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LEGISLATION, REGULATIONS & STANDARDS

DOJ Announces Guilty Plea in E. Coli Prosecution

The U.S. Department of Justice (DOJ) has announced that Memet Beqiri had pleaded guilty to “a charge related to his meat processing business’s falsification of numerous E. coli test results,” according to a press release. Beqiri, owner and general manager of New England Meat Packing LLC, allegedly prepared and submitted falsified documents indicating that the company had sent carcass swabs and ground beef samples to a certified laboratory, which purportedly had found no *E. coli*. “In fact, none of the 52 carcass swabs and samples had been submitted or tested by the identified laboratory, or any other laboratory, and the 36 documents were fraudulently prepared using laboratory letterhead obtained from previous testing that New England Meat Packing had conducted with that laboratory,” the press release states. The charge carries a maximum term of imprisonment of five years; Beqiri will be sentenced in November 2019.

FDA to Hold Standards of Identity Meeting

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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.

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Mark Anstoetter

The U.S. Food and Drug Administration (FDA) has announced a public meeting to discuss the agency’s “effort to modernize food standards of identity (SOI) and provide information about changes we could make to existing SOI, particularly changes that could be made across categories of standardized foods (*i.e.*, horizontal changes), to provide flexibility for the development of healthier foods.” The meeting will be held September 27, 2019, and comments on the subject will be accepted until November 12.

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FTC Workshop Focuses on “Made in USA” Claims

The U.S. Federal Trade Commission (FTC) will hold a public workshop to consider “Made in USA” product claims on September 26, 2019. In advance, FTC is requesting comments on several questions, including: (i) “What rationales underlie consumer preferences for products made in USA?”; (ii) “When consumers see product advertisements or labels stating or implying that products are ‘Made in USA’ or the equivalent, what amount of U.S. parts and labor do they assume are in the products?”; and (iii) “Do firms that advertise their products as ‘Made in USA’ charge higher prices than their competitors whose products are not advertised in this way?”



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LITIGATION

Raw Chicken Contains Excess Water, Plaintiff Alleges

A consumer has filed a putative class action alleging that Trader Joe’s Co. sells raw poultry products that contain more retained water than indicated on the package. *Webb v. Trader Joe’s Co.*, No. 19-1587 (S.D. Cal., removed August 23, 2019). The complaint alleges that the retained water in some packaged poultry was found to be as much as 16% but labeled as a maximum of 5%. “Poultry products are sold by weight,” the plaintiff argues. “Excess Retained Water in the product unlawfully increases the price the consumer pays and decreases the value of the product, cheating the consumer.” The plaintiff asserts eight causes of action, including theft by false pretenses and unjust enrichment, and

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.

seeks class certification, restitution and damages.

Whole Foods Water Contains Arsenic, Consumers Argue

Citing a *Consumer Reports* piece investigating the arsenic content of several bottled-water brands, three plaintiffs have filed a lawsuit alleging that Whole Foods Market Inc. sells water that “has some of the highest arsenic levels of any bottled water presently being marketed in the United States, with some bottles exceeding the maximum arsenic contamination levels allowed by federal and state law.” *Berke v. Whole Foods Mkt. Inc.*, No. 19-7471 (C.D. Cal., filed August 28, 2019). The plaintiffs argue that Whole Foods charged a “hefty premium,” “especially as compared to tap water,” for a product it marketed as “some of the purest and most pristine water available in the U.S.” while it knew “that the product has been universally contaminated with arsenic, with some bottles containing the industry’s highest levels of arsenic for many years.” The plaintiffs seek class certification damages, restitution and attorney’s fees for alleged violations of California and Illinois consumer-protection statutes.

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.



Court Dismisses Clif Bar White Chocolate Suit

A California federal court has dismissed a lawsuit alleging that Clif Bars misled consumers into believing their bars contained white chocolate, but it granted the plaintiffs leave to amend their allegations. *Joslin v. Clif Bar & Co.*, No. 18-4941 (N.D. Cal., entered August 26, 2019). The court first found that the plaintiffs failed to show that they had standing to pursue injunctive relief because they did “not allege a cognizable threat of future harm,” then turned to the issue of white chocolate on the label.

“Accepting Plaintiffs’ allegations as true, and drawing all reasonable inferences in favor of Plaintiffs, the Court concludes Plaintiffs’ allegations are not sufficient to show members of the public are likely to be deceived,” the court ruled. However, it was “not convinced at this stage that amendment would be futile,” so it granted leave to amend.

New York Times Explores Potential Citywide Foie Gras Ban

The New York Times has published a [piece](#) on the city's proposed ban on force-fed foie gras. The authors speak to several stakeholders—including chefs, city council members and veterinarians—and tour the upstate New York production facilities of two of the country's three foie gras farms. The authors note that foie gras, “a luxury item,” is “an easy target” for “anti-snobs.” “It's enjoyed by foodies and gourmets: people most of this country resents,” the author of *The Foie Gras Wars* reportedly told the paper. The authors note that the employees of the production facilities—where “[n]o ducks appeared unable to walk,” they report, contradicting rumors about the production process—were worried about losing their jobs. “That's 400 people, sure, but really, that's 400 families,” the head chef at one facility reportedly said, referencing the number of employees who work at both upstate New York facilities.

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