



LEGISLATION, REGULATIONS & STANDARDS

FDA Seeks Comments on Food Allergen Labeling Guidance

The U.S. Food and Drug Administration (FDA) has issued two guidance documents explaining the agency's current thinking on issues relating to food allergen labeling and is seeking feedback on one of the documents.

FDA is seeking comments on a draft guidance entitled "[Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act \(Edition 5\): Draft Guidance for Industry.](#)" The deadline to submit comments on the draft guidance is January 30, 2023.

When finalized, the document will explain the agency's current thinking on issues relating to the labeling of food allergens, including requirements in the Food Allergen Labeling and Consumer Protection Act and the Food Allergy Safety, Treatment, Education, and Research Act of 2021.

Specifically, the agency is considering whether it should modify its historical interpretations of "milk" and "eggs" for purposes of the definition of "major food allergen," given increases in recent years in consumption of milk and eggs from species other than domesticated cows and chickens.

FDA has also revised several questions and answers to update and clarify information presented in earlier editions, including questions relating to the labeling of tree nuts, fish and crustacean shellfish.

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PDF ARCHIVES

Note: The Food and Beverage Litigation and Regulatory Update website is under construction this week.

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For additional information about Shook's capabilities, please contact



Mark Anstoetter
816.559.2497
manstoetter@shb.com

FDA also issued a final guidance entitled "Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5): Final Guidance for Industry." The final guidance includes the questions and answers from the current edition that remain unchanged.

UNESCO Adds French Baguette to World Cultural Heritage List

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has added the French baguette to its Representative List of Intangible Cultural Heritage of Humanity, the organization announced.

UNESCO notes that the baguette is the most popular kind of bread enjoyed and consumed in France year-round.

"The traditional production process entails weighing and mixing the ingredients, kneading, fermentation, dividing, relaxing, manually shaping, second fermentation, marking the dough with shallow cuts (the baker's signature) and baking," the organization said.

What sets the baguette apart, UNESCO said, is that it is made with only four ingredients: flour, water, salt and leaven and/or yeast. Each baker uses these ingredients to make a unique product. Baking baguettes requires specific knowledge and techniques, gained from a combination of school courses and working in bakeries, but the end result is the same. "Their crisp crust and chewy texture result in a specific sensory experience," the organization stated.

LITIGATION

Consumer Alleges 'All Natural' Capri Sun Drink Contains PFAS

A New York woman has filed a putative class action against the Kraft Heinz Co. alleging it misleads consumers by labeling its Capri Sun juice drinks as containing "all natural ingredients" when the products also allegedly contain so-called "forever chemicals." *Toribio v. Kraft Heinz Co.*, No. 22-6639 (N.D. Ill., filed November 29, 2022).

The plaintiff alleged in her suit that her testing has shown that Capri Sun Strawberry Kiwi, which is prominently labeled as containing "All Natural Ingredients," contains per- and



M. Katie Gates Calderon

816.559.2419

kgcalderon@shb.com



Lindsey Heinz

816.559.2681

lheinz@shb.com



James P. Muehlberger

816.559.2372

jmuehlberger@shb.com

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

polyfluoroalkyl substances (PFAS), a group of synthetic, man-made chemicals that she argues are linked to health issues ranging from thyroid disorders to cancer.

The plaintiff asserts that the defendant’s marketing “is intentionally designed to drive sales and increase profits by targeting health-conscious consumers—and specifically, conscientious parents and caregivers—who reasonably believe that the Product is free from ingredients which are artificial or otherwise unnatural.”

“The presence of PFAS is entirely inconsistent with Defendant’s uniform representations that Capri Sun kids’ drinks, including the Product, ‘are proudly made with all natural ingredients,’” she argued.

The plaintiff is alleging violations of the Magnuson-Moss Warranty Act, the New York Deceptive Trade Practices Act, breach of express warranties, fraud, constructive fraud and unjust enrichment. She is seeking class certification, restitution, damages, attorney’s fees, civil penalties and prejudgment interest.

Consumer Alleges Pepsi’s Izze’s ‘No Preservatives’ Claims Are Misleading

A New York woman has filed a putative class action against PepsiCo Inc. and equity firm PAI Partners alleging the companies’ Izze sparkling juice products are falsely advertised as containing “no preservatives.” *Taylor v. PepsiCo, Inc.*, No. 22-10219 (S.D.N.Y., filed December 1, 2022).

The plaintiff alleges that the defendants prominently display on their front label that they contain “No Preservatives,” however, they contain two well-known preservatives, citric and ascorbic acid. She asserts that while each ingredient may serve a purpose other than a preservative function—citric acid is also used for flavoring—both are also preservatives.

“Based on the foregoing, Defendants’ use of citric acid in their Products renders their ‘No Preservatives’ representation false and misleading,” she said, further asserting that the defendants seek to capitalize on consumers’ preference for less-processed foods.

The plaintiff’s claims include alleged violations of New York and other states’ consumer protection laws, New York’s false advertising law and New York’s law prohibiting deceptive acts or practices in the conduct of any business, trade or commerce. She seeks class certification, declaratory judgment, damages, prejudgment interest, restitution and costs and expenses

inspections, subject to FDA, USDA and FTC regulation.



including attorney's fees.

Velveeta Packaging Misleads Consumers on Cook Time, Suit Alleges

A Florida woman has filed a putative class action against Kraft Heinz Foods Co. alleging the company misleads consumers as to the cook time of its Velveeta-brand microwavable macaroni and cheese product. *Ramirez v. Kraft Heinz Foods Co.*, No. 22-23782 (S.D. Fla., filed November 18, 2022).

The woman alleged that consumers seeing claims that the product will be “ready in 3 ½ minutes” will believe it represents the total amount of time needed to prepare the product.

“However, the directions outlined above show that 3-and-a-half minutes is just the length of time to complete one of several steps,” she said in her complaint, pointing out that the label does not state that the product takes 3 ½ minutes to cook in the microwave.

“To provide consumers with a Product that is actually ‘ready in 3½ minutes,’ the Product would need to be cooked in the microwave for less than 3-and-a-half minutes, so that all the preparation steps could be completed in the 3-and-a-half minutes timeframe,” she asserts.

The plaintiff is alleging violations of the Florida Deceptive and Unfair Trade Practices Act, Florida’s False and Misleading Advertising law, and other state consumer fraud acts, among other claims. She is seeking class certification, injunctive relief, damages and costs and expenses including attorney’s fees.

Country Crock Maker Sued for ‘Misleading’ Avocado Oil Claims

An Illinois man has filed a proposed class action against Upfield U.S. Inc., the maker of Country Crock Plant Butter, alleging packaging claims that the products are “made with avocado oil” are misleading. *Redmond v. Upfield US Inc.*, No. 22-6334 (N.D. Ill., filed November 14, 2022).

While Upfield’s Plant Butter product packaging boasts that the product is “Made With Avocado Oil” and includes imaging of an avocado and avocado pit, the product contains a minimal amount of avocado oil, the plaintiff alleged in his complaint. He pointed to the ingredient list showing avocado oil is the smallest part of the

vegetable oil blend, behind palm fruit, palm kernel and canola oils.

“Consumers are misled because they expect “Made With Avocado Oil” with a picture of an avocado to mean the Product contains more than a relatively de minimis amount of this valued ingredient,” the plaintiff asserted in the complaint. “The amount of avocado oil is insufficient to confer health it is known for.”

The plaintiff is alleging violations of Illinois’ Consumer Fraud and Deceptive Business Practices Act and other state consumer fraud acts, breaches of express and implied warranty, negligent misrepresentation, fraud and unjust enrichment. He seeks class certification, restitution and disgorgement, injunctive relief, damages, and costs and expenses including attorney’s fees.

MEDIA COVERAGE

New York Times Covers "Causes of Obesity" Meeting

The New York Times has published a [guest essay](#) from health writer Julia Belluz covering a Royal Society conference on "[Causes of obesity: theories, conjectures and evidence](#)." Belluz notes that the researchers largely agreed that obesity is not "a personal failing"—instead, she notes, the researchers concluded that "as long as we treat obesity as a personal responsibility issue, its prevalence is unlikely to decline."

"When I asked many of the researchers how they’d tackle obesity, given the uncertainties, they pointed to policies that would alter or regulate our environment, like outlawing junk food marketing to kids, banning vending machines in schools and making neighborhoods more walkable," Belluz writes. "They talked about changing the food system in ways that also address climate change — a related crisis once met with policy inertia that now has international momentum. But when it comes to obesity, governments are still accused of being nanny states if they try to intervene with regulation."

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