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LEGISLATION, REGULATIONS & STANDARDS

AAFCO Issues Guidelines on Hemp in Animal Food

The Association of American Feed Control Officials (AAFCO) has issued [guidelines](#) on the 2018 Farm Bill and its removal of hemp from the list of controlled substances. “As of April 2019, hemp and hemp products may not be used in animal feed or pet food in the United States,” the guidelines state.

“In 2015 AAFCO asked the hemp industry to come forward and present information for the scientific review to establish definitions for animal foods made from the industrial hemp plant. We expected information on hemp seed oil, hemp seed meal, and whole hemp seeds. Although there are private companies and organizations working on applications, to date, the industry has not submitted any data showing that ingredients derived from the hemp plant are safe and useful in animal food. AAFCO is encouraging the industry to submit their data promptly.”

The guidelines also advise that feed with cannabidiol (CBD) is not approved. “[P]arts of the hemp plant will not be appropriate for approval as an animal feed ingredient. As such, products that contain CBD as a feed ingredient could be labeled adulterated or misbranded and be subject to regulatory actions by state agencies.”

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“Aside from CBD, there are parts of the plant, such as hemp seeds, that have the potential to be approved for animal feed,” the guidelines conclude. “AAFCO continues to encourage interested parties to work on submitting a proper application either through the AAFCO or the [U.S. Food and Drug Administration] review process.”

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EFSA Issues Opinion on Titanium Dioxide as a Food Additive

Following the French Agency for Food, Environmental and Occupational Health and Safety’s opinion suspending the sale of food products containing titanium dioxide—a food additive appearing in chewing gum, sauces and baked goods—the European Food Safety Authority (EFSA) has issued a statement asserting that no further research has been published that would cause the agency to amend its previous opinion that the substance “did not raise concern with respect to genotoxicity and that it was not carcinogenic after oral administration.” EFSA notes that its earlier opinion “identified data gaps and uncertainties that required follow-up by the European Commission by means of a subsequent call for additional data” but that the French opinion did not fill those gaps.



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The statement also follows the submission of a letter to the European Commission from several civil society organizations based in France, Italy and other member countries calling on the entity to “put forward a legislative proposal removing E171 [titanium dioxide] from the EU list of permitted food additives.” The letter also urges the EC “not to raise any objections or initiate any legal proceedings against the French measure.”



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General Codex Meeting Scheduled

The U.S. Department of Agriculture has announced a June 21, 2019, public meeting to discuss several general Codex Alimentarius Commission issues, including the adoption and revocation of Codex Texts, amendments to Codex Standards, the Codex Strategic Plan 2020-2025 and matters arising from the Food and Agriculture Organization of the United Nations and the World Health Organization. The meeting will also feature a

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.

discussion of budgetary and financial matters, including a 2018-2019 progress report and a proposal for 2020-2021.

LITIGATION

“Wildberry Acai” Toaster Pastries Lack Enough Acai, Complaint Alleges

A consumer has filed a putative class action alleging that Nature’s Path Foods USA Inc. misleads consumers by marketing the filling of its Wildberry Acai Toaster Pastries as containing high levels of acai berries despite containing more apples, raspberries, blueberries and other fruits. *Louis v. Nature’s Path Foods USA Inc.*, No. 19-2584 (E.D.N.Y., filed May 1, 2019). The complaint features an image of the front and back labels, alleging that acai berries account for 45 percent of the berries shown in packaging images, and the plaintiff asserts that the “use of the term ‘acai’ in the Product name and the numerical superiority of the acai berries depicted relative to other berries cause a reasonable consumer to expect the Products contain more acai berries than other identified and named fruit ingredients.”

The plaintiff also alleges that the ingredient list includes a number of fruits—apples, blueberries, strawberries and others—in whole form but includes only “acai powder,” which “is made through concentrating and pasteurizing fresh juice, mixing it with a carrier to ensure stable drying and feeding it through a spray dryer”; as a result of “the high heat and fast evaporation, antioxidant activity and flavor compounds are significantly diminished.” For alleged violations of California’s consumer-protection statutes as well as negligent misrepresentation, fraud, breach of warranties and unjust enrichment, the plaintiff seeks class certification, injunctions, restitution, damages and attorney’s fees.

Anchor Brewing Asserts Rights to “Steam Beer” Trademark

Anchor Brewing Co. has filed an opposition against D.G. Yuengling & Son Inc.’s application to register “James River Steam Brewery” as a trademark, arguing that the proposed mark will

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.



confuse consumers familiar with its product Anchor Steam. *Anchor Brewing Co. v. D.G. Yuengling & Son Inc.*, No. 91247967 (U.S.P.T.O., opposition filed May 3, 2019). Anchor asserts that it owns the rights to use “Steam Beer,” which describes “an indigenous style of beer known as California common beer.” The use of “James River Steam Brewery,” Anchor argues, “is likely to create the false impression that Applicant’s goods are provided by, related to, endorsed by, or associated with Opposer.”

MEDIA COVERAGE

NPR Explores Lab-Grown Fish Possibilities

National Public Radio (NPR) has published a piece on BlueNalu, a company aiming to market and sell fish cultivated in a laboratory. “[U]nlike today’s wild-caught or farmed fish options, BlueNalu’s version of seafood will have no head, no tail, no bones, no blood. It’s finfish, just without the swimming and breathing part,” the article explains. “It’s seafood without the sea.” BlueNalu is one of six companies working on lab-grown seafood, NPR reports, and all are “likely five to 10 years away from having actual product on the market.”

A BlueNalu executive told NPR that he is confident the products will not “end up languishing within the [U.S. Food and Drug Administration] for years, the way AquaBounty’s genetically modified salmon did,” partly because lab-grown fish is “not using any genetic modification” such as CRISPR. “We aren’t introducing new molecules into the diet. We’re not introducing a new entity that doesn’t exist in nature,” the executive is quoted as saying. “The approval will be about whether this is safe, clean and are the manufacturing processes reliable and accountable.”

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