

Food Advertising and Regulation

Scrutiny of your promotion efforts continues to increase, and it can be difficult to stay on top of compliance.

Keeping your finger on the pulse of regulatory changes to promotion of your food or beverage product can often be tricky. Having a solid strategy is essential in order to avoid a Warning Letter or other enforcement action — and you certainly don't want to risk a class action claim.

We will help you safely and effectively market your products, including advising on beneficial health, nutrition, ingredient, production, and other claims. We not only understand the regulations, but have also been intimately involved in writing them and understand the food science behind them as well.

We have extensive experience with claims for human food ingredients. We can help you distinguish between disease claims, structure/function claims, health claims, and provide guidance on the requirements that apply to the various claims. For structure/function claims, we work with our clients to develop the competent and reliable scientific evidence needed to meet FDA, FTC, and class action challenges brought against the food industry.

We also track closely the requirements for positioning products as “organic,” “natural,” “nonGMO,” “sustainable,” “low carbon footprint,” and other claims that are growing in popularity.

We are playing a leading role in monitoring the new

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Practices

Food Law

requirements being developed by USDA on the mandatory disclosure of whether a food is bioengineered.

In addition to federal requirements, we keep our clients apprised of state labeling laws, including California's Proposition 65, which could impact products sold in the state.

Representative experience

Reviewing and summarizing for our clients the regulations that will govern the new nutrition labeling requirements on food products.

Keeping clients abreast of the latest guidance documents on the changes to the nutrition facts panels.

Monitoring and keeping clients apprised of the USDA efforts to issue regulations on bioengineered foods and assisting clients in submitting comments on questions raised by USDA.

Advising national food advertising campaigns for major restaurant chains on a range of issues, including comparative claims, product quality claims, and necessary substantiation.

Advising multiple clients on label and advertising claims for their products and ways to mitigate risks with claims such as "natural,"

Keeping clients apprised of new developments in class action lawsuits against the food industry and helping them develop claims to mitigate class action risk.

Advising clients on impact of Proposition 65 listing of furfuryl alcohol, BPA, acrylamide, and other listed substances on compliance with warning requirements.

Assist clients in developing data supporting a decision that their food products do not expose California residents to a listed substance at a level that triggers a warning.

Latest thinking and events

Analysis

FDA issues final rule on records required to support "Gluten-Free" claim on fermented or hydrolyzed food

News

Rethinking recyclable packaging claims in an evolving litigation landscape

Sponsorships and Speaking Engagements

National Advertising Division (NAD) 2020 Annual Conference

Sponsorships and Speaking Engagements

Food and Drug Law Institute's Food Advertising, Labeling, and Litigation Conference

News

FDA announces additional flexibility for new nutrition labeling requirements

News

California update: OEHHA extends comment period