

FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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An industry group's recommendation about a Feastables "blind taste test," a lawsuit alleging added sugar is not a "breakfast essential," a challenge to West Virginia's law banning synthetic color additives, and more.

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SPOTLIGHT

First Appearance of FDA's Import Certification Authority

By Senior Counsel [John F. Johnson III](#)

The U.S. Food and Drug Administration (FDA) has instituted an import certification requirement for shrimp and spices originating from a specific region of Indonesia. This action follows the detection of elevated levels of Cesium-137 (Cs-137), a radioactive element, in products from that area. Notably, this marks the first time that FDA has exercised this authority, which it received more than 14 years ago through the Food Safety Modernization Act (FSMA) ([FDCA, Section 801\(q\)](#)).

Under this new requirement, any import shipment subject must be accompanied by certification that the food complies with FDA standards and is free from Cs-137 contamination ([FDA, FAQ about FDA's Response](#)). This certificate must be issued by the Government of Indonesia and if the required certification is not provided, FDA will refuse the import ([FDCA, Section 801\(a\)](#)).

The certification requirement is outlined in [Import Alert 99-52](#), which creates a two-tier system: red list and yellow list. A firm on the “red list” is essentially barred from exporting to the United States until they provide FDA with adequate assurances. Everyone else is on the “yellow list”—which is this certification requirement.

This new requirement will affect import timelines and necessitate increased coordination among stakeholders. The appropriate certificate must be obtained from the designated Indonesian authority. These import certifications must be submitted directly to FDA from the Indonesian authority using a system that only works after the U.S. Customs broker has filed the import filing. As such, strong communication between the importer, exporter/manufacturer and the certifying entity is essential to ensure timely and accurate submission of documentation to FDA and to avoid import refusals.

If a shipment lacks the required certification or originates from a manufacturer on the red list, FDA will deny the importation. This requirement takes effect on October 31, 2025. As this is the first time FDA is implementing this authority, some initial challenges are expected. It remains to be seen whether this is a one-time action or the beginning of a broader FDA regulatory strategy for imported food products.

LEGISLATION, REGULATIONS & STANDARDS

CARU Recommends Improvements to Feastables' Ad and Privacy Disclosures

The Children's Advertising Review Unit (CARU), a unit of BBB National Programs, has [recommended](#) that MrBeastYouTube LLC and its affiliate Feastables update their advertising and data collection practices in multiple locations, including the Feastables website and Feastables Sweepstakes. Among CARU's focuses was a promotional video released on MrBeast's YouTube channel that featured a "blind taste test" between Feastables chocolate bars and "top European chocolates" that purportedly found all participants preferred the Feastables chocolate. "Although MrBeast contended the taste test demonstration was not intended to be taken seriously, CARU concluded that it would appear to be a valid taste test to children," the unit's press release notes.

U.S. Reps Introduce Bill to Repeal Coffee Tariffs

On September 19, 2025, U.S. Reps. Ro Khanna (D-Cal.), Don Bacon (R-Neb.), Don Beyer (D-Va.) and Maggie Goodlander (D-NH) introduced the [No Coffee Tax Act](#), a bill that would repeal tariffs on coffee. "Brazil, the top source for U.S. coffee, has faced a 50% tariff under the Trump administration's tariff policy, contributing to a surge in prices," the representatives' [press release](#) indicates. "The No Coffee Tax Act will bring coffee tariffs back to the level they were the day before Trump took office. That level was 0% on everything other than coffee substitutes containing coffee."

LITIGATION

Manufacturers Sue to Block West Virginia Synthetic Color Additive Ban

The International Association of Color Manufacturers has filed a lawsuit against West Virginia seeking to block [HB 2354](#), which bans synthetic color additives from foods sold in the state and meals served in school nutrition programs. [Int'l](#)

[*Ass'n of Color Mfrs. v. Singh*](#), No. 25-0588 (S.D. W. Va., filed October 6, 2025).

The first phase of the law, which took effect August 1, 2025, bans the use of certain color additives in any meal served in a school nutrition program in the state; the second phase, which takes effect on January 1, 2028, bans the manufacture for sale, offer for sale, or sale in West Virginia of any food product containing certain additives. The International Association of Color Manufacturers called the bill “part of a new pseudoscientific fad that seeks to end decades-long settled science, entirely lacking in justification.”

Nestle Faces Putative Class Action for Carnation Breakfast Essentials Marketing

A California plaintiff has filed a proposed class action alleging Nestle Health Science US Holdings deceptively markets its Carnation Breakfast Essentials Nutritional Drink products as healthy. [*Testori v. Nestle Health Sci. US Holdings*](#), No. 25-0905 (E.D. Cal., filed October 6, 2025). The plaintiff alleges that the French Vanilla-flavored product is prominently marketed as a “nutritional drink” and highlights its 10g of protein per serving. “In reality, the Product provides 10g of protein but also delivers 12g of sugar per serving — 24% of the recommended daily value for added sugars — making sugar one of its predominant ingredients,” the plaintiff asserts. “A product whose first two ingredients are water and glucose, and which delivers a higher concentration of sugar than protein, is not a nutritional ‘breakfast essential.’”

Poppables' "No Artificial Flavors" Labeling Prompts Suit

A New York plaintiff has filed a putative class action alleging PepsiCo and Frito-Lay mislead consumers with their Poppables' "no artificial flavors" labeling because the products contain citric acid. [*Palmeri v. PepsiCo, Inc.*](#), No. 25-05371 (E.D.N.Y., filed September 25, 2025). “Manufactured Citric Acid—referred to in scientific literature as ‘MCA’—is a nonnatural, industrially produced compound,”

the plaintiff alleges. "It is not derived from any fruit or vegetable source and bears no meaningful relation to the naturally occurring citric acid found in citrus fruit."

Corn Dog Contamination Recall Prompts Consumer Suit

An October recall of more than 3.8 million pounds of Foster Farms LLC chicken and turkey corn dogs has led to a consumer's proposed class action in California. [*McWhite-York v. Foster Farms, LLC*](#), No. 25-0934 (E.D. Cal., filed October 10, 2025). The plaintiff asserts that the defendant's recall on its own was an insufficient remedy for those who purchased and consumed the contaminated products. While Foster Farms posted the recall on its website, she argues, "[g]laringly absent is an offer to reimburse consumers for purchasing their contaminated food product."

Campbell's Co. Alleges Trademark Infringement by Political Candidate

The Campbell's Co. and CSC Brands LP have filed a complaint alleging Shelby Nicole Campbell and her political campaign committee used the "iconic design" of the Campbell's Soup can without permission. [*Campbell's Co. v. Campbell*](#), No. 25-13213 (E.D. Mich., filed October 10, 2025). The Michigan congressional candidate allegedly promoted her campaign on social media with an image showing the can with the label changed to say "Campbell for Congress" and "Soup for Change 2026." Further, her social media handles include "@soup4change" and "@atasteofsoup," and the campaign's website is "soup4change.com."

The company alleges the campaign's usage of the image has led consumers to believe the company endorses the political candidate. "Campbell's, however, does not endorse Defendants' political campaign and, before filing this action,

sent Defendants a cease-and-desist letter asking them to change their campaign logo," the complaint notes. "Defendants refused Campbell's request. Instead, Defendants posted both Campbell's letter and their response on social media and remarked that the dispute would 'make [her] blow up and really win congress easily.'" The company seeks an injunction preventing further distribution of infringing materials and removal of all infringing images, videos or other content from the candidate's website and social media accounts.

New York Court Certifies Sazerac Malt Beverage Classes

A federal court in New York has granted class certification in two cases to plaintiffs who allege Sazerac Co., Inc.'s labeling of certain malt-based alcohol beverages violated New York consumer protection laws. [*Pizzaro v. Sazerac Co., Inc.*](#), No. 23-2751; [*Koonce v. Sazerac Co., Inc.*](#), No. 23-4323 (S.D.N.Y., entered September 18, 2025). The products central to the case are Sazerac's Fireball Cinnamon and Parrot Bay malt beverages. The plaintiff in the Fireball Cinnamon case alleges that despite fundamental differences between Fireball whiskey and the Fireball Cinnamon malt beverage, they are sold with labels and in packaging "that is nearly identical, which is misleading to the public." The plaintiff in the Parrot Bay case alleges that, when viewed together with the Parrot Bay Rum brand name, the Parrot Bay malt label misleads consumers into believing it contains distilled spirits.

Death Wish Coffee Files Trademark Claim Against Liquid Death

Death Wish Coffee LLC has filed a lawsuit aiming to enjoin Liquid Death from launching coffee beverages using the mark "Death." [*Death Wish Coffee LLC v. Liquid Death*](#), No. 25-9583 (C.D. Cal, W. Div., filed October 7, 2025). Canned water company Liquid Death filed to register a mark for "Liquid Death Deathuccino," the complaint asserts, which would "duplicate the dominant

element of Death Wish's registered trademarks—i.e., DEATH." Death Wish argues that because it sells ready-to-drink canned coffee beverages, products with the "Deathuccino" mark would likely appear alongside its own products and cause confusion among consumers. "In short, this is a dead-to-rights case of willful trademark infringement," Death Wish asserts.

Trump-Themed Restaurant Sues Landlord for Trademark Infringement

Trump Burger, a Texas restaurant with a theme centered on President Donald Trump, has filed a lawsuit against its landlord for alleged trademark infringement. *MAGA Burger Holdings, LLC v. 409 Bradford, LLC*, No. 25-0313 (S.D. Tex., filed September 26, 2025). The plaintiff alleges that the defendants engaged in “a hostile takeover,” allegedly assuming control of the operations of the restaurant first under the Trump Burger name, then changing it to MAGA Burger, using the same concept without permission.

SCIENTIFIC / TECHNICAL ITEMS

Sugar-Sweetened Beverages and Low- and Non-Sugar-Sweetened Beverages Linked to Higher Risk of Liver Disease, Researchers Assert

A study presented at United European Gastroenterology's UEG Week 2025 purportedly links consumption of sugar-sweetened beverages (SSBs) and low- and non-sugar-sweetened beverages (LNSSBs) to metabolic dysfunction-associated steatotic liver disease (MASLD). According to a [news release](#), the study followed 123,788 UK Biobank participants without liver disease at baseline who reported beverage consumption through repeated 24-hour dietary questionnaires. The study's authors reportedly found that a higher intake of both low- and no-sugar-sweetened beverages (LNSSBs) and sugar-sweetened

beverages (SSBs) was associated with an elevated risk of developing MASLD, formerly known as non-alcoholic fatty liver disease.

The study's lead author asserted in a statement that while the higher sugar content in SSBs can cause rapid spikes in blood glucose and insulin, LNSSBs can affect liver health by altering the gut microbiome. "These findings challenge the common perception that these drinks are harmless and highlight the need to reconsider their role in diet and liver health, especially as MASLD emerges as a global health concern," she said.

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More to Explore

- In one of our latest **Shook Look** spotlight videos, **Animal Health and Agribusiness** Associate **Caitlin Robb** explains how she taps into her **personal and professional background in agriculture** to represent agribusinesses.
- Shook **National Employment Litigation and Policy Practice** Chair **Bill Martucci** has partnered with Shook attorneys across the firm to author *Chambers USA* guides on **Massachusetts** and **California** employment law.
- The previous issue of the **Food and Beverage Litigation and Regulatory Update** focused on the first use of FDA's import certification authority, lawsuits related to allergen labeling, a rundown of federal food standards changes, and more.

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