



Having trouble reading this email? [View it in your browser.](#)

ISSUE 777 | June 03, 2022



FIRM NEWS

Shook Food and Beverage Practice Ranked in Chambers USA

Chambers and Partners has [listed](#) Shook’s [Food, Beverage and Agribusiness Practice](#) as Band 4 in its USA – Nationwide rankings. According to Chambers, “The Shook, Hardy & Bacon team is respected for its representation of companies in the food and agribusiness space, including manufacturers and distributors of feed additives and animal food. The group counsels clients in a range of issues, including product labeling, marketing, product safety and regulatory compliance.” One person who provided feedback for Chambers’ research reportedly stated, “The team is excellent, they are very responsive.” Shook’s [other Chambers rankings](#) included a Band 1 designation for Product Liability & Mass Torts and a Band 2 listing for Product Liability: Consumer Class Actions.

LEGISLATION, REGULATIONS & STANDARDS

Attorneys General File for Reconsideration of Heavy Metals Petition

The attorneys general of 21 states have filed a [petition for reconsideration](#) for a citizen petition denied May 2, 2022, that urged the U.S. Food and Drug Administration (FDA) “to adopt a series of interim guidance measures intended to complement the long-term approach of the Closer to Zero Plan,” which aims to

SHARE WITH [TWITTER](#) | [LINKEDIN](#)

SUBSCRIBE

PDF ARCHIVES

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.

For additional information about Shook’s capabilities, please contact



[Mark Anstoetter](#)

816.559.2497

manstoetter@shb.com

reduce the amount of contaminants in baby foods. The attorneys general sought interim guidance to (i) set action levels for inorganic arsenic, lead, cadmium and mercury; (ii) set an action level for inorganic arsenic in infant rice cereal that is lower than the existing action level of 100 parts per billion; and (iii) issue guidance to industry that testing for heavy metals is a “preventive control” manufacturers should perform. The reconsideration petition takes issue with multiple points in the denial, including the argument that FDA did not consider relevant information as to its own authority. The attorneys general again urge FDA to issue interim proposed action levels for three of the heavy metals at issue—inorganic arsenic, cadmium and mercury, removing lead from its request—and, in addition, they reiterate the second and third points of the original petition.

LITIGATION

Court Dismisses Fudge Pop-Tart Complaint

An Illinois federal court has granted Kellogg Sales Co.’s motion to dismiss a consumer’s putative class action complaint alleging that Frosted Chocolate Fudge Pop-Tarts lacked the milkfat (milk and butter) necessary for a product to be described as fudge. *Reinitz v. Kellogg Sales Co.*, No. 21-1239 (C.D. Ill., entered June 2, 2022). As evidence for the claim, the plaintiff provided a book by Molly Mills, who was described as “one of today’s leading authorities on fudge”; Kellogg argued that Mills’ book, which contains 40 recipes for fudge, included multiple recipes that do not contain milkfat. “Plaintiff fails to support that the average consumer would believe a fudge product must, of necessity, contain milkfat,” the court found. Comparing a similar case dismissed when the plaintiff could not show that a reasonable consumer would be misled by the strawberry designation on the Pop-Tart label, the court dismissed the complaint but granted leave to amend within 14 days.

Multiple Lawsuits Filed Against Beyond Meat for Protein Claims

Beyond Meat Inc., producer of plant-based meat substitute products, has been hit with two lawsuits in the same week—one filed by a competitor and another filed by a group of consumers. *Roberts v. Beyond Meat Inc.*, No. 22-2861 (N.D. Ill., E. Div., filed



M. Katie Gates Calderon

816.559.2419

kgcalderon@shb.com



Lindsey Heinz

816.559.2681

lheinze@shb.com



James P. Muehlberger

816.559.2372

jmuehlberger@shb.com

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

May 31, 2022); *Don Lee Farms v. Beyond Meat Inc.*, No. 22-3751 (C.D. Cal., filed June 2, 2022). The complaints make similar allegations, asserting that Beyond Meat “miscalculates and overstates the Products’ protein content” as well as the quality of the protein. “Beyond Meat goes the extra mile to represent that the Products are the ‘future of protein’ and claims that eating the Products allows consumers to get high-quality protein in their diet while simultaneously helping the environment,” the consumer complaint argues. Both complaints describe the process of testing Beyond Meat’s products to ascertain the protein content of the products, allegedly finding that most of the products contained less than the company represented. The consumers argue that they spent money on Beyond Meat products relying upon the marketed protein content, and the competitor, Don Lee Farms, alleges that it lost business to the company because of its protein claims.

Don Lee Farms further argues that Beyond Meat consistently markets its products as natural and not synthetic despite allegedly containing methylcellulose, “a synthetic ingredient that is commonly used as a laxative, a filler in cosmetics products, or as a binding agent in hot dogs.” The consumers seek class certification and damages for alleged violations of Illinois consumer-protection statutes, and Don Lee Farms has requested damages as well as injunctions enjoining Beyond Meat from making the allegedly false representations and mandating a corrective advertising campaign.

inspections, subject to FDA, USDA and FTC regulation.



SHB.COM

ATLANTA | BOSTON | CHICAGO | DENVER | HARTFORD | HOUSTON | KANSAS CITY
LONDON | LOS ANGELES | MIAMI | NEW YORK | ORANGE COUNTY | PHILADELPHIA
SAN FRANCISCO | SEATTLE | ST. LOUIS | TAMPA | WASHINGTON, D.C.

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

© Shook, Hardy & Bacon L.L.P. All rights reserved.

[Unsubscribe](#) | [Forward to a Colleague](#) | [Privacy Notice](#)