



LEGISLATION, REGULATIONS & STANDARDS

DEA Submits Proposed Rule on Implementing 2018 Farm Bill’s Hemp Legalization

The U.S. Drug Enforcement Administration (DEA) has proposed a rule that would codify the legalization of hemp cultivation and related definitions passed in the 2018 Farm Bill into the Controlled Substances Act. The amendments include (i) modifying federal rules to state that “the definition of ‘Tetrahydrocannabinols’ does not include ‘any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 16390’”; (ii) removing from Schedule V a “drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol [] derived from cannabis and no more than 0.1% (w/w) residual tetrahydrocannabinols”; (iii) removing import and export controls on these substances; and (iv) modifying federal rules by “stating that the definition of ‘Marihuana Extract’ is limited to extracts ‘containing greater than 0.3 percent delta-9-tetrahydrocannabinol on a dry weight basis.’”

FSIS Announces Meat Inspection Committee Meeting

The U.S. Department of Agriculture’s (USDA’s) Food Safety and Inspection Service (FSIS) has announced a virtual public meeting of the National Advisory Committee on Meat and Poultry Inspection (NACMPI) on September 24-25, 2020. The objectives

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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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are “for the Committee to review and advise about the steps FSIS should take to ensure better control of artisanal, shelf-stable ready-to-eat (RTE) fermented, salt-cured, or dried products that rely on multiple hurdles for lethality” and to “review and advise whether the Agency should continue not to test boxed beef primal and sub-primal products for Shiga toxin-producing *E. coli* (STEC), if they are intended for intact cuts.”

USDA also announced the appointment of 10 new members to NACMPI, as well as an additional member to the National Advisory Committee on Microbiological Criteria for Foods.

LITIGATION

Trader Joe’s 12 Grain Crackers Contain Less Grain Than Expected, Plaintiff Argues

A plaintiff has filed a lawsuit asserting that Trader Joe’s misleads consumers by using “enriched flour” as the predominant ingredient in its 12 Grain Mini Snack Crackers. *Rosenfeld v. Trader Joe’s Co.*, No. 20-3717 (E.D.N.Y., filed August 14, 2020).

“The representations are misleading because the Product contains (1) a de minimis amount of the 12 grain blend, (2) less of the 12 grain blend than consumers expect and (3) predominantly [] enriched white flour,” the plaintiff argues. “This is revealed through the fine print of the ingredient list, indicating ‘enriched flour’ is the predominant flour, listed far ahead of the 12 grain blend (‘Multigrain Flour Blend’).”

The plaintiff argues that the product’s “common or usual name” should include the “percentage of the characterizing 12 grain blend ingredient” because “the proportion of this ingredient ‘has a material bearing on price or consumer acceptance or when the labeling or the appearance of the food may otherwise create an erroneous impression that’ more of the 12 grain blend is present in an amount greater than is actually the case.” The plaintiff seeks class certification, injunctive relief, damages, costs and expenses for alleged violations of New York’s consumer-protection statute and the Magnuson-Moss Warranty Act along with fraud, negligent misrepresentation and unjust enrichment.

Consumer Challenges Smoked Gouda Preparation



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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.

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

A consumer has filed a putative class action alleging that Dietz & Watson's smoked gouda is not prepared by smoking but rather by the addition of a smoke flavor. *Watson v. Dietz & Watson Inc.*, No. 20-6550 (S.D.N.Y., filed August 17, 2020). "No reasonable consumer would be instinctively distrustful or skeptical of a product labeled 'Smoked Gouda' such that they would be inclined to verify whether the ingredient list disclosed a 'smoke flavor,'" the complaint asserts. "However, the Product's smoked taste is provided by 'Natural Smoke Flavoring' instead of from being smoked, indicated in the small print on the ingredient list." The plaintiff alleges violations of New York's consumer-protection statute and the Magnuson-Moss Warranty Act as well as fraud, unjust enrichment and negligent misrepresentation, and she seeks class certification, injunctive relief, damages, costs and attorney's fees.

inspections, subject to FDA, USDA and FTC regulation.



SCIENTIFIC / TECHNICAL ITEMS

Study Assesses Consumer Perception of “Whole Grain” Labeling

University of Cambridge researchers have published a [study](#) examining “whether consumers are misled about wholegrain (WG) content and product healthfulness based on common product labels.” Wilde et al., “Consumer confusion about wholegrain content and healthfulness in product labels: a discrete choice experiment and comprehension assessment,” *Public Health Nutrition*, August 10, 2020. The researchers showed online participants a pair of hypothetical products and asked them to determine which product is more healthful based on disclosed nutritional information, with some products containing “multigrain,” “wheat,” “made with whole grains” or similar labeling claims.

“Although by design, the ‘no WG label’ option had more actual WG content, substantial fractions of respondents incorrectly identified the ‘WG label’ option as healthier or chose the ‘equally healthy’ option,” the researchers stated. In addition, they found that “[r]espondents showed substantial difficulty in identifying the WG content of four actual products found in the marketplace,” generally overestimating the amount of whole grains in each product.

“The current study has potential policy implications for Federal Trade Commission oversight over false, unfair, and deceptive advertising, [Food and Drug Administration] oversight over food

labelling, and for the [Dietary Guidelines for Americans], which are the basis for government food programmes,” the researchers concluded. “Courts have upheld the Federal Trade Commission’s finding of deception when far fewer respondents (10.5–17.3 %) were found to be misled than in the current study.”

MEDIA COVERAGE

Mexican States Ban Sale of “Junk Food” to Minors

The legislatures of multiple Mexican states have voted to prohibit the sale of highly processed foods and sugar-sweetened beverages to anyone under the age of 18, according to the *Washington Post*. A nationwide labeling law that takes effect in October 2020 will also require black stop signs on foods high in added sugar, saturated fats, calories and added sodium, and those foods will not be permitted to be sold or promoted in schools. One legislator reportedly noted that the COVID-19 pandemic has made more Mexicans aware of the effects that being overweight or obese can have on a person’s susceptibility to other diseases and conditions, echoing a similar sentiment expressed by U.K. Prime Minister Boris Johnson as he announced new limits on the sale and marketing of similar foods.

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