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Voter initiatives to ban foie gras, complaints targeting allulose and avocado oil, a court's rejection of a "biased" perception survey, and more.

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SPOTLIGHT

Hot Fridges, Cold Sweats

By Josh Hansen

A cyberattack on food supplies across Europe is a wake-up call on the risks of connected devices in the food industry. The attackers reportedly did not steal a single record or encrypt any files; they just turned up the heat—literally. They increased the temperature on refrigerators in hundreds of supermarkets. The lesson goes beyond spoiled fish: security reviews must cover every connected device that keeps your business running, not just the systems that hold data.

What Happened

Hackers remotely triggered defrost cycles at hundreds of European supermarkets and removed the limits that normally cap temperatures. Display

cases reportedly hit 122°F for about six hours, which caused refrigerators to fire and stuck companies with food losses into the millions of Euros. But there are still critical, unknown details; there is no apparent motive, no ransom demand, and no one has claimed responsibility.

This was not a sophisticated attack. The reported entry point was ordinary: systems that were end of life or running outdated/unpatched firmware, many of which were sitting accessible on the public internet.

Why It Matters

This is a board-level lesson dressed up as a grocery story: if a connected device can stop your operations, it belongs in your risk program, your vendor contracts and your incident response plan.

- **Foreseeability.** Some of the affected systems had known vulnerabilities with available patches. In events like this, nobody will ask what the attackers did. They will ask who knew what, and when.
- **Vendor Risk.** Retailers typically outsource refrigeration to maintenance firms with remote access. Boards will ask who had contractual obligations for security. If your contracts are silent on patching and incident notice, you have your answer.
- **Insurance.** Physical damage caused by a cyber event sits in the seam between property and cyber policies, and each can point at the other.

What to Do Now

Look beyond data. Start here:

- **Inventory Devices.** Identify every connected device, who controls it, and whether it needs to be online.
- **Secure Equipment.** Patch systems on a regular basis, retire end-of-life equipment (or document why you kept it), and determine which devices need internet accessibility.
- **Paper Obligations.** Require vendors to patch devices, meet security standards, and report incidents—and make them answer for failures.
- **Drill and Revise.** Run a tabletop and update your incident response plan to account for cybersecurity beyond personal data.

The Bigger Picture

France's economy minister called the attack a "wake-up call for everyone," and the EU's agriculture commissioner warned that "the weaponization of food has become a reality." No one has attributed this attack, but France's president recently cited Russian hybrid threats, and Interpol's CISO says AI is increasing the scale and speed of attacks. Companies need to protect continuity, not just data. The same weaknesses sit in utilities, logistics and food warehouses. The fridge is just the most relatable canary in the coal mine, or the cold room.

Shook boasts one of the best and most accomplished privacy and cybersecurity practices in the country. Our team has been named by Chambers USA as a "Band One Highly Regarded Practice" and several of our partners have been recognized by Chambers as top practitioners in this area of law. To learn more about the firm's privacy and cybersecurity capabilities, please contact Practice Chair Alfred J. Saikali.

FIRM NEWS

Livestock Producers and Lines Between Animal Welfare and Animal Rights

Laws that categorize animals as property are being tested, with a substantial fault line dividing animal welfare from animal rights. Shook Associate Caitlin Robb and Public Policy Practice Co-Chair Phil Goldberg have authored an article in *AGDAILY* on the evolving regulatory and legislative landscape surrounding animal rights.

In "Livestock Producers and Lines Between Animal Welfare and Animal Rights," Robb and Goldberg say that animal welfare accepts that people own animals and sets standards for their care, while animal rights asks whether animals should have their own legal standing, liberty rights, or, even further, legal personhood.

“In looking at the broad legal landscape, courts and legislatures tend to reject pure animal rights reforms, but those campaigns are often cast as welfare reforms and shape public attitudes, legislation, and public initiatives,” they say. “Producers, therefore, must do more than merely comply with current regulations. They should assess how their practices could be (mis)construed by the public, document their animal welfare efforts, and get involved in animal law debates — on all topics.”

LEGISLATION, REGULATIONS & STANDARDS

D.C., Denver Ban Force-Feeding Birds, Foie Gras

Voters in Washington, D.C., and Denver, Colorado, have approved initiatives seeking to ban the force-feeding of birds and the sale of foie gras. According to Denverite, 66% of voters approved Denver's Initiated Ordinance 311, which prohibits the force-feeding of birds and sale of products derived from force-feeding birds, including foie gras. In Washington, D.C., Axios reported that Initiative 86 passed with more than 73% of the vote. The measure prohibits any person from force-feeding a bird and bans the sale or distribution of any product resulting from force-feeding a bird, including foie gras. Both measures have an effective date of July 1, 2027.

California Governor Signs Non-UPF Labeling Bill

California Gov. Gavin Newsom has signed into law a bill creating a first-in-the-nation label recognizing non-ultraprocessed foods (UPF). AB 2244 requires the California Department of Public Health to create a specified standardized "Non-Ultraprocessed Certified" seal, and foods bearing the seal must be certified by an accredited certification agent. The law builds on an earlier law regarding UPFs in schools, which defines UPFs as any food or beverage that contains a specified

substance and either high amounts of saturated fat, sodium, or added sugar or a nonnutritive sweetener or other substance, as specified.

The bill's sponsor, Assemblymember Jesse Gabriel (D-Encino), said in a statement that the bill received bipartisan support, and compared it to federal labeling requirements. "Like the USDA Organic label, this new seal will provide consumers with clear, trustworthy information and make it easier for them to locate healthier foods that are free from harmful additives," he said.

AGENCY UPDATES

- "Draft Guidance: Requirements for Additional Traceability Records for Certain Foods," Food and Drug Administration. Comments accepted until November 23, 2026.
- "Request for Nominations for Voting Members of Food and Drug Administration Advisory Committees," Food and Drug Administration. Nominations accepted until November 30, 2026.
- "Final Rule: Use of Salt Substitutes To Reduce the Sodium Content in Standardized Foods," Food and Drug Administration. Rule effective as of December 14, 2026.
- "Draft Guidance: Action Levels for Cadmium in Processed Food Intended for Babies and Young Children," Food and Drug Administration. Comments accepted until December 22, 2026.
- "Draft Guidance: U.S.-Origin Statements on Seafood," Food and Drug Administration. Comments accepted until December 28, 2026.
- "National Organic Standards Board Call for Applications and Nominations," Agricultural Marketing Service. Applications accepted until December 28, 2026.

LITIGATION

New York Court Trims Lead Contamination Lawsuit

A federal court in New York has dismissed some claims in a consumer's deceptive marketing putative class action against Badia Spices Inc. related to alleged lead contamination in ground cinnamon and ground ginger. *Kolker v. Badia Spices, Inc.*, No. 25-3099 (E.D.N.Y., entered September 28, 2026).

The plaintiff allegedly tested Badia Spices' ground ginger after an alert by the New York State Department of Agriculture and Markets in 2024. The plaintiff did not test Badia Spices' ground cinnamon but instead relied on news articles incorporated by reference into her complaint that mention elevated lead levels in certain lots of cinnamon. The court found the articles to be insufficient to establish standing for her claims related to the cinnamon.

"Put simply, all Plaintiff has alleged is that, at some point, the New York State Food Laboratory found lead in some lots of Defendant's Products and that Plaintiff purchased Defendant's Products, including the Cinnamon Product, 'numerous times' during a three-year period," the court said. "These allegations are simply too speculative to plausibly infer that the Cinnamon Product that Plaintiff purchased likely contained lead."

The court additionally dismissed the plaintiff's breach of express warranty and unjust enrichment claims. The court allowed the plaintiff to seek leave to amend her complaint solely with regard to standing.

Snack Brands Sued for Avocado Oil Labeling

Consumers from California and Illinois have filed putative class actions against the makers of chips advertised as being made with avocado oil. *Brand v. Utz Brands, Inc.*, No. 26-11845 (N.D. Cal., filed October 14, 2026); *Wilson v. Garza Food Ventures, LLC*, No. 26-13028 (N.D. Ill., filed October 22, 2026); *Mullen v. SF Markets, LLC*, No. 26-5070 (S.D. Cal., filed September 8, 2026); *Hood v. Sprouts Farmers Mkt., Inc.*, No. 26-5362 (S.D. Cal., filed September 17, 2026).

The lawsuits include snacks sold under the Boulder Canyon, Siete and Sprouts Farmers Market brands. The plaintiffs point to a study from the University of California, Davis that purportedly found many avocado-oil products to be adulterated with cheaper oils. In *Brand*, the plaintiffs included products not specified in the study, asserting that "its findings raise concerns regarding Defendant's avocado-oil representations across Boulder Canyon products marketed as cooked in avocado oil."

Court Rejects 'Biased' Perception Survey, Ends Barilla Pasta Labeling Suit

A California federal court has granted summary judgment to Barilla America Inc. in a class action alleging the company falsely advertises its pasta as "Italy's #1 Brand of Pasta" despite being made in the United States with wheat from around the world. *Sinatro v. Barilla Am., Inc.*, No. 22-3460 (N.D. Cal., entered September 30, 2026).

The boxes at issue included the "Italy's #1 Brand of Pasta" labeling and three teardrops of green, white and red. The boxes additionally stated on the side label below Barilla's name and location that the products were "Made in the U.S.A. with U.S.A. and imported ingredients." The plaintiffs retained experts who conducted a consumer perception study that resulted in 57% of respondents indicating that the statement "does communicate" that the product's ingredients are sourced from Italy, the court said.

The court first granted Barilla's motion to strike expert testimony regarding the survey, finding that it failed *Daubert*'s reliability prong because the survey was biased. The survey asked participants whether they believe the product's ingredients are sourced from Italy, and included three possible responses: an affirmative answer, a negative answer and a "don't know/not sure option."

"This question is biased because in asking respondents whether the statement means that '[t]he product's ingredients are sourced from Italy,' and only that, it steers them to that very meaning and gives them no opportunity to indicate

other meanings," the court said. "The survey also fails to capture the possibility that respondents understand the Challenged Representation to have multiple meanings. This type of biased survey cannot assist a trier of fact."

The court held that no reasonable jury could find for the plaintiffs in light of the excluded testimony and that Barilla's labeling is not misleading as a matter of law, granting summary judgment with regard to the plaintiff's claims under California consumer protection statutes. The court additionally granted summary judgment to Barilla on the plaintiffs' unjust enrichment and breach of warranty claims.

Celsius Holdings Faces 'Healthwashing' Claims

A Washington consumer has brought 'healthwashing' claims alleging Celsius Holdings Inc. makes misleading and unsupported health claims about its energy drinks. *Nielsen v. Celsius Holdings, Inc.*, No. 26-4113 (W.D. Wash., filed October 26, 2026). The plaintiff points to labeling that the products accelerate metabolism and burn body fat, as well as the company's slogan "live fit." "The Misrepresentations, partial misrepresentations, overall impression communicated by the Products' labels, and other deceptive conduct by Celsius misleadingly convey to consumers that the Healthwashed Energy Products, by themselves, accelerate metabolism and burn body fat and have certain characteristics that they do not actually possess," the plaintiff asserts.

Court Denies Injunctive Relief, Allows Other Claims in Probiotic Soda Suit

A California court has denied injunctive relief but is allowing state consumer protection law claims to proceed in a lawsuit alleging Cove Drinks misleads consumers by including "No Artificial Sweeteners" labeling on its products when

they contain erythritol. *Williams v. Cove Drinks, Inc.*, No. 26-3374 (S.D. Cal., filed September 28, 2026).

The defendant argued that the plaintiff failed to adequately allege she has standing to pursue injunctive relief. The court agreed, noting the complaint said the plaintiff would purchase the products again if the labeling was corrected or the defendant stopped using misleading representations, but would not currently rely on the defendant's labeling to purchase again. “This allegation is insufficient to allege an imminent or actual threat of future harm,” the court said.

Driscoll's Faces PFAS-Related Marketing Claims

A New York plaintiff has filed a putative class action alleging that Driscoll's misleads consumers as to the food safety and quality of its strawberries and fails to disclose the use of pesticides containing PFAS-related compounds. *Farley v. Driscoll's*, No. 26-5950 (E.D.N.Y., filed September 24, 2026). The complaint cites independent testing publicly reported in May 2026 purportedly finding the company's strawberries contained multiple pesticide residues, including fluorinated pesticide compounds characterized as PFAS-related. The plaintiff asserted that had he known the allegedly omitted facts concerning PFAS-related compounds, he would not have purchased the product or would have paid substantially less for it.

Dunkin’, Target Face Zero-Sugar Allulose Claims

Illinois consumers have filed putative class actions alleging Dunkin’ Brands, Inc. and Target Corp. falsely advertise their products as "zero-sugar" when they contain allulose. *Wells v. Dunkin' Brands, Inc.*, No. 26-14463 (D. Mass., filed September 30, 2026); *Williams v. Target Corp.*, No. 26-12870 (N.D. Ill., filed October 20, 2026). The Dunkin’ case relates to its Dunkin’ Zero beverages. According to the complaint, the products have labeling asserting the drinks contain “0g of sugar” and “zero grams of sugar” but the products are sweetened

with approximately 9 grams of allulose. The Target case is centered on Up & Up Sugar-Free Hydration Supplement Powder. Both complaints cite a July ruling from the U.S. Court of Appeals for the Seventh Circuit in *Franco v. Chobani* holding that allulose is a sugar under relevant federal regulations.

Court Allows Lactic Acid Claim to Proceed Against Kraft

A Illinois federal court has denied a motion to dismiss claims that Kraft Heinz Foods Co. falsely and deceptively labeled its Philadelphia Cheesecake Crumble product as having no artificial preservatives when it contains lactic acid. *Daly v. Kraft Heinz Foods Co., LLC*, No. 25-7185 (N.D. Ill., filed September 24, 2026).

The plaintiffs allege that lactic acid is manufactured by the defendant and produced through a genetically engineered bacterial fermentation and acid base synthesis process. Kraft moved to dismiss, arguing that the plaintiffs did not plausibly allege that the lactic acid in the product is an artificial ingredient or that it functions as a preservative in the product. The court disagreed. “It very well may be that discovery shows lactic acid does not actually function as a preservative in the Products,” the court said. “But that is an issue for another day. At this juncture, Plaintiffs have done enough to survive Kraft’s motion to dismiss.”

'No Artificial Flavors' Labeling Prompts Suit Against Candy Maker

SmartSweets faces a putative class action from a New York consumer alleging labeling that its products are "naturally flavored" and contain "no artificial flavors" is deceptive because the products contain citric acid most likely derived through synthetic means. *Decker v. Smartsweets Inc.*, No. 26-6009 (E.D.N.Y., filed September 28, 2026). The plaintiff, who allegedly purchased the company's Sweet Fish product and a variety pack containing Peach Rings, Tropical Sours

and Pink Lemonade Dream, asserts that if the products contained natural citric acid, one would expect the defendant to highlight that distinction. "Given that 99% of citric acid is chemically and artificially produced through microbial fermentation, that extraction of natural citric acid from citrus fruit is no longer commercially viable, and the scale of Defendant's operations, the only plausible inference is that the citric acid used in the Products is artificial citric acid that is industrially manufactured through fermentation," she alleges.

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- ***Lawdragon*** selected 24 Shook partners for the 2027 Lawdragon 500 Leading Litigators in America.
- The previous issue of the ***Food and Beverage Litigation and Regulatory Update*** focused on state and municipal food legislation updates, complaints targeting the use of cheaper oils in place of avocado oil, a dispute over bunny marshmallows, and more.

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