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LEGISLATION, REGULATIONS & STANDARDS

Organic Group Objects to Withdrawal of OLPP

A group of organic food producers, retailers and certifiers has published a full-page [advertisement](#) in *The Washington Post* containing the text of a letter to Secretary of Agriculture Sonny Perdue expressing the group’s objection to the withdrawal of the Organic Livestock and Poultry Practices Rule.

In the letter, the group says the elimination of the rule is “an affront to the many people and organizations engaged in a multi-year, transparent, and highly participatory process that resulted in an animal welfare standard overwhelmingly supported by organic farmers, organic companies, humane animal care advocates, and consumers Eliminating the rule not only fails to acknowledge innovation in the organic farming sector and provide fair and transparent rules, it also undermines the faith people have in how organic agriculture is governed.” The letter had 25 signatories, including Organic Valley, Whole Foods Market, the Union of Concerned Scientists, the Humane Society of the United States and the Natural Resources Defense Council.

EU To Update Fishing Rules, Ban Electric Pulse Fishing

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Shook offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

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The EU has voted to update and combine more than 30 existing fishing regulations, including the addition of a ban on electric pulse fishing and new regional measures tailored to meet the needs of industries in each sea area. The law would provide common rules governing fishing gear and methods, restrictions on fishing in certain areas or at certain times of the year, and the minimum size of fish that may be caught. The rules will also restrict catches of marine mammals, seabirds and reptiles and will include provisions to protect their habitats.

FDA Releases 2018 Strategic Policy Roadmap

The U.S. Food and Drug Administration (FDA) has released a strategic policy roadmap for 2018 identifying four primary areas on which the agency will focus this year: (i) combating addiction; (ii) improving public health; (iii) ensuring consumers are better-informed about diet, health and nutrition; and (iv) strengthening the agency's workforce and upgrading its technological resources.

In an effort to “use nutrition to reduce morbidity and mortality from disease,” FDA has indicated that it will “take new steps in 2018 to implement a comprehensive plan, incorporating a range of new efforts, to leverage dietary information to reduce the burden of disease through nutrition and encourage the development of more healthful food options.”

EFSA Reevaluates Silicon Dioxide Safety

The European Food Safety Authority (EFSA) has issued a scientific opinion reevaluating the safety of silicon dioxide used as a food additive, concluding that the available information is insufficient to confirm the current acceptable daily intake. The panel reportedly found no indication of adverse effects or genotoxicity, but it questioned a long-term study indicating silicon dioxide is not carcinogenic because the description of the primary particle size was not reported. The panel recommended that the European Commission consider lowering the current limits for arsenic, lead, mercury and cadmium in the current specifications for silicon dioxide to ensure it will not be a source of exposure to those elements.

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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.





USDA Proposes Changes to Organic National List

The U.S. Department of Agriculture (USDA) seeks public comment on proposed amendments to the National List of Allowed and Prohibited Substances that would change restrictions on some items and allow new ones. Among the changes that USDA proposes are the suggested additions of activated charcoal, mineral oil, nutritive supplements and propylene glycol. The deadline for submission of public comment is March 19, 2018.

FDA Extends Comment Period for Soy Labeling

The U.S. Food and Drug Administration (FDA) has extended the comment period for its proposed rule revoking authorization for a health claim that the consumption of soy can reduce the risk of heart disease. The agency proposed the rule in October 2017 and opened a 75-day comment period, but it has extended the deadline until March 19, 2018.

EFSA Seeks Public Comment on Nanotechnology

The European Food Safety Authority (EFSA) has opened a public consultation period on draft guidance for the agency's risk assessment of nanoscience and nanotechnology applications in human and animal food. The draft, intended to update the 2011 guidance, will include coverage of novel foods, food contact materials, food and feed additives and pesticides. It also considers in vivo and in vitro toxicology studies and outlines a tiered framework for testing. The deadline for submission of public comments is March 4, 2018.

FDA To Expedite Recall Announcements

The U.S. Food and Drug Administration (FDA) has issued draft guidance aiming to increase and expedite product warnings and

recalls. According to *FDA Voice*, recall information has historically not been released to the public until after a weeks- or months-long evaluation and classification process. The agency plans to add “not-yet-classified” recalls of drugs, food and veterinary products to its weekly Enforcement Report, but the addition will not affect existing protocols for working with companies. The deadline for submitting public comment is March 20, 2018.

LITIGATION

Plaintiffs Allege Luigi’s Real Italian Ice Cups Are Underfilled

The maker of Luigi’s Real Italian Ice is facing a proposed class action alleging that each Luigi’s cup contains 5.5 ounces of the product despite packaging listing the contents as six ounces. *Orbach v. J&J Snack Foods Corp.*, No. 18-0321 (S.D.N.Y., filed January 12, 2018). The plaintiffs allege that both the outer packaging and the cup lids indicate that each cup contains six fluid ounces. Claiming breach of warranties, unjust enrichment, violations of New York and Massachusetts laws governing deceptive acts and practices, false advertising and fraud, the plaintiffs seek class certification, damages, restitution, injunctive relief and attorney’s fees.

Companies Dispute the Use of “Delicious Tamales”

Delicious Inc. has filed a lawsuit alleging Texas restaurant Delicious Tamales and its owners have infringed on Delicious Inc.’s trademark. *Delicious Inc. v. Lopez*, No. 18-0041 (W.D. Tex., filed January 12, 2018). Delicious Inc. argues that it has owned the federal rights to the “Delicious Tamales” mark since 2012 in the categories of “Tamales, bunuelos, hot sauce and tortillas” as well as “Chile con carne, and Mexican barbecue, namely, prepared meat.” In 2017, the defendants opened a restaurant under the Delicious Tamales name, “brazenly located” a “mere one mile from Plaintiff’s long-established location” in San Antonio.

Delicious Inc. alleges it received “numerous complaints from customers regarding the quality of the food sold at Defendant’s location” because they believed “that both locations were owned by the same individuals or company.” Alleging violations of the Lanham Act as well as state trademark infringement, the plaintiffs seek a permanent injunction, damages, costs and attorney’s fees.

MEDIA COVERAGE

“Rotten” Documentary Series Explores Food Issues

From the rise in food allergies to the changing economics of agriculture and animal husbandry, documentary series “Rotten” examines a range of factors that affect the food and beverage industry. Episodes include “Lawyers, Guns & Honey,” which explores how foreign honey enters the U.S. market; “Big Bird,” which documents the effects of JBS’ purchase of Pilgrim’s Pride on U.S. poultry farmers; and “Milk Money,” which examines the benefits and risks linked to the sale of raw milk.

The final episode, “Cod is Dead,” details the effects of catch limits on commercial fisheries and reviews the case of Carlos Rafael, the “Codfather.” Since the release of “Rotten,” the National Oceanic and Atmospheric Administration has reportedly sought to prevent Rafael and his businesses from reentering the fishing industry after he is released from prison.

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