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## FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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Federal and state efforts to limit the use of food dyes, a complaint challenging "climate neutral" packaging, plaintiffs questioning protein content, and more.

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### SPOTLIGHT

## FDA, HHS Announce Measures to Phase Out Petroleum-Based Dyes in Food

The U.S. Department of Health and Human Services (HHS) and Food and Drug Administration (FDA) have [announced](#) actions to phase out petroleum-based synthetic dyes from foods in the U.S. food supply. In a news release, FDA said it will ask companies to speed up the process to remove Red No. 3 sooner than the 2027–28 deadline, establish a national standard and timeline for transitioning away from synthetic dyes, initiate the process to revoke authorizations for Citrus Red No. 2 and Orange B, work with industry to eliminate six additional dyes, authorize the use of four natural color additives, and partner with the National Institutes of Health to conduct research on the impact of food additives on children's health and development.

Shook Senior Counsel [John Johnson III](#), an FDA regulatory attorney, spoke to [Nosh](#) about the announcement, emphasizing that the timeline to end use of the colorants is "very fast." "Members of the industry would need to tell us about what supply is out there, and lead times on manufacturing and formulations," he said. "[Y]ou can't just simply switch colorants. You need to make sure that the other stuff is available and it can do what you need it to do." Johnson noted that the agencies' action may be part of an effort by the administration to revoke existing regulations. "Removing a colorant that's not really used anymore may free up space for other desired goals," he suggested.

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## LEGISLATION, REGULATIONS & STANDARDS

### **Report: FDA to End Routine Inspections**

The U.S. Food and Drug Administration (FDA) will end most of its routine food safety inspections, effectively outsourcing them to state and local governments, according to a [report](#) by *CBS News*. Unnamed federal health officials told CBS that the plans have not been finalized and may need congressional action to progress. In a statement, an FDA spokesperson said the claim was false. "FDA is actively working to ensure continuity of operations during the reorganization period and remains committed to ensuring critical programs and inspections continue," they said.

### **West Virginia Enacts Artificial Dye Ban, Other States Weigh Legislation**

West Virginia Gov. Patrick Morrisey has signed a [bill](#) into law that bans seven food dyes from use in school meals, beginning August 1. As of January 1, 2028, the law will also prohibit the seven dyes as well as preservatives butylated

hydroxyanisole and propylparaben from use in food items for sale in the state. In March, Virginia [passed](#) a similar law banning dyes from food served in schools, effective July 1, 2027, and 23 other states seek to ban food dyes and other additives, according to [CNN](#).

## **FDA to Explore Rulemaking to Revise GRAS Final Rule**

U.S. Department of Health and Human Services Secretary Robert F. Kennedy Jr. [announced](#) that he has directed the U.S. Food and Drug Administration (FDA) to explore potential rulemaking to revise its Substances Generally Recognized as Safe (GRAS) Final Rule and related guidance to end the process allowing companies to self-affirm that the use of a substance is safe. Removing the pathway will require companies aiming to introduce new ingredients for sale to publicly notify FDA of their intended use for the ingredients and underlying safety data before they are introduced to the food supply, according to an agency news release.

## **Egg Price Bill Seeks to Remove Egg Refrigeration Regulation**

A bipartisan group of lawmakers from the U.S. House of Representatives has [introduced](#) the Lowering Egg Prices Act, a bill that would overturn a regulation forcing farmers to refrigerate eggs within 36 hours of being laid. Bill Sponsor Rep. Josh Riley (D-New York) said in a news release that the regulation “forced chicken farmers to throw away nearly 400 million perfectly good eggs each year.”

“That rule didn't make sense when it was enacted, and it makes even less sense now, at a time when egg prices are too high and supermarket shelves are too empty,” he said in a statement.

## LITIGATION

### **Consumer Alleges Clif Kid ‘Climate Neutral’ Packaging is Misleading**

A California consumer has filed a putative class action alleging Mondelez International's Clif Kid ZBar products contain misleading statements that they are “climate neutral.” *Salguero v. Mondelez Int’l Inc.*, No. 25-2139 (N.D. Ill., filed February 28, 2025). The plaintiff alleges the assertion is false and misleading because the product’s manufacturing and distribution result “in substantial carbon emissions, other greenhouse gas emissions, and harm to the climate.”

### **Consumers Challenge Protein Content in Cookies, Bars**

Bhu Foods faces a consumer complaint alleging that the company misrepresents its products as containing more protein than they do. *Cabrera v. Laura’s Original Boston Brownies Inc.*, No. 25-0262 (S.D. Cal., filed February 5, 2025). The plaintiff alleged the company features deceptive protein claims on the front label and misrepresents the percentage of Recommended Daily Value of protein contained in each serving.

In a separate case, a federal court issued an order trimming protein mislabeling claims against PepsiCo for its Gatorade protein bars. *McCausland v. PepsiCo, Inc.*, No. 23-4526 (N.D. Cal., entered March 6, 2025). The court held that the plaintiffs plausibly claimed consumer deception under the “unlawful” and “unfair” prongs of California’s Unfair Competition Law but ruled that they lack Article III standing to seek injunctive relief and failed to show they are entitled to equitable relief.

## **PIM Brands 'Fruit 'n Yogurt' Snacks Lack Yogurt, Suit Alleges**

Two consumers have filed a proposed class action alleging the packaging of PIM Brands' Welch's Fruit 'n Yogurt snacks misleads consumers into believing the product is made with yogurt. *Soto v. PIM Brands*, No. 25-0405 (N.D. Ill., filed January 14, 2025). The plaintiffs note that the packaging bears images of fruit surrounded by yogurt but argue that the product is instead “covered in a candy-like coating designed to provide the illusion of health while delivering the harms of an ultra-processed food.”

## **Ole Mexican Foods Faces Nutrition Labeling Suit**

A California plaintiff has filed a proposed class action alleging that the packaging of Ole Mexican Foods' Xtreme Wellness Tortilla Wraps deceives consumers about the nutrient content of the product. *Gambino v. Ole Mexican Foods Inc.*, No. 25-0497 (C.D. Cal., filed February 25, 2025). The plaintiff alleges that she purchased the product numerous times while seeking to adhere to a low-carb diet and relied on labeling that the product was “High Fiber,” “Carb Friendly” and “Keto Certified.” Independent testing allegedly found that the product's total dietary fiber was lower than represented on the product's packaging, the plaintiff asserts, while the net carbohydrates were nearly 2.5 times higher than represented.

## **'Skinny Coated' Labeling Prompts Infringement Allegations**

Chocoholic Inc. and Blok Chocolatier face allegations that they infringed Wild Things Snacks Inc.'s trademark and breached an earlier agreement to stop infringement. *Wild Things Snacks, Inc. v. Chocoholic, Inc.*, No. 25-4088 (N.D.

Ill., filed April 15, 2025). Wild Things Snacks, which markets "SkinnyDipped Almonds" with the tagline "We Don't Sugar Coat. We Skinny-Dip," alleges that Chocoholic Inc. sells a similar product under the name "Skinny Coated," marketing the product with the tagline "We Don't Sugar Coat, We Skinny Coat," and copying "nearly every aspect of SkinnyDipped's products, flavors, attributes, product names, imagery, and packaging." The plaintiff argues that the defendants agreed in a 2024 settlement to stop using "Skinny Coated" but later began to sell infringing products again.

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## More to Explore

- Shook was once again chosen as Top Food & Beverage Firm in the **JD Supra 2025 Readers Choice Awards**, and Partners **Katie Gates Calderon**, **Lindsey Heinz** and **James Muehlberger** were selected as Top Authors in the Food & Beverage category.
- Regulatory attorney **John Johnson III** partnered with Art Law Practice Co-Chair **Channah Norman** to compare how differently they view duct tape on bananas and more in Shook's latest video series, **Legal Art Seen**.
- Shook Partners **James Muehlberger**, **Veronica Gromada**, **Patrick Oot** and **Tom Sheehan** presented "**Junk Science, Not Junk Food: Crafting a Blueprint to Tackle the Rise of Novel Food Addiction Litigation**," a webinar on the recent wave of plaintiffs' attorney-driven "ultra-processed foods litigation."

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As the food and beverage industries become more complex, they require effective legal representation that can quickly evaluate potential liability and craft the most appropriate responses to suspected product adulteration, alleged foodborne outbreaks or environmental contamination claims. For decades, manufacturers, distributors and retailers at every link in the food chain have come to Shook, Hardy & Bacon to partner with a legal team that understands the issues they face in today's evolving food production industry. Shook attorneys work with some of the world's largest food and beverage companies to establish preventative measures, conduct internal audits, develop public relations strategies, and advance tort reform initiatives.

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