



SPOTLIGHT

Podcast: Food Lawsuits on the Rise

Shook Partner [Cary Silverman](#) joined the U.S. Chamber Institute for Legal Reform’s (ILR’s) Oriana Senatore for an [episode](#) of the organization’s podcast [Cause for Action](#) to discuss his work preparing “[The Food Court: Developments in Litigation Targeting Food and Beverage Marketing](#).” Senatore asks Silverman, “Can you give us a flavor for this litigation? What types of food lawsuits are courts seeing and what is driving this increase?”

“Flavor is exactly the right word, because that’s the type of lawsuits that we’re seeing most recently,” Silverman explains. “Lawsuits that are concentrating on the flavoring or the ingredients of products seem to be, as one might say, the ‘flavor of the month’ of this type of litigation. We’ve seen, in our 2017 paper, there were certain types of lawsuits, like slack fill, that were sort of the rage a couple of years ago. While those have fallen to the wayside for various reasons, the new ‘flavor of the month’ are the flavor lawsuits. We’re seeing any product that has flavoring—or that is advertised as having a food picture or is vanilla—is subject to a lawsuit.”

Listen to the full podcast on [Soundcloud](#) or watch the video on [ILR’s website](#).

LEGISLATION, REGULATIONS & STANDARDS

USDA Requests Comments on Cultured

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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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Meat and Poultry

The U.S. Department of Agriculture has requested comments on “the labeling of meat and poultry products comprised of or containing cultured cells derived from animals subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.” Comments will be accepted until November 2, 2021.

The announcement details the U.S. Cattlemen’s Association’s 2018 petition urging the agency to “limit the definition of ‘beef’ to products derived from cattle born, raised, and harvested in the traditional manner, and thereby prohibit foods comprised of or containing cultured animal cells from being labeled as ‘beef.’” In response to the petition, the agency received more than 6,000 comments “from trade associations, consumer advocacy groups, businesses operating in the meat, poultry, and cultured food product markets, and consumers,” the announcement states. “Most comments opposed the petition overall; however, nearly all generally agreed that cultured meat and beef should be labeled in a manner that indicates how it was produced and differentiates it from slaughtered meat products.”

“Several commenters, both for and against the petition, discussed the nature and source of cultured meat to support their arguments. Generally, commenters in support of the petition argued that cultured meat will not have the same characteristics as slaughtered meat or beef and, thus, should not be marketed as such. Commenters opposed to the petition, however, noted that cultured meat is derived from the same species as slaughtered meat and beef and can be produced with substantially similar characteristics as such products. Many commenters opposed to the petition also argued that the terms ‘meat’ and ‘beef’ were necessary to inform consumers of the texture, shape, and function of certain cultured meat products.”

FDA Releases Study on PFAS in Processed Foods

The U.S. Food and Drug Administration (FDA) announced the results of a study on the presence of per- and polyfluoroalkyl substances (PFAS) in processed foods, including baby foods. Out of 167 samples, three products had detectable levels of PFAS, the agency stated, and the amounts were not elevated to a level of concern. “Based on the best available current science, the FDA has no scientific evidence that the levels of PFAS found in the samples tested indicate a need to avoid any particular food in the food supply.”



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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

“The FDA’s testing for certain PFAS in such a wide range of foods available, including those commonly eaten by babies and young children, is among the first study of its kind,” said Acting FDA Commissioner Janet Woodcock in a press release. “Although our studies to date, including these newly released results, do not suggest that there is any need to avoid particular foods because of concerns regarding PFAS contamination, the FDA will continue our work to better understand PFAS levels in the foods we eat to ensure the U.S. food supply continues to be among the safest in the world.”

inspections, subject to FDA, USDA and FTC regulation.



Coalition of Advocacy Groups, Poultry Producers Calls for Changes

The Center for Science in the Public Interest has joined three other advocacy groups and four poultry producers to urge the U.S. Department of Agriculture (USDA) to update poultry food safety standards. “While progress on reducing foodborne illness has been at a standstill, scientific knowledge of *Salmonella* has greatly increased and recognized best practices for *Campylobacter* and other pathogens have advanced. Science tells us that current performance standards do not effectively target the particular types of *Salmonella* and the levels of bacteria that pose the greatest risks of illness, and the overall regulatory framework does not adequately harness modern tools for preventing and verifying control of the bacteria that are making people sick,” the letter to Secretary Tom Vilsack states.



“In order to finally make public health progress on *Salmonella* and *Campylobacter* illnesses and meet the Healthy People 2030 targets, significant change in the [Food Safety and Inspection Service (FSIS)] regulatory program is needed, guided by these principles. We would appreciate the opportunity to meet with you to ensure that USDA prioritizes making meaningful changes in food safety regulation and policy,” concludes the coalition, which includes Butterball LLC, Tyson Foods, Perdue Farms and Wayne Farms.

LITIGATION

Snyder’s-Lance, Frito-Lay End Pretzel Crisps Dispute

Snyder’s-Lance Inc. has voluntarily dismissed a lawsuit seeking to appeal a decision holding that it could not trademark “Pretzel

Crisps” as a name for its product, which Frito-Lay North America Inc. had challenged before the Trademark Trial and Appeal Board. *Snyder’s-Lance Inc. v. Frito-Lay N. Am. Inc.*, No. 21-1758 (4th Cir., filed August 31, 2021). The dismissal concludes years-long litigation disputing whether the “Pretzel Crisps” mark was too generic to be registered. An appeal of a lower court’s ruling that the term is generic had been pending until Snyder’s-Lance’s voluntary dismissal.

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