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A "health-washing" lawsuit for a reduced-sugar sports drink, an appeals court reversal in litigation about DL malic acid, states focusing on the online food delivery industry, and more.

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FIRM NEWS

## **Chambers USA Recognizes Shook in Food & Beverages: Regulatory & Litigation**

*Chambers and Partners USA* has ranked Shook as nationwide Band 3 in the category of Food & Beverages: Regulatory & Litigation. The firm's Band 1 nationwide rankings included Product Liability & Mass Torts: The Elite, Privacy & Data Security: Highly Regarded and E-Discovery & Information Governance. Regional rankings in Litigation: Product Liability and Litigation: General Commercial spanned the United States, including Band 1 rankings in Florida, Missouri and Pennsylvania. Partner [John F. Johnson III](#) was recognized for his work on U.S. Food and Drug Administration regulatory compliance through a ranking in Healthcare: Pharma/Medical Product Regulatory in the Washington, D.C., area.

## **Shook Adds John Johnson III as Food and Beverage Litigation Practice Co-Chair**

Shook Partner [John F. Johnson III](#) joins [Lindsey K. Heinz](#) and [James P. Muehlberger](#) as leaders of the firm's [Food and Beverage Litigation Practice](#). Johnson works with companies to develop and implement solutions for complying with laws administered by the Food and Drug Administration (FDA), U.S. Department of Agriculture (USDA), Customs and Border Protection (CBP) and other federal and state agencies. Johnson replaces Partner [Katie Gates Calderon](#), who co-chairs Shook's [Product Liability Litigation Practice](#).

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LEGISLATION, REGULATIONS & STANDARDS

## **AGs Urge FTC Action on Food Delivery Platforms**

Sixteen state attorneys general are urging the Federal Trade Commission (FTC) to amend its Rule on Unfair and Deceptive Fees to apply to the online food delivery industry. AGs from New York, Tennessee, Arizona, Connecticut, Delaware, the District of Columbia, Illinois, Maryland, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Vermont, Virginia and Washington sent a [letter](#) providing comment on the agency’s Advanced Notice of Proposed Rulemaking on Unfair or Deceptive Fees in Online Food Delivery Services.

In the letter, they point to explosive growth in the industry in recent years, noting that they have become an essential feature of many consumers’ lives. They expressed concern that the law is not keeping up with unique harms flowing from newer technologies. Specific issues they call out are drip pricing, markups and price differentials, the use of dynamic pricing and personalized pricing. They noted that consumers cannot meaningfully avoid personalized pricing they do not know about.

“Moreover, the data that companies use to offer personalized prices, from what source companies acquire that data, and how that data influences prices, are all material conditions that consumers must understand to make informed purchasing decisions,” they said.

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## LITIGATION

### **PepsiCo, Gatorade Face ‘Health-Washing’ Lawsuit For Reduced-Sugar Gatorade**

A group of consumers has filed a proposed class action against Pepsi and Gatorade, alleging the companies made false and misleading representations about their reduced-sugar Gatorade products. [Leam v. PepsiCo, Inc.](#), No. 26-4258 (S.D.N.Y., filed May 21, 2026). The plaintiffs take issue with representations that the products claim to be more hydrating than water and that the products contain no artificial flavors, sweeteners or added colors. The

latter claim is false, the plaintiffs assert, because the products contain citric acid, which is commonly used as an artificial flavor.

The plaintiffs call the marketing representations “health-washing,” or instigating the sale of a consumer product by making a product appear healthier than it is. “Here, Defendant uses false advertising and deceptive conduct which promises health-related benefits,” the plaintiffs said. “To compound matters, the misrepresentations made on the Products are not only potentially harmful but command a price premium consistent with these misrepresentations that Plaintiffs and Class members would not have paid had they known that Defendant’s representations are false and misleading.”

## **9th Circuit Reinstates Wiley Wallaby Licorice Labeling Suit**

The Ninth Circuit has reinstated a lawsuit alleging KLN Enterprises’ representations on its Wiley Wallaby licorice product packaging were false and misleading. *Trammell v. KLN Enterprises, Inc.*, No. 24-6097 (9th Cir., filed May 15, 2026). The plaintiff, who alleged he bought the Very Berry licorice, asserted that the product’s label represented that the product was free of artificial colors and flavors but that the product contained an artificial flavor, DL malic acid. The lower court dismissed the putative class action.

A Ninth Circuit panel reversed, holding that the lower court erred in concluding that the plaintiff’s complaint failed to satisfy the heightened pleading standard of Federal Rule of Civil Procedure 9(b). The panel found that the plaintiff’s allegations set out the “who,” “what,” “when,” “where” and “how.” “Faced with these allegations, Defendant knows what Trammell’s specific claims are, what it should defend against, and what it should seek to refute,” the court said.

## California Consumers Allege Cento San Marzano Tomatoes Are Inauthentic

California residents have brought a proposed class action alleging Cento Fine Foods, Inc., misrepresents its San Marzano tomatoes as “certified,” when they “lack the taste, consistency, and other physical characteristics associated by consumers with certified San Marzano Tomatoes.” *Andrich v. Cento Fine Foods, Inc.*, No. 26-4012 (N.D. Cal., filed May 4, 2026). The plaintiffs allege that San Marzano tomatoes are considered “the Ferrari or Prada” of canned tomato varieties and note that real San Marzanos can only be grown, processed and canned in a specific region of Italy, governed by a “Protected Designation of Origin” status from the EU. The products at issue in the lawsuit are Cento San Marzano Certified Peeled Tomatoes and San Marzano Organic Certified Peeled Tomatoes.

“Plaintiffs ... purchased and used Cento San Marzanos in reliance upon Defendant’s deceptive labeling, believing that they were authentic, certified San Marzano tomatoes,” they said. “However, Cento San Marzanos were not satisfactory to Plaintiffs because they were not authentic, DOP San Marzano tomatoes and lacked the physical characteristics of authentic San Marzano tomatoes.”

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### More to Explore

- The June issue of *Material Concerns: Legal Updates on Substances of Emerging Concern* focused on EPA’s best practices report for battery recycling, a Pennsylvania bill banning PFAS in consumer product advances, and a Connecticut preview of a PFAS reporting form.
- *The University of Cincinnati Law Review* honored Shook Public Policy Group Founder Victor Schwartz, who passed away in 2025, with a [special edition](#), including an article highlighting his impact on mass tort litigation.

- The previous issue of the ***Food and Beverage Litigation and Regulatory Update*** focused on a federal court decision finding that sugar content does not make a beverage less "nutritional," a bill that would allow FDA to destroy imported food products that pose a significant risk to public health, a complaint asserting matcha was falsely sold as "ceremonial grade," and more.

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As the food and beverage industries become more complex, they require effective legal representation that can quickly evaluate potential liability and craft the most appropriate responses to suspected product adulteration, alleged foodborne outbreaks or environmental contamination claims. For decades, manufacturers, distributors and retailers at every link in the food chain have come to Shook, Hardy & Bacon to partner with a legal team that understands

the issues they face in today's evolving food production industry. Shook attorneys work with some of the world's largest food and beverage companies to establish preventative measures, conduct internal audits, develop public relations strategies, and advance tort reform initiatives.

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