



LEGISLATION, REGULATIONS & STANDARDS

FDA Issues Warning Letter to CBD Co. for Unsubstantiated Claims

The U.S. Food and Drug Administration (FDA) has issued a [warning letter](#) to Curaleaf Inc. for “illegally selling unapproved products containing cannabidiol (CBD) online with unsubstantiated claims that the products treat cancer, Alzheimer’s disease, opioid withdrawal, pain and pet anxiety.” FDA cites the company’s website and social media accounts to assert that Curaleaf’s marketing establishes its products—including “Bido CBD for Pets”—as drugs or animal drugs because the products are portrayed as able to help alleviate anxiety and fear, among other purported benefits.

The agency also indicated that it will update the public on its progress towards creating a CBD regulatory framework by fall 2019. “We understand this is an important national issue with public health impact and of interest to American hemp farmers and many other stakeholders. The agency has a well-established pathway for drug development and drug approvals, and we remain committed to evaluating the agency’s regulatory policies related to other types of CBD products,” an FDA official stated in a [press release](#). “We plan to report our progress by early this fall as we expedite our work to address the many questions about CBD. The step-wise, science-based approach we’re taking protects

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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](#)

patients and the public health, fosters innovation for safe and appropriate products, and promotes consumer confidence.”

Shook’s [Cannabis Law Team](#) released a white paper on the legal landscape for the global cannabis market suggesting that governmental entities may increase enforcement action against companies for unsubstantiated claims. [Read more >>](#)

UK Opens Consultation on Health and Nutrition

The U.K. Cabinet Office has begun an [open consultation](#) on general health policies, including nutrition initiatives. The consultation includes an announcement that the government will ban the sale of energy drinks to children under 16, with the full policy to be announced “in our consultation response shortly.” The consultation response will also include details of a proposed policy on “making calorie labelling mandatory in the out-of-home sector, such as restaurants, takeaways and cafes.” Further, the government has identified five areas of the country that will test programs to restrict advertising for foods high in fat, sugar and salt, incentivize business to “improve their retail offer,” improve accessibility and affordability of healthy foods and “create healthier food environments through the planning system.” The consultation also includes plans for “infant feeding, clear labelling, food reformulation improving the nutritional content of foods, and support for individuals to achieve and maintain a healthier weight.”

Seafood Processor Guilty on Falsely Labeling “Product of USA” Crab Meat

The U.S. Department of Justice (DOJ) has [announced](#) that Michael Casey, vice president of Casey’s Seafood Inc., has pleaded guilty to charges of falsely labeling almost 400,000 pounds of crab meat as derived from Atlantic blue crab in the United States despite importing the meat from a number of countries, including Indonesia, China, Thailand and Vietnam. Casey’s guilty plea comes after a conviction for his father on similar charges. The foreign crab meat, which the company reportedly repacked into

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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.

containers labeled “Product of USA,” had a wholesale value of approximately \$4,324,916.

“U.S. consumers expect the origin of their seafood to be correctly identified. When sellers attempt to deceive the public about their product’s origins, they put the public’s health at risk by introducing seafood of unknown origin,” a DOJ investigator is quoted as saying in an agency press release. “When sellers are deceptive about their products’ origins, they deprive the public of important information about their purchasing decisions. We will continue to investigate and bring to justice those who put profits above fair dealing.”

EU Agency Releases Guidance on Use of Insects in Food

The EU International Platform of Insects for Food and Feed (IPIFF) has released [guidance](#) intended to assist industry with labeling provisions for insect-based foods. “While specific insect-based products are currently approved by certain Member States, it is foreseen that a number of novel food applications will be authorised by the European Commission in the near future – eliminating the barriers for the EU trade of edible insect-based products,” a [press release](#) states. The guidance includes instructions for nutrition and health claims, country of original labeling, allergen labels, food naming and ingredient listings.

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.



LITIGATION

Stoney Patch Infringes Trade Dress, Alleges Sour Patch Maker

Mondelez Canada Inc. has filed a lawsuit in California federal court alleging Stoney Patch cannabis-infused gummies infringe the trademark and trade dress of Sour Patch gummy candies. *Mondelez Canada Inc. v. Stoney Patch*, No. 19-6245 (C.D. Cal., W. Div., filed July 19, 2019). Stoney Patch candies, which contain tetrahydrocannabinol (THC), and Sour Patch Kids are both sold in yellow bags with green accents featuring the first word of the brand in green, all-caps sans serif type and “Patch” in the same

type in orange. Where the Sour Patch Kids bag features silhouettes of the candies—colorful gummies in humanoid shapes—the Stoney Patch bag features images of a marijuana leaf. Mondelez argues that “it is inconceivable” that Stoney Patch adopted its mark without notice of the Sour Patch design and Mondelez’ trademark rights to it. The company alleges federal trademark infringement, trade dress infringement, trademark dilution and unfair competition, and it seeks injunctions, destruction of infringing materials, damages and attorney’s fees.

Tofurky Co. Challenges Arkansas Meat Law

Turtle Island Foods, which does business as The Tofurky Co., has filed a civil-rights action alleging an Arkansas law that “prohibits purveyors of plant- or cell-based meats from using the words ‘meat’ and related terms like ‘beef,’ ‘pork,’ ‘roast,’ and ‘sausage’” is “a restriction on commercial speech that prevents companies from sharing truthful and non-misleading information about their products.” *Turtle Island Foods SPC v. Soman*, No. 19-0514 (E.D. Ark., W. Div., filed July 22, 2019). Turtle Island argues that the law creates consumer confusion rather than helping resolve it, asserting that its own marketing and its competitors’ marketing “emphasizes—through the use of commonly understood terms like ‘veggie burger’—that their products are plant-based alternatives to meat from live animals.” The complaint further argues that other laws already prohibit misleading or deceptive labeling, including the federal Food, Drug, and Cosmetic Act and the Federal Trade Commission Act. Turtle Island alleges violations of the First and Fourteenth Amendments as well as a civil-rights violation under the dormant Commerce Clause.

Similar litigation is pending against a Missouri “meat”-defining law, the first in the country to limit the definition. Tofurky filed a complaint with the Animal Legal Defense Fund, Good Food Institute and American Civil Liberties Union to challenge the law in August 2018; the parties have reportedly “reached an impasse” in settlement discussions and the litigation will continue.

Plaintiff Cites Consumer Reports and Prop. 65 in Fruit Juice Arsenic Lawsuit

A consumer has filed a putative class action alleging that Welch Foods Inc.'s grape juices contain excessive levels of lead and arsenic, citing a January 2019 article appearing in *Consumer Reports*. *Labajo v. Welch Foods Inc.*, No. 19-1306 (C.D. Cal., filed July 16, 2019). The complaint also cites California's Safe Drinking Water and Toxic Enforcement Act (Prop. 65), noting, "This Complaint does not allege a violation of Proposition 65. Proposition 65 is relevant, however, to the extent it provides information concerning the material omissions in violation of California's Consumer Protection laws, and guidance as to a reasonable consumer's purchasing decisions." The plaintiff seeks class certification, injunctions preventing fraudulent business practices and requiring disclosure of lead and arsenic content, restitution, damages and attorney's fees for alleged violations of California consumer-protection statutes.

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