grown food product as meat" as a deceptive trade practice.

EU Challenges U.S. Olive Tariffs In WTO Dispute

The European Union has requested a World Trade Organization consultation with the United States to address the imposition of tariffs on Spanish olives in August 2018. The United States reportedly applied countervailing and anti-dumping tariffs of 34.75 percent to the import of Spanish black olives on the grounds that Spanish growers receive benefits from the EU that are unavailable to other growers, such as those in California.

LITIGATION

Ninth Circuit Rules for Retail Associations on San Francisco SSB Ad Regulations

An en banc U.S. Court of Appeals for the Ninth Circuit has held that a district court abused its discretion by denying the American Beverage Association and the California Retailers Association a preliminary injunction that would prevent San Francisco's



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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

ordinance regulating advertisements for sugar-sweetened beverages (SSBs) from taking effect. *Am. Beverage Ass'n v. City & Cty. Of San Francisco*, No. 16-16072 (9th Cir., entered January 31, 2019).

The court found that the amount of space required for the mandatory health disclosure on SSB ads—20 percent—“is not justified and is unduly burdensome when balanced against its likely burden on protected speech.” The Supreme Court “made clear... that a government-compelled disclosure that imposes an undue burden fails for that reason alone,” the Ninth Circuit stated, before noting that the “remaining factors of the preliminary injunction test also favor an injunction. Because Plaintiffs have a colorable First Amendment claim, they have demonstrated that they likely will suffer irreparable harm if the Ordinance takes effect.” Accordingly, the court reversed the district court’s decision denying a preliminary injunction and remanded the case for further proceedings.

inspections, subject to FDA, USDA and FTC regulation.



Ghirardelli, Russell Stover Settle With California DAs

Ghirardelli and Russell Stover have agreed to pay \$750,000 to settle allegations brought by the district attorneys of several California counties, according to a [Yolo County press release](#). The California counties alleged that the chocolate companies “packaged certain chocolate products in oversized containers which can give consumers the misleading appearance that they are purchasing more product than they are actually receiving.” In addition, Ghirardelli allegedly misrepresented the amount of cocoa in one of its products.

“Consumers have the right to expect full value in their purchases and compliance with packaging requirements is an integral part of the process,” the Yolo County district attorney is quoted as saying. “We will continue to aggressively monitor businesses and prosecute those that violate consumer protection laws.”

“All Natural” LaCroix Flavors Are “98% Synthetic,” Putative Class Action Alleges

Two consumers have alleged that National Beverage Corporation misleads buyers of LaCroix sparkling water because it advertises the products as “all natural” and “100% natural” while they contain flavors composed of “between 36% and 98% synthetic ingredients.” *Graham v. Nat'l Beverage Corp.*, No. 19-0873

(S.D.N.Y., filed January 29, 2019). The complaint cites the Center for Applied Isotope Studies at the University of Georgia, which uses “compound specific stable isotope analysis [] and gas chromatography isotope ratio mass spectrometry to generate multi-component, multi-element data for the enhanced characterization of organic chemical processes and source validation.” The plaintiffs seek class certification, injunctions, damages and attorney’s fees for alleged violations of New York consumer-protection law, unjust enrichment and breach of warranties.

Plaintiff Alleges Coconut Oil Misrepresented as “Healthy”

A consumer has filed a putative class action alleging that Barlean’s Organic Oils misrepresents the health benefits of its coconut oils because “coconut oil is actually inherently *unhealthy*, and a *less healthy* option” when compared to “butter and various cooking oils.” *Testone v. Barlean’s Organic Oils LLC*, No. 19-0169 (S.D. Cal., filed January 24, 2019). The complaint asserts that coconut oil—“which is approximately 90 percent saturated fat”—increases the risk of cardiovascular heart disease and stroke, in contrast with representations on the Barlean’s website that its product is “Nature’s Most Versatile Superfood” that is “cold pressed fresh for your vibrant health.” The plaintiff alleges violations of California’s and New York’s consumer-protection statutes and seeks class certification, a corrective advertising campaign, restitution, damages and attorney’s fees.

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