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ISSUE 680 | July 18, 2018



LEGISLATION, REGULATIONS & STANDARDS

California Bans New Soda Taxes

California Governor Jerry Brown has signed the [Keep Groceries Affordable Act](#), a statute preventing local agencies in the state from imposing taxes or fees on groceries, including “carbonated and noncarbonated nonalcoholic beverages,” until January 1, 2031. The law, which exempts taxes that do not specifically refer to groceries as a target classification, also invalidates any “tax, fee, or other assessment on groceries imposed by a local agency after January 1, 2018,” but will not invalidate taxes on sugar-sweetened beverages in [San Francisco](#) and [Berkeley](#).

France Targets Non-French Wine, Champagne

France’s Institut National de l’Origine et de la Qualité has filed an [opposition](#) with the U.S. Trademark Trial and Appeal Board contesting Teastream LLC’s application to register “Champagne’s Sober Cousin” for tea products. *Institut National de l’Origine et de la Qualité v. Teastream LLC*, No. 91241975 (T.T.A.B., opposition filed June 25, 2018). The French agency asserts that the mark would infringe on the country’s protected designation of origin for sparkling wines from the Champagne region, allegedly

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resulting in “dilution by blurring and by tarnishment” of a famous mark.

Meanwhile, France’s Directorate General of Competition, Consumer Affairs and Fraud Control has reportedly investigated “anomalies, deceptions and fraud” in the sale of Spanish wine. The investigation purportedly found that several merchants sold as many as 10 million bottles of Spanish wine as French by falsely marking the bottles with “vin du France” or misleadingly marketing them with French elements, such as the French flag, a fleur-de-lis or an image of a chateau. The agency has reportedly filed 25 criminal charges against multiple companies.

Seattle Plastic Straw, Utensils Ban Takes Effect

Seattle’s ban on plastic straws and utensils took effect July 1, 2018, after the expiration of an exemption in a 2008 law requiring one-time-use food-service items to be compostable or recyclable. The law, which includes a medical necessity exception, can impose fines of \$250 on businesses that fail to comply. Other U.S. cities have considered similar bans on plastic straws, including Washington, D.C.

LITIGATION

Whole Foods Juice Allegations to Proceed on “Fresh,” “Unpasteurized” Claims

A New York federal court has dismissed some allegations in a lawsuit alleging Whole Foods Market Group Inc. and Freshbev LLC mislabeled juice products but will allow three claims to proceed. *Campbell v. Freshbev LLC*, No. 16-7119 (E.D.N.Y., entered July 2, 2018). The plaintiff alleged that the companies mislabeled the juices as unpasteurized, cold-pressed and fresh and that Ripe Craft Juice 12.2 Northeast Blend Cranberry Apple contained more apple juice than cranberry in the blend. The court dismissed the allegation that the “cold-pressed” labels were misleading because the juices are subjected to high-pressure processing, finding that a “reasonable consumer would not

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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.

mistake the cold-pressed claim to be a claim that pressure was never applied to the juice products.” The court permitted three state-law claims related to the “fresh” labels, the “unpasteurized” label on cranberry juice, and the “Cranberry Apple” juice ingredients to continue but dismissed claims for injunctive relief and fraud.

Plaintiffs Allege Campbell’s “No Preservatives” Soups Contain Chemical Preservatives

Campbell Soup Co. faces a putative class action alleging that it deceptively markets its soups as having “No Preservatives Added” or being “Made With Patience, Not Preservatives” despite containing citric acid, ascorbic acid or other preservatives. *Cabrega v. Campbell Soup Co.*, No. 18-3827 (E.D.N.Y., filed July 2, 2018). The complaint alleges that such statements violate consumer-protection statutes nationwide and are common law fraud. The plaintiffs seek class certification, damages, corrective advertising, injunctive relief and attorney’s fees.

Lawsuit Challenges Kerrygold Butter’s Made From “Grass-Fed Cows” Claim

A consumer has filed a putative class action alleging Ornuia Foods North America misleadingly marketed its Kerrygold butter as produced from grass-fed cows because the cows are fed for part of the year with soy, corn and other grains. *Myers-Taylor v. Ornuia Foods N. Am.*, No. 18-1538 (S.D. Cal., filed July 6, 2018). The plaintiff asserts Ornuia charges a premium based on the grass-fed-cows claim because butter produced from grass-fed cows purportedly contains higher levels of conjugated linoleic acid, omega-3 fatty acids, butyric acid and vitamins A and K2 than butter from grain-fed cows. Claiming violations of the California consumer-protection statutes, breach of express warranty, fraud and negligent misrepresentation, the plaintiff seeks class certification, restitution, damages and attorney’s fees.

Plaintiff Alleges Good Health Veggie

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.



Snacks Are Not Healthy

Utz Quality Foods LLC and Good Health Natural Products Inc. face a potential class action alleging that the companies replaced a blend of vegetable-derived ingredients with synthetic additives in their Extra Goodness! products, including vegetable straws and chips. *Feldman v. Utz Quality Foods, LLC*, No. 18-6004 (S.D.N.Y., filed July 3, 2018). The complaint alleges that the companies deceptively marketed and misbranded the snacks, which were previously made with a proprietary blend of spinach, broccoli, carrots, tomatoes, beets and shiitake mushrooms. The plaintiff contends that Utz and Good Health stopped buying the blend in December 2016 and replaced it with a “cheaper synthetic blend” but did not update the ingredient list for more than a year. Moreover, the plaintiff contends that the current product does not contain “significant amounts of the vegetables or vegetable-derived vitamins depicted, and are not healthful.” Claiming deceptive acts or practices, false advertising, breach of warranties and unjust enrichment, the plaintiff seeks class certification, damages, injunctive relief and attorney’s fees.

Lawsuit Challenges “Alkaline” Water Claims

A consumer has filed a putative class action alleging Trader Joe’s Co. misleads consumers with its alkaline water, which the company purportedly markets as “ionized to achieve the perfect balance.” *Weiss v. Trader Joe’s Co.*, No. 18-1130 (C.D. Cal., S. Div., filed June 26, 2018). The complaint asserts that Trader Joe’s charges a premium for its alkaline water despite that “no genuine scientific research” supports the representations, including that the pH level of “9.5+” can provide additional hydration and balance out the acidity of certain foods. The plaintiff seeks class certification, injunctive relief, damages and attorney’s fees for alleged violations of California’s consumer-protection statutes.

SCIENTIFIC / TECHNICAL ITEMS

Consumer Reports Survey Finds

Preference for Use of “Lab Grown Meat” Over “Clean Meat”

Consumers Union has announced the results of a phone survey asking consumers how meat products created from cultured animal cells in a laboratory should be labeled. The survey purportedly found that 49 percent of respondents indicated that the products should be labeled as meat with an explanation of its production and 40 percent answered that the products should be labeled as “something other than meat,” while five percent of respondents said that they should be labeled as meat without further explanation.

The survey also reportedly found that “lab-grown meat” and “artificial or synthetic meat” were the most popular answers about what the products should be called, while “cultured meat,” “clean meat” and “in vitro meat” were less popular.

Study Purports to Find Increased Consumer Acceptance of GMOs After Labeling Mandate

Researchers at the University of Vermont have published the results of a study comparing consumer attitudes towards genetically modified organisms (GMOs) before and after implementation of the state’s labeling mandate. Jane Kolodinsky et al., “Mandatory labels can improve attitudes toward genetically engineered food,” *Science Advances*, June 27, 2018. Funded in part by the U.S. Department of Agriculture, the study reported that opposition to GMO food in Vermont dropped by 19 percent after the label law took effect.

“Our findings put to bed the idea that GMO labels will be seen as a warning label,” one researcher was quoted as saying in a press release. “What we’re seeing is that simple disclosures, like the ones implemented in Vermont, are not going to scare people away from these products.”

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