



LEGISLATION, REGULATIONS & STANDARDS

Advocacy Groups Urge FDA to Ban Food Additive Use of BPA

Several advocacy groups, including the Environmental Defense Fund, Consumer Reports and Environmental Working Group, have filed a [petition](#) with the U.S. Food and Drug Administration (FDA) “requesting that the agency remove its approvals of the use of bisphenol A [BPA] . . . because recently published scientific studies show that the exposure from those food additive uses is not safe.” The groups cite a reevaluation of BPA effects conducted by the European Food Safety Authority (EFSA) and published in December 2021 that “unanimously concluded that ‘there is a health concern from dietary BPA exposure for all age groups.’”

“Given the magnitude of the overexposure, we request an expedited review by FDA of the food additive petition because the proposed amendments to the agency’s rule are intended to significantly increase the safety of the food supply,” the petition asserts. “Not only will it dramatically decrease exposure to a toxin – BPA – in food that undermines the proper functioning of the immune and reproductive systems, but it will allow the immune system to more successfully respond to exposure to human pathogens in or on food.”

FDA Revokes French Dressing Standard of Identity

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The U.S. Food and Drug Administration (FDA) has revoked the standard of identity for French dressing following a citizen petition filed by the Association for Dressings and Sauces. The revocation finalizes a December 2020 rule that “will allow for greater innovation and more flexibility of products on the market,” according to an FDA Constituent Update.

“The standard of identity for French dressing characterized it as containing oil, acidifying and seasoning ingredients, and allowed additional safe and suitable ingredients,” the update notes. “However, based on information submitted to the FDA, consumers appear to expect French dressing to have certain characteristics not required by the standard, such as containing tomatoes or tomato-derived ingredients.”

LITIGATION

Consumers Allege McCormick Spices Contain Undisclosed Heavy Metals

Two plaintiffs have alleged that McCormick & Co. Inc. sells herbs and spices that “expose consumers to heightened levels of toxic heavy metals, including lead, arsenic, and cadmium,” without providing warnings. *Balistreri v. McCormick & Co. Inc.*, No. 22-0349 (N.D. Cal., filed January 18, 2022). The complaint cites a *Consumer Reports* article, “Your Herbs and Spices Might Contain Arsenic, Cadmium, and Lead,” that purports to have found “sufficient levels of toxic metals as to render them unsafe for human consumption.”

“As a result of Defendant’s respective representations regarding the safety of their herbs and spices, and Defendant’s concealment of the fact that its herbs and spices contained elevated levels of toxic heavy metals, Plaintiffs and the Class members reasonably believed that Defendant’s Products were free from substances that would negatively affect children’s development as well as their own health,” the complaint asserts. The plaintiffs seek to represent a class of consumers alleging violations of California’s consumer-protection statutes and the Magnuson-Moss Warranty Act.

Plaintiff Argues Whole Foods’ Alleged Slack Fill Contradicts Eco-Friendly Image



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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

A consumer has filed a putative class action alleging Whole Foods Market Group Inc. sells a boxed rice pilaf in packaging that misleads consumers by being larger than the ingredients inside require. *Jacobs v. Whole Foods Mkt. Grp.*, No. 22-0002 (N.D. Ill., E. Div., filed January 1, 2022). The complaint details Whole Foods' stated commitment to environmentally friendly practices before arguing that the rice pilaf box contains "over 50%" empty space without legitimate reason.

"Defendant promised customers, through digital, print, audio, television, and in-store placards and signs, that it is replicating its reduction in excess packing materials across all aspects of its operations, to promote environmental welfare," the plaintiff asserts. "Defendant's excess packaging violates its pledges and commitments to consumers that it will operate sustainably and promote environmental stewardship." In addition to allegations of fraud, negligent misrepresentation and unjust enrichment, the plaintiff alleges violations of Illinois consumer-protection statutes and the Magnuson-Moss Warranty Act.

Gruyere Can Come from Anywhere, Court Rules

A Virginia federal court has reportedly confirmed that gruyere cheese does not need to be produced in the region near Gruyères, Switzerland, to carry the name in American stores. A consortium of cheesemakers in France and Switzerland near the region had appealed after the Trademark Trial and Appeals Board denied its application for a trademark, but the Eastern District of Virginia found that "gruyere" had been imported from areas outside of the Gruyère district for decades before the consortium applied for protections.

A spokesperson for Switzerland's agriculture department reportedly told the *New York Times*, "Using the term 'gruyère' for a cheese produced in the United States threatens the reputation of the original product and its place in the foreign market and can only harm the entire sector."

inspections, subject to FDA, USDA and FTC regulation.



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