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Denial of a motion to dismiss a "cage free" eggs lawsuit, updates on marketing plant-based products with meat- and dairy-related terms in Europe, dismissal of a lawsuit alleging a restaurant's salsa was excessively spicy, and more.

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LEGISLATION, REGULATIONS & STANDARDS

S.D. Governor Signs Lab-Grown Meat Moratorium

South Dakota Gov. Larry Rhoden has signed a bill that will impose a moratorium on cell-cultured protein in the state from July 1, 2026, to June 30, 2031. [SB 124](#) imposes penalties of up to 30 days in jail and a fine of \$500 for violations.

In February, Rhoden vetoed [HB 1077](#), a bill that sought to deem cultivated-protein food products as adulterated food. In a [letter](#) to state lawmakers, Rhoden said HB 1077 departs from the state's values of ensuring agriculture producers are able to thrive “by imposing a permanent ban on a category of lawful, federally regulated food products. While you won't catch me eating these products, it is against our values to ban products just because we don't like them.”

GRAS Process Under Scrutiny at State and Federal Levels

The Environmental Working Group (EWG) has released a [report](#) naming 111 chemicals purportedly added to the food supply without safety review under the U.S. Food and Drug Administration's "generally recognized as safe" (GRAS) designation. EWG indicated that 49 of the ingredients identified are listed in a global compendium of food products and ingredients maintained by the U.S. Department of Agriculture. "The analysis reveals how food and chemical companies have exploited a loophole in federal law in order to certify that their own new additives are 'generally recognized as safe,'" EWG said in a news release.

In California, a lawmaker has introduced [AB 2034](#), which seeks to close the so-called GRAS loophole, in partnership with the Center for Science in the Public Interest. According to a [news release](#), the bill would grant California health officials the authority to independently review food chemicals and require companies to disclose ingredients behind terms such as "artificial flavors," "natural flavors," "spices" or "artificial colors." The disclosures would be made public in a database managed by the California Department of Public Health.

EU Bans Use of Meat-Related Names for Plant-Based Products

The European Union will ban the use of 31 meat-related terms to describe plant-based products, including "steak," "drumstick," "beef" and "bacon." According to an EU Council [press release](#), the EU Council and European Parliament have reached a provisional agreement on a targeted amendment of the regulation on common market organization of agricultural products as well as regulations governing the common agricultural policy. EU officials say the agreement will "give farmers a stronger negotiating position in the agrifood value chain."

Trump Signs Glyphosate Executive Order

President Donald Trump has signed [Executive Order 14387](#), which invokes the Defense Production Act as to the production of elemental phosphorus and glyphosate-based herbicides. In a [fact sheet](#), the administration said the order is needed because any interruption to the supply of either material could leave the country's industrial base and food supply vulnerable to hostile foreign actors. The administration described elemental phosphorus as "a critical precursor element for the production of glyphosate-based herbicides, which are the most widely used crop-protection tools in U.S. agriculture — enabling efficient food and livestock feed production that protects food supply chains and ensures the availability of healthy, affordable food options within reach for American families."

LITIGATION

UK Supreme Court Invalidates Oatly's "Post Milk Generation" Trademark

The Supreme Court of the United Kingdom has ruled that Oatly cannot use its trademark "Post Milk Generation" after its registration was challenged by Dairy UK Ltd. [Dairy UK Ltd v. Oatly AB](#), No. UKSC/2025/0004 (UK Sup. Ct., filed February 11, 2026). Dairy's challenge succeeded before the hearing officer in the Intellectual Property Office, prompting appeal from Oatly. The decision was overturned in the High Court, and then again in the Court of Appeal, before the Supreme Court took the case.

At issue is Parliament and Council Regulation (EU) No. 1308/2013, which regulates the use of dairy terms such as milk, cheese and yogurt in relation to marketing agricultural products. While Oatly's oat drink product was not named using a dairy-related term, the company used the term "milk" in its marketing,

and the court ruled that “Post Milk Generation” falls within the scope of the regulation.

“Oat-based food or drink is not referred to in Points 1, 2 and 3 and so the use of the term ‘milk’ in respect of such food or drink is prohibited,” the court said.

“The prohibition bites where the designation has been used for a relevant product, and it is not necessary that it has been used as the name of the product.”

Buffalo Wild Wings Complaint ‘Has No Meat On Its Bones,’ Court Holds

A federal court in Illinois has dismissed a consumer's claim that Buffalo Wild Wings (BWW) deceives consumers by labeling its boneless wings as “wings” when they are pieces of chicken breast rather than deboned chicken meat. [*Halim v. Buffalo Wild Wings, Inc.*](#), No. 23-1495 (N.D. Ill., entered February 17, 2026).

The plaintiff alleged BWW’s use of the term “boneless wings” to describe breast meat was fraudulent and violates the Illinois Consumer Fraud Act. The court granted the company's motion to dismiss, stating that “a reasonable consumer would not think that BWW’s boneless wings were truly deboned chicken wings, reconstituted into some sort of Franken-wing.”

“[The plaintiff] sued BWW over his confusion, but his complaint has no meat on its bones,” the court said. “[The plaintiff] does not plausibly allege that reasonable consumers are deceived by boneless wings, so he has failed to state a plausible claim for relief.”

Halfday Tea Maker Faces False Advertising Lawsuit

A New York plaintiff has filed a putative class action alleging Halfday Tonics Inc. misleads consumers by claiming its prebiotic teas are “good for your

gut.” *Vickers v. Halfday Tonics Inc.*, No. 26-0935 (E.D.N.Y., filed February 17, 2026). The plaintiff alleges that each can of tea contains at most six grams of dietary fiber, and consumers would need to drink multiple cans a day to reap any meaningful benefits to their gut health. She further asserts that if consumers drank multiple cans a day they would dramatically increase their daily sugar intake and the soluble fiber in the product could cause trouble. “Consuming too much soluble fiber—especially in the absence of insoluble fiber—can lead to gas, bloating, constipation, and, in extreme cases, liver cancer,” she alleges. “None of these symptoms or effects are ‘good for your gut.’”

Court Allows ‘Cage Free’ Suit To Proceed Against Egglan’s Best

A federal court in Illinois has denied Egglan’s Best’s motion to dismiss claims it misrepresented the welfare of its chickens laying “cage free” eggs. *Janecyk v. Egglan’s Best, Inc.*, No. 24-6222 (N.D. Ill., entered February 27, 2026). The plaintiffs are consumers who assert that they bought Egglan’s Best cage-free eggs based on the packaging representation that the hens producing eggs were “free to roam in a pleasant, natural environment.” “As it turns out, Egglan’s hens have no access to the outdoors, and are instead packed into windowless compounds made of concrete, metal, and dirt,” the court said.

In its motion to dismiss, Egglan’s Best argued that no reasonable consumer could find the statement that its hens are “free to roam in a pleasant, natural environment” misleading. The court disagreed, finding that the plaintiffs plausibly allege that a reasonable person would take “free to roam” in a “natural” and “pleasant” environment together with the assertion that the hens are not kept in cages to mean that the hens would have some outdoor access. The court also disagreed with Egglan’s Best’s assertion that a reasonable consumer would not find their statements deceptive because they are mere puffery. “Plaintiffs retort that the living conditions of hens are verifiable facts, not unactionable puffery,” the court said. “The Court agrees.” The court denied, however, the

plaintiffs' claims for injunctive relief, finding that they did not plausibly allege a real and immediate threat of suffering future harm.

Alleged Artificial Preservatives Prompt Pet Food False Advertising Suit

A California consumer has filed a proposed class action alleging M.I. Industries Inc.'s Instinct Pet Foods Original Real Recipe, Raw Meals and Raw Boost Mixers dog foods are misbranded and falsely advertised because they contain synthetic preservatives. *Flick v. M.I. Industries, Inc.*, No. 26-1470 (S.D. Cal., filed March 9, 2026). The plaintiff alleges that the product labels contain prominent representations that they are made without artificial preservatives and contain "nothing artificial." She asserts that the representations are false because the Original Real Recipe products contain tocopherols and citric acid, both synthetic preservatives, while the Raw Meals and Raw Boost Mixers dog foods contain tocopherols.

U.S. Supreme Court Remands Hain Baby Food Case

The U.S. Supreme Court has remanded a lawsuit alleging Hain Celestial Group, Inc., sold baby food with elevated levels of heavy metals. *Hain Celestial Group, Inc. v. Palmquist*, No. 24-724 (U.S., entered February 24, 2026). The case, which included both Hain and Whole Foods as defendants, originated in Texas state court. Hain removed the case to federal court, where the district court dismissed Whole Foods and denied the plaintiffs' motion to remand. The district court granted Hain's motion for judgment as a matter of law on all claims, finding the plaintiffs failed to present sufficient evidence to prove causation.

The U.S. Court of Appeals for the Fifth Circuit reversed the district court's improper joinder decision and dismissal of Whole Foods. Because Whole Foods had been improperly dismissed, the Fifth Circuit concluded that the district

court lacked jurisdiction, that the district court's judgment had to be vacated, and that the case had to be remanded to state court. The Supreme Court took up the case to resolve a circuit split; the Court unanimously agreed with the Fifth Circuit.

"The core dispute in this case is whether Whole Foods's erroneous dismissal before final judgment cured the jurisdictional defect that existed at the time of removal. It did not," wrote Justice Sonia Sotomayor. "Because the jurisdictional defect lingered through judgment, the judgment 'must be vacated.'"

Court Dismisses German Tourist's Spicy Salsa Suit

A federal court has granted summary judgment to a New York City restaurant in a lawsuit filed by a German tourist who alleged he suffered severe physical and emotional injuries from unknowingly consuming excessively spicy salsa. [*Manz v. LTN1 Times Square, LLC*](#), No. 24-7457 (S.D.N.Y., entered February 17, 2026).

The plaintiff, who alleged he had never eaten tacos before, bought tacos from Los Tacos 1 in Times Square on a trip to New York. He allegedly added "hefty portions of salsa" on his tacos from a self-service salsa bar, including a green salsa he said caused his tongue to burn, hurt his mouth, made his face turn red and his heart rate soar, as well as prompted severe gastrointestinal distress.

The restaurant moved for summary judgment, alleging the plaintiff's claims fail as a matter of law for the failure to establish elements of negligence under New York law. The court found the plaintiff failed to state a claim that the restaurant negligently served excessively spicy salsa. "As Los Tacos argues, Mexican food, and more specifically, salsa, is often spicy," the court said. "In fact, when it comes to salsa, the spice is often the point. Generally speaking, a food purveyor cannot be liable for negligence under New York law for injuries resulting from an idiosyncratic characteristic of the consumer, so long as the purveyor's products fall within the norm of their nature."

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More to Explore

- The *Food and Beverage Litigation and Regulatory Update* was recognized in JD Supra's **2026 Readers' Choice Awards**, with Partners **Katie Gates Calderon**, **Lindsey Heinz** and **James Muehlberger** named top authors in the food and beverage category.
- Benchmark Litigation has named Shook the **2026 Product Liability Firm of the Year** at the Benchmark US Awards. Shook's **Product Liability Litigation Practice**, led by Partners **Katie Gates Calderon** and **Bill Geraghty**, handles complex and contentious product liability cases including MDLs, class actions, mass actions and various individual cases.
- The previous issue of the **Food and Beverage Litigation and Regulatory Update** focused on a disaster declaration related to the New World screwworm, an agency's adjusted approach to "no artificial colors" claims, Florida's investigation into pesticides in bread, and more.

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