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SPOTLIGHT

Shook Takes the Pulse of General Counsel on Maturation of Global Cannabis Market

More than half of in-house counsel surveyed in a new white paper by Shook, Hardy & Bacon plan to increase legal spending in the next two years to accommodate the evolving cannabis market, with a significant growth in litigation threats anticipated over the next decade.

[Read the results of the white paper >>](#)

“Articles and comments from industry players (and its detractors) often invoke images from the wild, wild West, and that might be a fair assessment in that the legal landscape for these products remains unclear,” stated Shook Partner [Katie Gates Calderon](#), co-chair of the firm’s new [Cannabis Law Practice](#).

Shook, Hardy & Bacon’s Cannabis Law Practice has released a report in partnership with ALM Media, exploring the impact of the global cannabis economy on the food and beverage, health and wellness, and consumer goods industries. The results of this in-house counsel survey show that legal departments outside the cannabis industry itself are increasingly concerned over regulatory, employment and litigation threats related to this emerging market.

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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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[Mark Anstoetter](#)

“It’s no surprise that many survey respondents—particularly those in the life science, health and wellness, and personal-care product space—are already navigating complex regulatory and employment questions around the cannabis sector, while also seeking to protect their assets and investments,” notes the white paper. “But legal departments already predict that, when it comes to cannabis-related issues, the share of their legal budgets devoted to intellectual property matters will slightly decline over the next two years, even as other concerns around labeling and liability come to the fore.”

Titled “Wild West or New Frontier? Global Cannabis Market Spurs Legal Spend Across All Sectors,” the white paper draws on feedback from in-house counsel in the following areas: food, pharmaceuticals, health and wellness (25 percent); software and technology (21 percent); financial and professional services (16 percent); and retail and manufacturing (10 percent), among others. In the next decade, these companies view the following as the most pressing legal liability issues for their businesses:

- Government enforcement;
- Employment disputes;
- Consumer class actions; and
- Personal injury matters.

The legal issues are likely to occur as they navigate supply chains, contracts and regulations related to the introduction of hemp, cannabidiol oil and other cannabis-related products into commerce, where state laws often conflict with the federal prohibition on cannabis in the United States.

To this end, Shook earlier this year announced its own practice area focused on the intersection of the cannabis market with more traditional economic sectors. Led by Calderon and Shook Partner Greg Wu, Shook’s Cannabis Law Practice draws on the experience of more than 30 attorneys across its 14 offices to help national and multinational companies consider risk in this emerging arena from multiple angles: indemnity, insurance, regulatory, litigation, and market-specific business risks. In addition, when and if product liability, marketing or labeling litigation occur, Shook’s storied reputation as a premiere trial firm established in product liability positions the 130-year-old firm to handle these evolving issues with creative solutions.

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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.

“We have fielded a variety of calls across a wide swath of industries and looked at a number of interesting legal issues touching on areas ranging from product development, distribution and sale, legislative and public policy, risk management and supply chain management,” concludes Wu in the white paper. “These questions have been as broad as ‘what types of products can be sold and in what states,’ to more definite inquiries regarding analyses of proposed contractual provisions for supply chain management and indemnification.”

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.

LEGISLATION, REGULATIONS & STANDARDS

FDA Issues Revised Fish Consumption Guidance for Pregnant Women

The U.S. Food and Drug Administration (FDA) has issued guidance revising advice for pregnant women about safe fish consumption. “Advice About Eating Fish: For Women Who Are or Might Become Pregnant, Breastfeeding Mothers, and Young Children” includes “a statement that eating fish when pregnant or breastfeeding can provide health benefits and states that fish and other protein-rich foods have nutrients that can help children’s growth and development. The revisions also include a statement that, as part of a healthy eating pattern, eating fish may offer heart health benefits and lower the risk of obesity. The revised advice also makes clear that many types of fish are both nutritious and lower in mercury.” FDA will accept comments until September 9, 2019, about suggested additional target populations for the advice, suggestions for effective means to distribute the advice and other information that may be useful to include.

EU Arrests Organized Crime Group Selling “Organic” Food Produced with Decomposed Apples

Eurojust, with Italian and Serbian national authorities, has arrested nine suspects allegedly perpetrating a “transnational large-scale fraud in the production and trade of allegedly organic food and beverages from rotten apples.” The apples were



apparently used to create juice, jams and other canned food products adulterated with “mycotoxins and other toxic chemical substances, unsuitable for human consumption and dangerous for public health.” The products were “refined with water and sugars, and falsely labelled and promoted as organic products of European origin.”

USDA Issues Guidance on Meal Kits

The U.S. Department of Agriculture (USDA) has released guidance on meal kits requiring inspection by the agency’s Food Safety and Inspection Service (FSIS). The guidance indicates that meal kits do not require assembly subject to FSIS inspection if (i) the “meat or poultry component is prepared and separately packaged under FSIS inspection and labeled with all required features”; (ii) the “outer kit label identifies all of the individual components in the kit”; and (iii) the “outer kit label clearly identifies the product as a single unit or ‘kit,’ such as ‘Chicken BBQ Dinner Kit’ and ‘Beef Lasagna Meal.’”

New Zealand Restaurant Investigated for Plant-Based Meat Use Without Disclosure

A New Zealand pizza restaurant is reportedly under investigation after it sold 3,000 “Burger Pizzas” that only featured a plant-based meat substitute rather than animal-derived meat. The company marketed the pizza topping as a “medium rare burger patty,” and a company manager apparently asserted to the BBC that the description was accurate on its face. Many consumers seemed to respond negatively, noting that the stunt could have triggered allergies because of the lack of proper ingredient disclosure. The manager reportedly told BBC, “If covertly adding meat-free options onto a pizza encourages more people to be open-minded, we’re happy to do that.”

LITIGATION

OCA Alleges Twinings Misleads With “Pure” Claims

The Organic Consumers Association (OCA) has alleged that Twinings North America Inc. misleads consumers by representing its tea products as “pure” and “natural” despite containing traces of pesticides. *Organic Consumers Ass’n v. Twinings N. Am. Inc.*, No. 2019 CA 4412 (D.C. Super. Ct., filed July 5, 2019). The advocacy group alleges that “[t]ests conducted by an independent laboratory using liquid chromatography mass spectrometry revealed the presence of thiacloprid in the Green Tea at levels of up to 0.156 milligrams per kilogram” and argues that Twinings knowingly misrepresents its products as “pure” to appeal to consumers looking for pesticide-free products. For an alleged violation of the D.C. Consumer Protection Procedures Act, OCA seeks an injunction, costs and attorney’s fees.

Vegan Food Co. Challenges Mississippi Meat Law

Upton’s Naturals Co. has filed a lawsuit challenging Mississippi’s law prohibiting the use of “meat” to describe products that are not derived from animals. *Upton’s Naturals Co. v. Bryant*, No. 19-0462 (S.D. Miss., filed July 1, 2019). Upton’s, which makes “vegan burgers,” “vegan bacon” and “vegan chorizo,” argues that the law is a “content-based regulation of speech” that “has no positive impact on society”—rather, it “harms society”—and “does not address any real problem in a meaningful way, but instead creates an artificial one” because it lowers consumer understanding of vegan products. Upton’s seeks declaratory judgment that the law violates the First and Fourteenth Amendments, preliminary and permanent injunctions, attorney’s fees and \$1 in damages.

Barilla Citric Acid Suit Partially Dismissed

An Illinois federal court has dismissed part of a lawsuit alleging that Barilla America Inc. misleads consumers about whether its sauce contains preservatives because it contains citric acid. *Kubulius v. Barilla Am Inc.*, No. 19-6656 (N.D. Ill., E. Div., entered July 2, 2019). The court declined to apply Illinois law, finding that the plaintiff’s claim was based “on a single statement he claims to have seen on a single product label during a straightforward retail purchase transacted in New York.” Further,

the court noted, “apparent from the complaint is that plaintiff’s statutory and common law consumer fraud claims cannot feasibly be maintained as a nationwide class action” because the asserted laws in each state are different. The court allowed the plaintiff’s New York fraud claims to continue.

RFK Jr. Group Sues Baby Food Co. For “Natural” Representation

Children’s Health Defense, an organization founded and chaired by Robert F. Kennedy, Jr., has filed a lawsuit alleging that Beech-Nut Nutrition Co. misrepresents its baby-food products as “100% natural” despite containing pesticide residues. *Children’s Health Def. v. Beech-Nut Nutrition Co.*, No. 2019 CA 4475 (D.C. Super. Ct., filed July 8, 2019). The organization alleges that Beech-Nut markets its products as “100% natural,” which the company website apparently defines as “simple, all-natural ingredients from places that nurture their fruits and vegetables and care about their quality. We never use artificial preservatives—nobody really needs modified starch, salt or harsh spices, especially babies. ... We’re not a fan of pesticides; our internal standards are significantly stricter than federal requirements.” The complaint asserts that an independent laboratory tested the products and found pesticide residues in several varieties.

The organization alleges a cause of action under the District of Columbia Consumer Protection Procedures Act and notes that under D.C. law, a nonprofit may “bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.”

Scotch Whisky Association Sues Distiller For “Highland” Use

The Scotch Whisky Association has filed a lawsuit alleging that the name of Virginia Distillery Co.’s Virginia-Highland Whisky misleads consumers into believing the alcohol beverage is a product of Scotland. *Scotch Whisky Ass’n v. Va. Distillery Co.*, No. 19-1264 (D. Del., filed July 8, 2019). The complaint asserts the

Virginia Distillery Co. product is described as “Whisky from Scotland married with Virginia Whisky,” allegedly violating federal regulations prohibiting the use of “words commonly associated with Scotland to designate any product not wholly produced in Scotland,” including “Highland” and “Highlands.” The association seeks an injunction, a recall, fees and costs for allegations of false advertising, unfair competition and deceptive trade practices.

SCIENTIFIC / TECHNICAL ITEMS

Study Purportedly Links SSB Consumption and Cancer

French researchers have published a study in *BMJ* purportedly finding that the consumption of sugar-sweetened beverages (SSBs) “was significantly associated with the risk of overall cancer” while the “consumption of artificially sweetened beverages was not associated with the risk of cancer.” Chazelas et al., “Sugary drink consumption and risk of cancer: results from NutriNet-Santé prospective cohort,” *BMJ*, July 10, 2019. The researchers tracked the SSB consumption—including soft drinks, syrups, juices, hot beverages, sports drinks and energy drinks—of 101,257 participants through “repeated 24 hour dietary records” for periods between five and nine years. The results apparently showed that an increased consumption of 100% fruit juice “was positively associated with overall cancer rate” while the “association between sugar sweetened soda specifically and cancer rate was borderline non-significant.”

BMJ also published an opinion piece responding to Boris Johnson’s assertion that he may review the effectiveness of U.K. SSB and other “stealth sin” taxes if he becomes prime minister. The author, a public health specialty registrar, argues that the evidence is strong to support the connection between SSB consumption and negative health effects as well as for the effectiveness of SSB taxes.

MEDIA COVERAGE

Start-Ups to Develop Lab-Grown Dairy

Products

Bloomberg has published an [article](#) on companies looking to create dairy products from laboratory-grown whey that could compete with the livestock-derived whey that sold an estimated \$10 billion in 2018. One featured start-up, Perfect Day, reportedly asserted that “its proteins require 98% less water and 65% less energy than that required to produce whey from cows” but the company must overcome “consumer squeamishness and regulatory reviews that may end up focusing more on the genetically modified organisms [GMO] used to make lab-grown whey.” Perfect Day “wants to rebrand microbes used in food—yeast, fungi, bacteria—as flora, a more consumer-friendly term,” *Bloomberg* reports, to attract vegans who may avoid something labeled “milk protein” and other consumers who may skip products described as “lab-grown” on the label. “We are trying to explore how we can get a term for this industry that’s outside of plant-based,” one of the founders reportedly told *Bloomberg*. “Something someone with a plant-based diet can eat, but it’s not from plants. It’s an animal protein, but not from animals.”

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