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LEGISLATION, REGULATIONS & STANDARDS

FDA Issues Guidance on “Potassium Chloride Salt”

The U.S. Food and Drug Administration (FDA) has issued [draft guidance](#) for industry on the use of “potassium chloride salt” on food labels as an acceptable alternative to the use of the common or usual name “potassium chloride.” The guidance indicates that the agency recognizes that food manufacturers “wishing to reduce sodium chloride in their products sometimes use substitute ingredients that provide similar taste and technical functions of sodium chloride in foods,” including potassium chloride, which is generally recognized as safe for use as a flavor enhancer, flavoring agent, nutrient supplement, pH control agent, stabilizer and thickener. [Comments](#) on the draft guidance will be accepted until July 19, 2019.

Bill Introduced to Ban PFAS in Food Containers

U.S. Rep. Debbie Dingell (D-Mich.) has [introduced](#) legislation that would “ban the use of toxic perfluorinated compounds (PFAS) in food containers and cookware.” The Keep Food Containers Safe from PFAS Act would give the U.S. Food and Drug Administration

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authority to deem PFAS chemicals in food containers as unsafe by 2022. “We already know the double cheeseburger and fries are not the most healthy meal, but no one suspects the dangerous chemicals seeping into your food from the wrapper or food containers,” Dingell is quoted as saying in a press release. “This important legislation ensures unsafe, hazardous chemicals are not allowed near the food we eat.”

EU Finalizes Ban on Some Single-Use Plastics

The Council of the European Union has voted to adopt measures banning “the 10 single-use plastic products most often found on European beaches,” including cutlery, plates, straws, drink stirrers, cups and other food and beverage containers. The ban focuses on products for which alternatives not constructed of single-use plastic are readily available. The decision will take effect 20 days after it is published in the Official Journal of the European Union, and member countries will have two years to implement the legislation in their national laws.

LITIGATION

Plaintiff Challenges Oreos’ “Real Cocoa” Content

Mondelez International Inc. allegedly markets its Oreos as containing “Real Cocoa” despite containing “cocoa processed with alkali.” *Harper v. Mondelez Int’l Inc.*, No. 19-2747 (N.D. Cal., filed May 20, 2019). A plaintiff has asserted that the claim “‘Always made with Real Cocoa’ or ‘Real Cocoa’ is intended to differentiate the cocoa in the Products from cocoa that has been processed, such as cocoa powder ‘processed with alkali,’” and Mondelez allegedly misleads consumers by including processed cocoa rather than unprocessed cocoa in Oreos. “No reasonable consumer would expect the cocoa in the Products to have been processed with alkalis, because ‘real’ represents the cocoa powder is included in its most unadulterated, non-artificial form,” the plaintiff argues. “It is false, deceptive and misleading to conspicuously promote ‘real cocoa’ without any reference to the presence and

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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.

use of alkalis either preceding or following because ‘real cocoa’ without any modifying terms implies the absence of artificial ingredients in the cocoa.” The plaintiff alleges fraud and violations of California consumer-protection statutes and seeks class certification, damages, injunctive relief and attorney’s fees.

Company Alleges Anti-Competitive Actions for Norwegian Farm-Raised Salmon

Cape Florida Seafood has filed a lawsuit alleging that several companies have “conspired since at least 2015” to fix prices on farm-raised Norwegian salmon. *Cape Fla. Seafood v. Mowi ASA*, No. 19-22002 (S.D. Fla., Miami Div., filed May 17, 2019). The complaint asserts that salmon prices before 2015 were correlated with the cost of feed protein, while after 2015, “regression analyses indicate that . . . as fishmeal prices declined, farm-raised salmon prices increased.” The plaintiff asserts that the regression analyses “are concrete evidence that farm-raised salmon prices were not increasing as a response to costs and, instead, were being affected by Defendants’ combination, contract, and/or conspiracy.” Cape Florida Seafood seeks class certification and damages for the alleged unlawful restraint of competition in violation of the Sherman Act.

Stewart’s Cream Soda Lacks Real Vanilla, Lawsuit Alleges

A consumer has filed a putative class action alleging that Stewart’s Fountain Classics beverages are misleadingly marketed as having a “Creamy Vanilla Taste” despite containing artificial flavors. *Dalton v. Mott’s LLP*, No. 19-2960 (E.D.N.Y., filed May 19, 2019). The plaintiff admits that the label discloses the product contains artificial flavors but argues that the “nostalgic imagery and glass bottles assist in focusing the consumers’ attention on the upper-right characterizing flavor claim, and away from the inconspicuous disclosure of artificial flavors at the bottom of the label.” For alleged violations of California’s consumer-protection statutes, negligent misrepresentation, fraud and unjust

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.



enrichment, the plaintiff seeks class certification, injunctive relief, damages and attorney's fees.

MEDIA COVERAGE

Article Examines Human Effects of SSB Tax

A *New York Times* [article](#) has documented how Philadelphia's tax on sugar-sweetened beverages (SSBs) has affected the residents of the city. The article, published days before the city's Democratic primary for mayor, speculates that the tax could be eliminated if the primary challengers were to beat Mayor Jim Kenney; although the mayor won the May 21, 2019, primary, the article compiles multiple negative perspectives of the tax and its effects. "In my district, 95 percent of the residents hate it," one councilperson is quoted as saying. "The people who buy \$7 lattes say the poor should be drinking water, but no one is considering the fact that my constituents live in food deserts with no access to fresh fruit and vegetables."

A Philadelphia business owner told the *Times* that his company has lost customers because the tax has sent consumers to suburban grocery stores to purchase SSBs along with the rest of their groceries. One such consumer called the tax "ridiculous" and told the news outlet that she makes the trip to purchase SSBs outside of Philadelphia twice a month. Kenney has reportedly said that the solution to the complaint from the business owner is a statewide SSB tax, but the *Times* notes that "the prospects of such a measure appear dim."

Citrus Growers Look to Antibiotics to Fight Citrus Greening

In an effort to combat citrus greening, some citrus farmers have reportedly begun spraying antibiotics on their trees, sparking concerns about antibiotic resistance, according to the *New York Times*. The Environmental Protection Agency (EPA) apparently approved the use of streptomycin and oxytetracycline for

emergencies “despite strenuous objections from the Food and Drug Administration and the Centers for Disease Control and Prevention” and the existence of bans on similar uses in Europe and Brazil. The *Times* calls the growers’ current use and the levels that EPA has approved for the future “the largest use of medically important antibiotics in cash crops” and contrasts the decision to the ban on antibiotics used to promote growth in farm animals. One plant pathologist reportedly told the *Times* that EPA prohibits the application of antibiotics 40 days before harvest, resulting in “little chance consumers would ingest the drugs.”

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