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## LEGISLATION, REGULATIONS & STANDARDS

### New Jersey Passes Ban on Single-Use Plastic, Paper Bags

New Jersey Governor Phil Murphy has reportedly signed a law banning single-use plastic and paper bags and imposing limits on other food containers and straws. Effective May 2022, the law will ban the use of polystyrene food and drink containers, and single-use plastic straws may only be provided upon request beginning in November 2021. Some products will be exempt until 2024, including meat and fish trays, food prepackaged in polystyrene by the manufacturer, polystyrene soda spoons used for thick drinks and portion cups for foods requiring a lid.

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## LITIGATION

### FDA Ordered to Reexamine GE Salmon

A California federal court has ordered the U.S. Food and Drug Administration (FDA) to conduct an assessment on the effects that could ensue if genetically engineered (GE) salmon escaped aquaculture farms and established themselves in the wild. *Inst. for Fisheries Resources v. FDA*, No. 16-1574 (N.D. Cal., entered November 5, 2020). The court found that the agency did not “meaningfully analyze what might happen to normal salmon in the event the engineered salmon did survive and establish themselves in the wild,” “[e]ven if this scenario was unlikely.” The court noted that FDA knew that AquaBounty was likely to

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establish additional farms. “Obviously, as the company’s operations grow, so too does the risk of engineered salmon escaping. Thus, it was particularly important at the outset for the agency to conduct a complete assessment of the risks posed by the company’s genetic engineering project, including an assessment of the consequences for normal salmon if the engineered salmon established themselves in the wild.”

“Indeed, we now know that the FDA has subsequently given the company permission to operate a third facility. In approving this facility, the agency relied heavily on the analysis it conducted for the first two facilities, even though that analysis had not meaningfully explained what might happen if the engineered salmon were to establish themselves in the wild. Before starting the country down a road that could well lead to commercial production of genetically engineered fish on a large scale, the FDA should have developed a full understanding—and provided a full explanation—of the potential environmental consequences. The agency is ordered to go back and complete the analysis.”

## Court Dismisses Part of Vanilla Suit Against Kellogg

A California federal court has dismissed without prejudice a lawsuit alleging Kellogg Sales Co. misleads consumers as to the characterizing flavor of its Bear Naked V’Nilla Almond granola, finding that the plaintiff could not support his allegation that the product does not contain sufficient amounts of vanilla. *Zaback v. Kellogg Sales Co.*, No. 20-0268 (S.D. Cal., entered October 29, 2020). The plaintiff alleged that the image of vanilla beans on the granola packaging misleadingly implied that “real vanilla derived exclusively from vanilla beans” was the only characterizing flavor. The court had previously dismissed the “allegation that merely because vanilla is expensive Kellogg would have included vanilla on the Product’s ingredient list” and instead assessed the plaintiff’s argument that Kellogg “admitted” the product did not contain sufficient vanilla to flavor the granola. “The ‘admission’ boils down to this: Kellogg’s use of ‘Natural Flavors’ on the Product’s ingredient list means the product does not have sufficient vanilla to independently characterize the food. This ‘admission’ is still not sufficient to ‘nudge [his] claims . . . across the line from conceivable to plausible.’” The court found that the plaintiff had not successfully alleged that the granola did not contain sufficient vanilla and dismissed the claim.



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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

## Researchers Examine “Kidfluencers” and Children’s Health

A group of researchers has published a study in *Pediatrics* examining the “frequency with which kid influencers promote branded and unbranded food and drinks during their YouTube videos and assess the nutritional quality of food and drinks shown.” Alruwaily et al., “Child Social Media Influencers and Unhealthy Food Product Placement,” *Pediatrics*, November 2020. The researchers reviewed the 50 most-watched videos and 50 videos featuring food and beverages in the thumbnail image from each of the five most-watched YouTube personalities aged 3 to 14, ultimately identifying 179 videos including food. “The 179 videos that featured food and/or drinks were viewed >1 billion times and generated 2.6 million likes on YouTube,” the report states. “Food and/or drink product placements in those kid influencer videos generated ~16.5 million impressions for items that were mostly unhealthy branded products.”

“Our findings suggest the need for future experimental studies to examine the extent to which viewing these types of videos increases consumption of unhealthy foods and assess whether kid influencers’ endorsements increase the preferences for the product among toddlers, young children, and parents,” the researchers concluded. “The [Federal Trade Commission] should enact regulations that more adequately address unhealthy food and beverage brands promoted by kid influencers.”



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