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LEGISLATION, REGULATIONS & STANDARDS

GE Salmon Bill Introduced in U.S. Senate

A bipartisan group of U.S. senators has introduced a bill that would require labeling of genetically engineered (GE) salmon and independent scientific review of the U.S. Food and Drug Administration's environmental assessment of GE fish produced for human consumption.

“The primary purpose of this bill is to ensure that consumers have all the facts and can make an informed decision when they are purchasing salmon. There’s a huge difference between ‘Frankenfish’ and the wild, healthy, sustainably-caught, delicious real thing—and I want to make sure folks are aware of that,” Sen. Lisa Murkowski (R-Alaska) said in a July 14, 2017, [press release](#). “I will not accept that this ‘fake fish’ will be sold in stores without clear labeling.”

Europol Arrests 66 in Horse-Meat Investigation

Europol has announced the arrests of 66 people following a four-year investigation into an organized-crime group accused of selling horse meat "not suitable for consumption" as beef products. The investigation began in 2013 after Irish authorities found products sold as beef burgers that contained horse meat and led to a Dutch man in Spain alleged to be the leader of the scheme. According to Europol's July 16, 2017, [press release](#), "Investigators concluded that the Spanish element of this

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organisation was a small part of the whole European structure controlled by the Dutch suspect."

Canada Backtracks Ban on Some "Made in Israel" Wine Labels

Following a July 6 announcement that it would no longer allow the sale of wine made in the West Bank labeled as "Made in Israel," the Canadian Food Inspection Agency (CFIA) has retracted its position per a free-trade agreement between the countries. Canada does not recognize Israel's sovereignty over the West Bank, and the original announcement noted that the labels were providing consumers with incorrect information. An official reportedly blamed the announcement on a "low-level person" within the CFIA. See *National Post*, July 13, 2017.

LITIGATION

NYC Groups Challenge Enforcement of City Menu-Labeling Law

A group of convenience-store and restaurant trade groups have filed a lawsuit to stop New York City from enforcing a municipal regulation requiring calorie and nutrition information to be posted in their establishments. *Nat'l Assoc. of Convenience Stores v. New York City Dep't of Hygiene*, No. 17-5324 (S.D.N.Y., filed July 14, 2017). In 2010, the Patient Protection and Affordable Care Act (ACA) imposed new menu-labeling requirements, and the U.S. Food and Drug Administration (FDA) issued its final implementation rule for those requirements in 2014. FDA extended the compliance date for the federal rule to May 7, 2018, but on May 18, New York City Mayor Bill de Blasio announced that enforcement of the parallel city regulation will nonetheless begin on August 21, 2017. Claiming that the city regulation is preempted by the ACA, the plaintiffs seek preliminary and permanent injunctions against enforcement and a declaration that the city regulation is preempted by federal law. Additional details appear in Issues [597](#), [603](#) and [633](#) of this *Update*.

Mislabeled Pizza Suit Can Proceed Against Whole Foods

A Tennessee federal court has ruled that a personal-injury lawsuit against Whole Foods Market can proceed because the plaintiffs



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ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.



did not plead that they were “practicing vegans” and therefore could not be expected to know that a vegan pizza product might contain nuts. *Jones v. WFM-WO*, No. 17-0749 (M.D. Tenn., order entered July 17, 2017). The plaintiff alleged that she bought two slices of “Vegan Garden Pizza” from a Whole Foods bakery, relying on the label indicating that the pizza “did not contain certain nuts and/or ingredients derived from nut products.” After her daughter ate the pizza and suffered an allergic reaction requiring hospitalization, the plaintiff called the store and talked to the department manager, who reportedly told her the pizza was “mislabelled” and that an employee had prepared it using a taco sauce containing crushed pecans.

Whole Foods argued that the pizza was exempt from the warning-label requirements of the Food, Drug and Cosmetic Act and the Food Allergen Labeling and Consumer Protection Act because it was a pre-packaged food not intended for consumption on the premises. The court rejected the claim as premature, finding the facts alleged in the complaint did not establish whether the pizza could have been eaten on the premises. However, the court did limit recovery for the plaintiffs’ claims to medical expenses and loss of services, dismissing the mother’s claims for her own emotional suffering.

Consumer Challenges Watermelon Beverage Ingredients, Production Process

World Waters, maker of WTRMLN WTR, faces a proposed class action alleging its product labeling misleads consumers into believing that the products contain mostly watermelon juice and that the beverages are “cold-pressed” rather than heat pasteurized. *Pizzirusso v. World Waters*, No. 17-4071 (E.D.N.Y., filed July 8, 2017). The plaintiff first asserts that World Water “overstates” the amount of watermelon in the mixed-fruit juice beverages. The complaint further alleges that although World Waters uses “Cold Pressed” and “Cold Pressured” to describe its products and claims on its website that the beverages are not pasteurized, the cold-pressure process heats the juices in a manner comparable to pasteurization; in addition, similar products produced by competitors apparently bear the term “High Pressure Processed.” Alleging violations of New York consumer-protection laws, breach of warranty, unjust enrichment and fraud, the plaintiff seeks class certification, injunctive relief, damages and attorney’s fees.

Salsa Maker Alleges Adulterated Tortilla Chips Caused Stroke, Emotional Distress

A Texas man alleges the tortilla chips provided for his food demonstrations were rancid and adulterated with a salt shaker and a dirty napkin, threatening his business relationships and causing him emotional distress. *Henry's Dream Distrib. v. El Matador Foods*, No. 2017-46884 (Tex. Dist. Ct., Harris Cty., filed July 14, 2017). The plaintiff asserts that in two separate incidents related to tortilla chips he purchased from El Matador Foods, a salt shaker rolled out of a bag at a sales demonstration and a dirty napkin was found in a bag that held rancid chips. According to the complaint, the plaintiff suffered a stroke after the second event. Claiming breach of contract, negligence, breach of warranty, negligent misrepresentation and violations of Texas consumer-protection law, the plaintiff seeks damages and attorney's fees.

Scottish Brewery Loses Bid to Keep “Elvis Juice” Beer Name

Scottish brewery BrewDog lost its battle to call one of its craft beers “Elvis Juice” when the U.K. Intellectual Property Office ruled that Elvis Presley’s estate still owns a trademark for “Elvis” beer. BrewDog released the grapefruit IPA in 2015, and the U.K. trademark owner, Authentic Brands Group, filed an infringement notice. The administrative body determined that consumers were likely to be confused by the names and that the average consumer would assume that the beer was produced by the Presley estate. *See CNBC*, July 12, 2017.

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