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FIRM NEWS

Johnson to Present on Recall Readiness

Shook Senior Counsel [John Johnson](#) will present “Recall Ready 2.0: How to Take Your Recall Readiness to the Next Level” on April 4, 2023, at 12 p.m. ET. Johnson will be joined by Judi Lazaro, senior director of global sales at AIB International.

FDA wants your company to be "recall ready" and many think they are since they have a recall plan based on FDA's guidance. Those who have experienced a recall know that the guidance only goes so far, and they know the stress from having to navigate those limitations. However, you don't have to.

Judi and John will share their experiences and lessons learned so that you can take your company's recall readiness to the next level. Those lessons will help you to be able to move faster, with greater precision and less disruption in case you may be facing a recall.

[Register now »](#)

LEGISLATION, REGULATIONS & STANDARDS

Report: FDA Food Recalls Jumped 700% from 2021 to 2022

The number of individual units of food and drink recalled by the U.S. Food and Drug Administration (FDA) in 2022 increased

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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.

For additional information about Shook's capabilities, please contact



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700% compared to the prior year, according to a new report from Sedgwick.

In its State of the Nation 2023 issue of the Sedgwick brand protection Recall Index, the organization reported that while the number of food recall events was relatively steady year over year, the number of units increased from 52.08 million units in 2021 to 416.93 million units in 2022. The top reason for recalls by event was undeclared allergens.

“It will be interesting to see how having sesame added to the list of allergens that must be declared impacts this category while companies adjust to the new regulation,” the report noted.

In contrast to the FDA findings, the report found that the food recalls by the U.S. Department of Agriculture held steady in terms of the numbers of recall events, but the agency saw an 87% drop in the volume of units recalled, from 13.4 million pounds in 2021 to 1.7 million pounds in 2022.



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LITIGATION

Court Dismisses Claims that Instant Noodles’ ‘No Added MSG’ Claim Misled Consumers

A federal court in New York has thrown out a proposed class action against the maker of Cup Noodles and other instant noodle products claiming that its use of the phrase “No Added MSG” deceived consumers. *Henry v. Nissin Foods (U.S.A.) Co., Inc.*, No. 22-363 (E.D.N.Y., entered March 17, 2023).

The plaintiff filed suit against Nissin Foods (U.S.A.) Co. Inc., alleging that the labeling on its products—which include Cup Noodles, Top Ramen, Hot & Spicy and Chow Mein—mislead consumers because while they are labeled as having “No Added MSG,” certain ingredients contain free glutamates.

She asserted that a reasonable consumer would believe the products do not contain any free glutamates because of the presence of the “No Added MSG” label. The products also contain, in smaller lettering, a notice that the products contain small amounts of naturally occurring glutamates.

The plaintiff argued in part that the term “naturally occurring glutamates” may be interpreted as referring to “bound glutamates,” a benign form of glutamate, as opposed to “free glutamates,” and is misleading.

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.



The court said the plaintiff provided no explanation as to why, however, noting there is no indication that one form of glutamate is artificial while the other is natural. The court also said there is no reason to believe that the term “naturally occurring” implies essential to production, which the plaintiff also argued.



“There is no essential form of the Products; ‘Cup Noodles’ do not exist nature,” the court said. “The Products only exist in the form in which [defendant] manufactures them. A reasonable consumer would know this and not read the ‘naturally occurring’ label to imply inherent or essential to production.”

The court ruled that the disclaimer, when read in conjunction with the “No Added MSG” label, clarifies any misconception created by the label and that a reasonable consumer would not be misled to believe that the products do not contain free glutamates, dismissing the plaintiff’s claims in their entirety.

Bumbu Rum Co.'s Original Craft Rum Is Not Rum, Suit Alleges

A New York man has filed a proposed class action against the Bumbu Rum Company, alleging its Original Craft Rum product misleads consumers because it is not actually rum under federal and state regulations. *Golston v. Bumbu Rum Co. LLC*, No. 23-00241 (W.D.N.Y., filed March 18, 2023).

The plaintiff alleges that the product is not rum because federal and state regulations require rum to be “bottled at not less than 40 percent alcohol by volume (‘ABV’) (80° proof),” whereas the Original Craft Rum product is only 35% ABV or 70-proof, he said in the complaint. He also alleged the product does not qualify as rum because of the addition of ineligible ingredients, including flavoring materials.

“The Product is closer to a cordial or liqueur because it is believed to contain added sugar and flavorings beyond threshold to qualify under this type of beverage,” he said in the complaint. “However, the description of ‘rum liqueur’ would not be accurate because the significant amount of added vanilla and banana flavoring and sweetening results means its predominant characteristic is no longer rum.”

The plaintiff is alleging Bumbu violated state consumer fraud acts, breached express and implied warranties and the Magnuson-Moss Warranty Act. The complaint also includes claims of negligent misrepresentation, fraud and unjust enrichment. The plaintiff is seeking class certification, damages and costs and expenses

including attorney's fees.

Papa John's Sued for Allegedly Denying Blind Employee's Request for Service Dog

The U.S. Equal Employment Opportunity Commission (EEOC) has filed a disability discrimination lawsuit against Papa John's Pizza, alleging the company unlawfully denied a blind employee's request to keep his service dog on site and away from customers and food preparation activities during his shifts. *EEOC v. Papa John's USA, Inc.*, No. 23-0030 (M.D. Ga., filed March 14, 2023).

In a press release, EEOC said the employee applied for a job at his local Papa John's in early 2020 after hearing from a friend that the company hired individuals with visual impairments. The employee—who is legally blind and relies on his service dog for his commute—applied for a job and was hired, but could not start until the company formally granted his accommodation request to bring his service dog. Papa John's denied the request and fired him before he worked a shift. EEOC asserts that such alleged conduct violates the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability.

“The ADA prohibits employers from terminating employees because of a disability and denying them equal employment opportunities,” an EEOC attorney said in a statement. “The ADA protects employees seeking reasonable accommodations involving service animals. Employers must evaluate such requests on their individual merits. They may not, as Papa John's has done, reject such requests based on vague and unspecified ‘health and safety’ concerns.”

EEOC is seeking back pay, reinstatement or front pay, compensatory damages and punitive damages, as well as injunctive relief.

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