



## LEGISLATION, REGULATIONS & STANDARDS

### Advertising Complaint Upheld Against U.K. Hemp Rum Co.

The U.K. Advertising Standards Authority (ASA) has upheld a complaint against The Cornish Rum Co. against its ads marketing Dead Man’s Fingers Hemp Rum. The complainant asserted that two Instagram posts and an ad in a trade magazine used language linking the hemp-infused rum to cannabis, including “Delicious mixed with coke or ginger ale—serve chilled, man. Coming to a joint near you.” Another Instagram post featured an image of an outdoor ad reading “Warning: Our Hemp Rum May Cause the Munchies” along with “an image of a skull which was smoking and wearing a hat with a cannabis leaf print.” The trade magazine ad included the text “Dealers Wanted.”

ASA dismissed the portion of the complaint arguing that the ad was intended to appeal to an audience under 18, finding that the images “were not references associated with youth culture and that overall the colours and imagery used gave each of the ads an adult tone.” The ad board took issue with the wording on the ads, however, finding unpersuasive the alcohol company’s arguments that the words used were not referencing cannabis because “joint” was “a slang term for a place or establishment,” “munchies” was “a slang term for hunger generally” and “dealers” was “used as a

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slang term for someone who bought or sold any goods or products.”

Further, the images had “a subversive feel”; the skull image “was smoking a cigarette, and, because of the cigarette’s shape, we considered it would be understood by consumers to contain cannabis.” ASA “concluded that because the ads featured imagery and wording associated with the illicit drug cannabis, the ads linked alcohol to illicit drugs and therefore breached the Code.” ASA also upheld the portion of the complaint challenging the use of the phrase “blow your mind,” finding that “alcohol ads must not imply that alcohol had therapeutic qualities” or cannot “be portrayed as capable of changing mood, physical condition or behaviour or as a source of nourishment.”

## Proposed D.C. SSB Tax Would Shift Burden to Manufacturers

A Washington, D.C., Council member, with the support of seven other members, has introduced a tax on sugar-sweetened beverages (SSBs) that would replace a sales tax that took effect in early October 2019 with an excise tax applied to SSB manufacturers. According to a press release, the Healthy Beverage Choices Act of 2019 “repeals the existing 8% *sales tax* on sugary drinks (passed in 2010 and raised in 2019) and creates a new 1.5 cent per ounce *excise tax* on sugary drinks in the District,” shifting the added cost from appearing “at the register” to appearing “on the price tag.” The proposed tax would fund parks and healthy eating advocacy programs.

## Report Purportedly Finds Toxic Chemicals in 95% of Baby Food

Healthy Babies Bright Futures has released a report describing tests it commissioned on 168 varieties of baby food from 61 brands reportedly finding that 95% of the products contained traces of arsenic, lead, cadmium or mercury, with 26% of products containing all four heavy metals. The organization asserts that rice puff snacks, teething biscuits, infant rice cereal, fruit juice, carrots and sweet potatoes carry the highest levels of heavy metals. The report cites a study arguing that “lead and arsenic in rice-based

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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.

foods account for one-fifth of the more than 11 million IQ points children lose from birth to 24 months of age from all dietary sources.” The organization calls on the U.S. Food and Drug Administration to “establish and finalize health-protective standards for heavy metals,” “implement a proactive testing program for heavy metals in foods consumed by babies and toddlers” and “establish a health-based limit for [inorganic arsenic] in infant rice cereal and other rice-based foods.”

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.

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## LITIGATION



### Advocacy Group Sues Hemp Co. In Prop. 65 Complaint

The Environmental Research Center has filed a lawsuit alleging that Manitoba Harvest USA LLC Corp.’s food products contain lead and cadmium levels exceeding the amounts permitted by California’s Safe Drinking Water and Toxic Enforcement Act (Prop. 65). *Envtl. Research Ctr. Inc. v. Manitoba Harvest USA LLC Corp.*, No. RG19038961 (Cal. Super. Ct., Alameda Cty., filed October 15, 2019). The complaint asserts that Manitoba Harvest “has knowingly and intentionally exposed numerous persons to lead and/or cadmium without providing any type of Proposition 65 warning” to “the public, who undoubtedly believe they have been ingesting totally healthy and pure products pursuant to the company’s statements.” The advocacy group seeks civil penalties, injunctive relief and declaratory judgment.



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## Putative Class Action Challenges Sanderson Farms “100% Natural” Chicken

Following the August 2019 dismissal of a lawsuit brought by advocacy groups alleging similar facts, a group of consumers has filed a putative class action alleging that Sanderson Farms Inc. misleads consumers by marketing its chicken as “100% Natural.” *Lentz v. Sanderson Farms Inc.*, No. 19-6570 (N.D. Cal., filed October 11, 2019). The complaint alleges that “Sanderson’s advertising misleads consumers in four ways,” including representations that (i) the chickens “were not given antibiotics or other pharmaceuticals,” (ii) the chickens “were raised in a natural environment,” (iii) “there is no evidence that the use of antibiotics and other pharmaceuticals in poultry contributes to the evolution of antibiotic-resistant bacteria” and (iv) the chicken products “do not contain any antibiotic or pharmaceutical residue.”

A previous case brought by two advocacy groups was dismissed because of a lack of standing; the court found that the groups could not show sufficient injury because “they were incurring ordinary program costs [advocating against antibiotics in poultry] regardless of Sanderson’s advertising.”

## Additional Vanilla Lawsuits Filed

Joining a number of pending putative class actions, a New York plaintiff’s firm has filed three lawsuits alleging that Wegmans Food Markets Inc., Whole Foods Market Group Inc. and Moran Foods LLC mislead consumers by marketing their products as vanilla-flavored while using artificial flavors. As with similar cases previously filed, the complaints target dairy and associated products—ice cream and almondmilk—and allege that the front-of-package representation of the flavor as “vanilla” amounts to

violations of New York’s consumer-protection statutes. *Arriola v. Wegman Food Markets Inc.*, No. 19-9227 (S.D.N.Y., filed October 4, 2010); *Pinkston v. Whole Foods Mkt. Grp. Inc.*, No. 19-9362 (S.D.N.Y., filed October 9, 2019); *Smith v. Moran Foods LLC*, No. 19-9453 (S.D.N.Y., filed October 12, 2019).

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## SCIENTIFIC / TECHNICAL ITEMS

# Study Compares Menu Items in U.K. Restaurants With and Without Calorie Labels

U.K. researchers have published the findings of a comparison of calorie counts on menu items in restaurants that feature labeling of those counts and in restaurants without such labeling. Dolly R.Z. Theis & Jean Adams, “Differences in energy and nutritional content of menu items served by popular UK chain restaurants with versus without voluntary menu labelling: A cross-sectional study,” *PLOS One*, October 16, 2019. The researchers compared offerings from “the 100 most popular UK restaurant chains by sales” and found that 42% of the restaurants offered nutritional information, and 13 of those voluntarily provided menu labeling. The researchers were reportedly able to establish that restaurants that provide calorie labeling on menus offered food with 45% less fat and 60% less salt, though they could not identify whether the labeling caused the companies to formulate products with lower fat and salt contents.

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