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FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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Food Delivery Ad Targeting Should Have Excluded Under-16s, ASA Rules

The United Kingdom's Advertising Standards Authority (ASA) has [banned](#) a social media advertisement for food-delivery company Just Eat after finding the company had not taken all possible measures to prevent it from being shown to those under 16. According to ASA, Bite Back 2030 challenged whether the ad, which featured fast food items, was for a product that was high in fat, salt or sugar (HFSS) and was directed at children. In response, Just Eat said it targeted the ad at those over the age of 18. ASA concluded that Just Eat had not used interest-based targeting factors to exclude groups of people more likely to be under 16. "We understood that interest-based targeting measures were available for such ads, and consequently, we considered that Just Eat should have utilised those tools to minimise the exposure of the ad to under-16s," ASA said.

USDA Announces Microbiology, Organic Meetings

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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The U.S. Department of Agriculture (USDA) has announced meetings of the National Advisory Committee on Microbiological Criteria for Foods and the National Organic Standards Board. The National Advisory Committee on Microbiological Criteria for Foods will provide updates on genomics as well as *Cronobacter spp.* in powdered infant formula at a [public meeting](#) held from September 24 to 26.

The [National Organic Standards Board](#) will meet October 22-24, 2024, to discuss and vote on proposed recommendations to USDA, obtain updates on the National Organic Program and hear comments from the organic community.

LITIGATION

Consumer Alleges Whole Grain Saltine Crackers Mislead Consumers

A New York woman has filed a putative class action alleging Mondelez Global LLC's Nabisco Whole Grain Premium Saltine Crackers' "whole grain" labeling is misleading because the main flour ingredient is non-whole grain enriched flour. *Ransom v. Mondelez Global LLC*, No. 24-6216 (S.D.N.Y., filed August 16, 2024). The plaintiff asserts that the product's labeling falsely implies that whole grain flour is the primary flour ingredient, while the amount of whole grain flour in the products is "de minimis or negligible."

Groups Sue U.S. Government for Failing to Implement Mammal Protection Law

Three animal protection and conservation groups have sued several U.S. agencies and their leaders, including the National Marine Fisheries Service (NMFS), alleging they have failed to implement the import provisions of the Marine Mammal Protection Act (MMPA). *Natural Resources Defense Council, Inc. v. Raimondo*, No. 24-0148 (Ct. Intl. Trade, filed August 8,



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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.



2024).

The MMPA aims to reduce marine mammal bycatch within U.S. fisheries and put economic pressure on foreign fisheries that export to the United States, the plaintiffs argue. The law requires foreign fisheries to meet U.S. standards for bycatch and prohibits the importation of fish caught in a manner not allowed by domestic fisheries. The plaintiffs alleged that the U.S. government has “largely failed to implement these import limitations” and take issue with NMFS granting extensions of a 2016 final import rule, delaying the rule’s effective date to January 2026. “These statutory violations frustrate the policy enacted by Congress in 1972: to reduce, with a goal of eliminating, the deaths and serious injuries of marine mammals in fishing gear,” the plaintiffs assert.

Suit: Mondelez Misleads Consumers on Cocoa Sourcing Practices

An Illinois plaintiff has brought a proposed class action alleging Mondelez International Inc. misleads consumers on whether its cocoa products are sustainably sourced and free from forced labor. *Gollogly v. Mondelez Int’l Inc.*, No. 24-7368 (N.D. Ill., filed August 16, 2024). The company’s “Cocoa Life” logo, which appears on products across several brands including Oreo, Toblerone and Côte d’Or, is the company’s self-created global cocoa sustainability program, the plaintiff alleges, and the company makes claims that products bearing the logo are “made the right way” and “sustainable.” “But contrary to Mondelēz’s claims, the supply and production of the Products contribute to grievous and unsustainable labor abuses, including the worst forms of child and forced labor ... as well as other exploitative labor practices that are endemic in the cocoa industry,” the plaintiff alleges.

Study Authors Call for More Regulation of Infant, Toddler Food Packaging Claims

A study in *Nutrients* has purportedly [found](#) that nearly 60% of commercially produced infant and toddler foods failed to meet nutritional composition standards set by the World Health Organization (WHO). The study authors reviewed 651 products available in the United States and found that none of the products met international front-of-pack and promotional standards set by WHO. The authors noted that overall compliance was particularly poor in regards to labeling total sugar and protein content, and many products made prohibited claims. The findings should serve as a wake-up call for policymakers, the researchers argue. “The prolific use of prohibited claims demonstrates the need to regulate the type and number of claims that can be used on product packaging, ensuring caregivers are not misled by the deceptive labeling that is currently used,” they said.

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