



LEGISLATION, REGULATIONS & STANDARDS

Additional Probes, Lawsuits Announced on Toxic Elements in Baby Food

New York Attorney General Letitia James has announced a probe into whether baby food contains toxic elements such as arsenic and other metals. In a press release, James said, ““Baby food manufacturers have a legal and moral obligation to ensure the safety of their products, and provide peace-of-mind to the parents who rely on their products every day. Through this probe, I am committed to protecting the health and wellness of the next generation.”

D.C. Attorney General Karl Racine filed a lawsuit against Beech-Nut Nutrition Co., alleging “that Beech-Nut’s deceptive and misleading advertising violated the District’s consumer protection laws and misled parents that its baby food underwent the most stringent testing and was fully safe for babies when, in fact, the food contained high levels of toxic heavy metals.” Racine is quoted as saying, “No company should profit by illegally deceiving parents about products that actually jeopardize the health and safety of their children. We are seeking to put a stop to it and put other baby food companies on notice that they must provide truthful and complete information about their products. Additionally, federal regulators and Congress need to take action to help ensure baby food is safe.”

EU Study Finds GMO Legislation Not Fit for Purpose

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An EU [study](#) has examined New Genomic Techniques (NGTs), which can create genetically modified organisms (GMOs), and their potential effects on creating a sustainable food system in Europe. In a [press release](#), Commissioner for Health and Food Safety Stella Kyriakides said, “The study we publish today concludes that New Genomic Techniques can promote the sustainability of agricultural production, in line with the objectives of our Farm to Fork Strategy. With the safety of consumers and the environment as the guiding principle, now is the moment to have an open dialogue with citizens, Member States and the European Parliament to jointly decide the way forward for the use of these biotechnologies in the EU.” The announcement notes that the EU will begin an open consultation “to discuss the design of a new legal framework for these biotechnologies.” Among the findings of the study are that “NGT products have the potential to contribute to sustainable food systems” and that “the current 2001 GMO legislation is not fit for purpose for some NGTs and their products, and that it needs adaptation to scientific and technological progress.” The European Food Safety Authority also contributed a [review](#) of the agency’s and European member countries’ scientific opinions on the risks of GMO foods.



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LITIGATION

EU Court Rules Organic Food Cannot Contain Added Red Algae to Boost Calcium Content

The European Court of Justice has [ruled](#) that alga *Lithothamnium calcareum* cannot be used in the production of food labeled as organic for the purposes of adding calcium. *Natumi GmbH v. Land Nordrhein-Westfalen*, No. C-815/19 (E.C.J., entered April 29, 2021). Natumi GmbH manufactured a drink labeled as organic that is marketed as calcium-rich because of its red algae content, but the German state North Rhine-Westfalia imposed a fine on the company for adding non-edible algae to its products.

“Natumi acknowledges that, since the use of calcium carbonate is prohibited for the calcium enrichment of organic products, many producers of soya-, rice- and cereal-based organic drinks add the *Lithothamnium calcareum* alga to them because it is naturally high in calcium. In addition, Natumi argues that that alga is a natural alternative to calcium and that its use for enriching organic food should be permitted,” the court found. However, it stated, allowing the addition of the algae would “amount to

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

permitting producers of those foodstuffs to circumvent the prohibition” on “the addition of calcium in the processing of organic foodstuffs [] for the purpose of their enrichment with calcium.”

“Such an interpretation would, therefore, have the effect of rendering ineffective the strict rules relating to the addition of products and substances such as minerals in the production of organic food laid down by the legislation at issue in the main proceedings and would run counter to the objectives pursued by that legislation,” the court held, accordingly upholding the German high court’s ruling that the algae cannot be added to the company’s products and continue to be labeled organic.

inspections, subject to FDA, USDA and FTC regulation.



Pancake Mixes Overcount Protein, Plaintiffs Allege

According to a putative class action complaint, Kodiak Cakes LLC and Baker Mills Inc. deliberately mislead consumers by labeling Kodiak Cakes pancake and waffle mixes as containing 14 grams of protein despite allegedly containing only 11.5 grams. *Hinkley v. Baker Mills Inc.*, No. 21-221 (D. Utah, filed April 13, 2021).

“Consumers are increasingly health conscious and, as a result, many consumers seek foods high in protein to support weight loss, exercise, and general fitness, among other perceived health benefits of protein consumption,” the plaintiffs argue. “To capitalize on this trend, Defendants prominently label their Kodiak Cakes products as providing specific amounts of protein per serving depending on the product, such as ‘14g protein’ on the label of its Buttermilk Flapjack and Waffle Mix. Consumers, in turn, reasonably expect that each product will provide the actual amount of protein per serving that the label claims it will. In truth, however, Defendants’ products do not deliver the amount of protein that the labels claim. Based on amino acid content testing, Defendants’ products contain approximately 17% less protein than claimed, meaning, for example, rather than having 14 grams of protein per serving, Defendants’ Buttermilk Flapjack and Waffle Mix product actually has only 11.5 grams.”

The complaint further asserts that the quality of protein in Kodiak Cakes is “of low biological value to humans” because it is “pea protein and wheat protein.” The plaintiffs seek class certification, an injunction, damages and restitution for allegations of unjust enrichment and fraud as well as alleged violations of New York, Florida and Illinois consumer-protection statutes.



MEDIA COVERAGE

Epicurious To Stop Posting Beef Recipes

Food website *Epicurious* has announced that it will stop posting new recipes containing beef to avoid “giving airtime to one of the world’s worst climate offenders.” As the *Washington Post* noted, “Reaction was swift and illustrated the meaning of the metaphor about tossing red meat to a crowd. Some praised the decision, noting that tastes have changed and that readers are looking for more plant-based, less meaty dishes. Others slammed Epicurious for ‘canceling’ beef.” The North American Meat Institute commented, suggesting that the reduction in beef recipes will correspond with a reduction in web traffic, according to the *New York Times*. Others reportedly questioned the effectiveness of the move in achieving its stated goal, with the founder of Food Tank telling the *Post* that the move is “short-sighted” because options exist for sustainable beef production.

“While beef consumption in the U.S. is significantly down from where it was 30 years ago, it has been slowly creeping up in the past few years,” the *Epicurious* announcement asserted. “The conversation about sustainable cooking clearly needs to be louder; this policy is our contribution to that conversation.”

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