



SPOTLIGHT

Report Examines Rise Of Class Actions In New York

Shook Partner [Cary Silverman](#) has authored a report exploring the rise in class actions filed in New York, which, he explains, “is largely a result of lawsuits targeting businesses that sell food and beverages.” *[Class Action Chaos: The Rise of Consumer Class Action Lawsuits in New York](#)*, created in partnership with the [New York Civil Justice Institute](#), details how “the percentage of class action lawsuits targeting products that New Yorkers place in their shopping carts, grab at a grocery store, or buy at a restaurant has gone up.”

“Lawsuits claiming that businesses mislead consumers in how they labeled, marketed, or advertised food made up about one-third of deceptive practices class actions in 2015. Now, these ‘food court’ lawsuits account for about 60% of New York’s consumer class actions – exceeding deceptive practices claims against all other products and services combined. Over 100 food class actions were filed in New York in 2020 alone,” Silverman explains. He breaks down which types of claims have been increasing—e.g., ingredient-based claims such as lawsuits centered on the legitimacy of “vanilla” appearing on a label—and which types of filings have been receding, such as excessive slack fill claims. Silverman goes on to pick “contenders for the dubious distinction of being named among the Top 10 most ridiculous consumer class actions filed in New York,” including lawsuits alleging consumers believe that Yumions will contain real onions rather than onion powder or that carrot-cake donuts will contain real carrots.

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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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Silverman concludes by offering three steps to rein in abusive litigation, including actions the New York legislature can pursue. “Dubious consumer class actions are often settled or withdrawn before reaching a ruling on a motion to dismiss or soon thereafter,” he notes. “Despite the cost, disruption, and risk, businesses must be willing to fight back in court against meritless claims. Otherwise, the sue, settle, and sue-again cycle will continue unabated.”

The report’s conclusions have been amplified by coverage and commentary in the *New York Post*, *The Center Square* and the *New York Daily News*. Mike Durant, president and CEO of Food Industry Alliance, told the *Daily News* that the report should be “required reading for every lawmaker in New York.” The editorial board of the *Post* agreed with Silverman’s conclusions, asserting, “Lawmakers should be looking to rein in this kind of legal blackmail, not encourage it. New York’s small businesses have enough troubles as it is.”



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LEGISLATION, REGULATIONS & STANDARDS

FDA Launches Food Traceability Challenge

The U.S. Food and Drug Administration (FDA) has “launched a challenge to spur the development of affordable, tech-enabled traceability tools to help protect people and animals from contaminated foods by enabling the rapid identification of their sources and helping remove them from the marketplace as quickly as possible.” The agency has asked “food technology solution providers, public health advocates, entrepreneurs and innovators across the human and animal food supply chain to present food traceability solutions that utilize economic models that are affordable, with costs that are proportional to the benefits received and can scale to encourage widespread adoption.” FDA will accept submissions until July 30, 2021, and will select up to 12 winners for the challenge. Winners “will have the opportunity to present their work publicly in a webinar planned for September and their videos will be posted for public viewing.”

JBS Targeted by Cybercriminal Group

A Russian cybercriminal group known as a “ransomware as a service” organization attacked JBS SA, the world’s largest meat

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

processor, according to [the FBI](#). The attack led several of the company's meat processing plants to halt production for several days. While JBS is "the largest food manufacturer yet to be hit by ransomware," according to the [Associated Press](#), "at least 40 food companies have been targeted by ransomware gangs over the last year." A [cybersecurity](#) expert reportedly told the news outlet that food companies are at "about the same level of security as manufacturing and shipping. Which is to say, not very."

inspections, subject to FDA, USDA and FTC regulation.



FDA Issues Compliance Guide on Aflatoxins

The U.S. Food and Drug Administration (FDA) has issued a [compliance policy guide](#) on aflatoxins in human food. "Aflatoxins may occur in food as a result of mold growth in susceptible raw agricultural commodities," the guide explains. "The growth of molds that produce aflatoxins is influenced by environmental factors such as temperature, humidity, and extent of rainfall during the pre-harvesting, harvesting, or post-harvesting periods. Foods most susceptible to molds that produce aflatoxins include: peanuts, corn, some tree nuts including Brazil nuts and pistachios, and some small grains such as rice. Because aflatoxins are known carcinogens to humans, the presence of aflatoxins in foods should be reduced to the lowest levels attainable using modern agricultural and processing techniques." FDA issued guides for aflatoxins in [brazil nuts](#), [peanuts and peanut products](#), and [pistachio nuts](#).



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