FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

SHOOK HARDY & BACON

Lawsuits challenging "zero sugar" representations of products with allulose, "greenwashing" allegations about seafood products, a price-fixing complaint against refined sugar producers, and more.

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SEPTEMBER 4, 2026

SPOTLIGHT

Driscoll's Lawsuits Reflect Growing Risks of Consumer Protection Litigation

By Kate Klaus

Two lawsuits against Driscoll's, the global berry producer, highlight the expanding litigation landscape around environmental marketing claims. Both cases challenge Driscoll's statements around sustainability and food safety, claiming its messaging creates consumer expectations that its produce does not meet.

The first of these lawsuits, filed in June 2026, is a proposed class action alleging that Driscoll's conventional (non-organic) strawberries contain detectable levels of per- and polyfluoroalkyl substances (PFAS). *Washington v. Driscoll's, Inc.*, No. 26-6961 (N.D. Cal., removed from state court July 8, 2026). The lawsuit centers on the claim that consumers would not have purchased Driscoll's strawberries, or would have paid less for them, had they known of the alleged PFAS content. The complaint relies in part on third-party testing that reportedly identified fluorinated pesticide compounds in two packages of Driscoll's strawberries. The complaint further asserts that the purported presence of PFAS conflicts with consumer expectations allegedly created by Driscoll's slogan "Only the Finest Berries."

The case raises claims under various California consumer-protection statutes, seeking damages such as the return of profits and punitive damages. The complaint also seeks injunctive relief, including an order preventing Driscoll's from selling its conventional strawberries until the alleged PFAS are removed or disclosed.

A second lawsuit was filed in August 2026 in D.C. Superior Court by advocacy organizations Beyond Pesticides, Organic Consumers Association and Toxin Free USA. *Beyond Pesticides v. Driscoll's Inc.*, No. 26-5727 (D.C. Super. Ct., filed August 14, 2026). The plaintiffs challenge Driscoll's sustainability messaging, including representations that its products are "good for you and the planet." According to the complaint, such statements are misleading because the company's berry growing and packaging practices allegedly "use significant amounts of plastic," "little of which is recycled." The complaint further asserts that the company's plastic use leads to the presence of microplastics in its berries and the environment, citing laboratory testing commissioned by the plaintiffs that reportedly detected microplastic particles in a sample of Driscoll's blueberries.

For these reasons, among others, the plaintiffs claim that Driscoll's products and practices are inconsistent with its environmental messaging. The plaintiffs seek injunctive and declaratory relief, but no damages, under the D.C. Consumer Protection Procedures Act. Specifically, the complaint asks the court to declare that Driscoll's marketing violates the D.C. law and to prevent it from continuing the challenged conduct.

Notably, neither of these lawsuits raise personal injury or traditional product liability claims. Rather, the cases are part of a broader trend in litigation centered on product marketing and consumer expectations. That trend may accelerate as states continue to expand chemical disclosure requirements. For example, several states are beginning to implement PFAS reporting and labeling programs. As more product information becomes public, consumers may increasingly look to compare those disclosures against companies' marketing claims and sustainability messaging.

This article originally appeared in Material Concerns: Legal Updates on Substances of Emerging Concern. Shook's Environmental team's proactive approach to protecting clients' business interests and avoiding expensive litigation includes monitoring industry trends, legislative and regulatory developments, key judicial cases, plaintiffs' bar activities and the latest scientific literature. To learn more about Shook's environmental capabilities, please contact Practice Co-Chairs Thomas J. Grever or James F. Thompson, or for more information about Material Concerns please contact Partner Jennifer E. Hackman.

LEGISLATION, REGULATIONS & STANDARDS

HHS Announces Food Policy Reforms

The U.S. Department of Health and Human Services (HHS) has announced two food policy reforms as it seeks to modernize federal oversight of food ingredients. The U.S. Food and Drug Administration (FDA) has issued a proposed rule requiring manufacturers to notify it whenever they conclude the use of a substance added to human or animal food is Generally Recognized as Safe (GRAS). The agency said the rule would modernize the GRAS framework by making such notifications mandatory and expanding the public-facing inventory of submitted notices, "significantly improving transparency while strengthening the FDA's ability to oversee ingredients entering the food supply." HHS and the U.S. Department of Agriculture also submitted for final review the government's first proposed definition of ultra-processed foods (UPFs). The proposed definition, which "incorporates feedback from thousands of stakeholders, including industry, consumer organizations, researchers, and members of the public," has not been released publicly.

AGENCY UPDATES

- "Revising U.S. Standards for Grades of Mushrooms," Agricultural Marketing Service (August 25, 2026)
- "National Poultry Improvement Plan and Auxiliary Provisions," Animal and Plant Health Inspection Service (August 5, 2026)
- Public Meetings on Codex Alimentarius Committees
  - Food Import and Export Inspection and Certification System, September 10, 2026
  - Milk and Milk Products, September 17, 2026
  - Contaminants in Foods, September 29, 2026

LITIGATION

7th Circuit Revives Chobani Sugar-Free Yogurt Labeling Suit

The U.S. Court of Appeals for the Seventh Circuit has revived a putative class action alleging Chobani deceptively labels its Chobani Zero Sugar Yogurt. *Franco v. Chobani, LLC*, No. 25-2087 (7th Cir., entered July 27, 2026). According to the court, federal regulations require foods advertised as sugar-free to contain less than a half gram of sugar. Chobani sold a yogurt that it advertised as sugar-free, but the yogurt contained four grams per serving of allulose, a naturally occurring sweetener. The plaintiffs allege Chobani deceptively markets the product under dozens of state consumer-protection laws. Chobani moved to dismiss the claims, alleging preemption, and the district court agreed.

At issue on appeal was whether allulose is considered a sugar under federal law. If it qualifies, the plaintiffs' state law claims may proceed, but if not, their claims are preempted by the Federal Food, Drug, and Cosmetic Act, the court said. The Seventh Circuit reversed the lower court's holding, finding that allulose is a sugar under the relevant federal regulation and that the plaintiffs plausibly alleged consumer deception. The court said that the U.S. Food and Drug Administration filed an amicus brief in the case in which it took the position that the relevant statute is unambiguous and that total sugars as defined in the regulation include all monosaccharides, including allulose. "The federal requirements at issue are plain—food products cannot be labeled sugar free unless they have less than half a gram of sugar, and sugars include every monosaccharide, including allulose," the court said. "[The plaintiffs] want to hold Chobani liable under state law for violating identical standards, and so their claims are not preempted."

DOJ Sues To Stop Pet Food Maker From Selling Adulterated Products

The U.S. Department of Justice has sued to block Arrow Reliance Inc., doing business as Darwin's Natural Pet Products, from manufacturing and selling adulterated pet food. *U.S. v. Arrow Reliance Inc.*, No. 26-2805 (W.D. Wash., filed August 7, 2026). The federal government alleges that the business owner violated federal law by failing to follow preventive controls requirements, causing uncooked pet food to become adulterated.

DOJ alleges that the U.S. Food and Drug Administration found *Salmonella*, *Listeria monocytogenes* and Shiga toxin-producing *E. coli* (STEC) in samples collected from the company's finished pet food products from 2017 to 2025. The government additionally alleged that the pet food repeatedly caused infections in humans and pets. The lawsuit seeks an injunction requiring the company and its owner to make sanitation improvements and to comply with preventive controls regulations and other federal food safety requirements before making or distributing any more pet food.

In a statement, a DOJ spokesperson said that pet food manufacturers must ensure the safety of their products. “Given the high likelihood that consumers will come into direct contact with pet food products, the Department of Justice will continue to work closely with FDA and take action against food manufacturers that operate under insanitary conditions."

Food Companies Allege Refined Sugar Producers Fixed Prices

A group of food companies has filed a lawsuit against producers and sellers of refined sugar, alleging they unlawfully agreed to fix prices in the United States. *McLane Co., Inc. v. ASR Grp. Int'l, Inc.*, No. 26-3412 (D. Minn., filed July 24, 2026). The plaintiffs, including PepsiCo. Inc., Frito-Lay Inc., Quaker Oats Co. and Bimbo Bakeries USA, allege that as early as January 2019, the defendants—American Sugar Refining Inc., Domino Foods Inc. and United Sugar Producers & Refiners Cooperative, among others—conspired to artificially inflate refined sugar prices in the United States. They allege that the defendants exchanged detailed, competitively sensitive, non-public information (CSI) about refined sugar prices, capacity, sales volume, supply and demand. “The Defendants’ sharing of CSI bears all the hallmarks of concerted information sharing and demonstrates an effective enforcement mechanism of a price-fixing scheme,” they allege.

Consumers Challenge Nutrition Claims on Products Containing Allulose

California consumers have brought claims against the maker of David protein bars and Liquid Death, alleging they falsely label their products as containing zero grams of sugar when they contain allulose. *Yovino v. Linus Tech. MergerSub, LLC*, No. 26-8834 (N.D. Cal., filed August 24, 2026); *Williamson v. Supplying Demand, Inc.*, No. 26-8839 (N.D. Cal., filed August 24, 2026).

The plaintiff in the David protein bar dispute argues that the company has built its brand on "a three-number promise"—that the bars contain 28 grams of protein, 150 calories and zero grams of sugar—that he alleges is false and misleading. "Defendant's Products include allulose – a sugar – and therefore cannot claim to contain '0g sugar.' Defendant has deceived the public and has charged a premium for it," he asserts. "Consumers paid for '0g sugar' and received sugar."

In the Liquid Death lawsuit, the plaintiff took issue with zero-sugar labeling on sparkling energy drinks, arguing that "[d]efendant seeks to take advantage of consumers' desire for truly premium products that are free from sugar by falsely, misleadingly, and deceptively labeling the Products with the Challenged Representations. Defendant does so at the expense of unwitting consumers, as well as Defendant's lawfully acting competitors, over whom Defendant maintains an unfair competitive advantage."

U.S. Beekeepers Allege False Labeling on Foreign 'Organic' Honey

A group of beekeepers has filed a lawsuit against the U.S. Department of Agriculture (USDA) challenging the agency's creation of pathways to organic certificates made available only to Brazilian and other foreign honey processors. *Royal Honey Farm LLC v. USDA*, No. 26-0323 (E.D. Wash., filed August 3, 2026). They allege the pathways violate the Organic Foods Production Act of 1990 (OFPA) and discriminate against U.S.-based commercial beekeepers legally barred from obtaining organic certificates.

The plaintiffs say the central issue is the USDA organic seal, which symbolizes the honey was made by bees feeding off plant nectar in an agrochemical-free environment. They assert that no consumer would expect that the seal is the product of rules that enable beehives to be placed in or near conventional agricultural fields where bees can feed on plants sprayed with agrochemicals. “No U.S. beekeeper can legally produce high volumes of ‘organic’ honey because of OFPA prohibitions,” they allege. “However, the USDA allows foreign honey producers to bypass those prohibitions, entirely, by giving foreign producers access to different rules, like Canadian rules that provide a road to high volume production in conventional agricultural environments.” The plaintiffs seek injunctive relief, requesting an order requiring USDA to cease licensing the USDA organic seal for use on foreign honey labels, alleging it is false labeling.

Danone’s “Bright & Mellow” Trademark Claims Against Chobani Survive Motion To Dismiss

A federal court in New York has denied Chobani LLC’s motion to dismiss trademark infringement claims brought by Danone US LLC for Chobani's use of the phrase “Bright & Mellow” on its La Colombe cold brew coffee. *Danone US LLC v. Chobani LLC*, No. 25-6217 (S.D.N.Y., entered July 27, 2026). Danone US LLC and WhiteWave Services Inc. allege Chobani infringed an unregistered trademark and engaged in unfair competition under the Lanham Act and New York common law. Danone alleges Chobani adopted the phrase "Bright & Mellow" on a directly competing ready-to-drink cold brew coffee product after Danone had used it for several years as a trademark in connection with its own STōK Cold Brew. Danone also alleged that La Colombe revised its packaging to more closely match Danone’s after Chobani acquired the brand.

In its motion to appeal, Chobani argued the use of “Bright & Mellow” is generic because “bright” and “mellow” identify types of flavor characteristics of coffee. The court said it cannot reach that conclusion from the pleadings. “As a general matter, Bright & Mellow — unlike, say, 'RTD coffee,' 'cold brew coffee,' or 'light roast coffee' — is not, on its face, indicative of a category of products,” the court said. “Indeed, the Complaint alleges the opposite: some of Danone’s focus group participants did not know from the Mark what taste to expect and had difficulty reconciling ‘bright’ with ‘mellow.’”

Customers Allege Amazon 'Greenwashes' Seafood Products’ Sustainability

Two consumers have filed a proposed class action alleging Amazon.com Inc. has used unqualified and unsupported environmental and ecological representations about 365 by Whole Foods Market, Chicken of the Sea and Bumble Bee seafood products. *Rogow v. Amazon.com Inc.*, No. 26-2702 (W.D. Wash., filed July 31, 2026). The plaintiffs allege Amazon uses product-detail pages and point-of-sale disclosures to communicate that its seafood products originate from environmentally responsible and ecologically sustainable fisheries and supply chains using phrases such as “sustainable,” “sustainably sourced,” “responsibly sourced,” “wild caught,” “traceable,” “MSC Certified Sustainable Seafood” and “dolphin safe.” “Taken together, the Sustainability Claims create the net impression that the Greenwashed Seafood Products are sourced in a manner that causes minimal harm to the planet and our oceans—an impression that is, at best, unsubstantiated and at worst, materially false,” the plaintiffs argue.

Court Trims Big League Chew Claims

A federal court in Illinois has trimmed claims brought by Ford Gum & Machine Co. and Ford Gum Specialties, the maker and distributor of shredded chewing gum under a license of Big League Chew Properties, LLC. *Ford Gum & Machine Co., Inc. v. Heiser*, No. 25-13301 (N.D. Ill., entered August 7, 2026).

The plaintiffs allege that Big League Chew employees and their associated entities shared confidential information in violation of contractual agreements and state and federal trade secrets statutes. Each of the three named employees —Big League Chew’s managing partner, chief financial officer and a former Ford Gum vice president of sales and marketing who left the company to work for Big League Chew—filed motions to dismiss. The court has allowed misappropriation claims to proceed against two of the three named plaintiffs; however, it dismissed breach of contract and intentional interference claims.

More to Explore

- Associate **Brandon Gilligan** breaks down the packaging EPR laws sweeping across states—who is covered, what producers owe and the penalties for getting it wrong—in the latest episode of the ***For That Matter*** podcast.

- Missouri Lawyers Media named Shook Chair **Madeleine McDonough** to its 2026 **Top Managing Partners**, a special feature showcasing some of the "best-known and hardest working managing partners" of law firms in Missouri.

- The previous issue of the ***Food and Beverage Litigation and Regulatory Update*** focused on litigation related to the *Cyclospora* outbreak, a complaint alleging a soda contains three times the amount of sugar indicated on the label, a California law on sell-by dates, 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. Learn more about Shook at www.shb.com

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