Make America Healthy Again (MAHA) and Ultra-Processed Foods (UPFs)

The MAHA movement is reshaping the regulatory, litigation, and enforcement environment for food, beverage, pharmaceutical, and retail companies, with federal and state initiatives forcing companies to rethink how they formulate and market FDA-regulated products.

About

With nationwide media attention, new state laws being passed and proposed regularly, novel approaches and potential regulations at the FDA, and an uptick in consumer class actions, businesses face both increased scrutiny and uncertainty on a broad range of topics including product formulations and ingredient use, nutrient content claims, express and implied "healthy" and nutrition-focused claims, and more. Kelley Drye's cross-disciplinary team helps clients anticipate enforcement and litigation risk, engage constructively with regulators, and execute compliant, business-forward strategies across advertising and marketing, helping them navigate evolving federal and state standards, FDA scrutiny, state attorneys general enforcement, and consumer class actions with confidence.

Why This Matters Now

State legislatures across red and blue states are moving quickly on various food safety initiatives, including proposals to define and regulate ultra-processed foods (UPFs), statewide additive bans, school meal restrictions, and new labeling mandates. Many of these laws are being challenged in court—creating greater uncertainty for companies as they consider whether and how to shift practices. Some states are also initiating investigations and enforcement under longstanding state laws prohibiting unfair and deceptive acts and practices (UDAP). These same laws are being used by the plaintiffs' bar to bring class actions and arbitration demands against businesses under both traditional and novel UDAP theories.

In parallel, the Department of Health and Human Services (HHS) and the Food and Drug Administration (FDA) are reevaluating the voluntary Generally Recognized as Safe (GRAS) pathway and previewing notice-and-comment rulemaking that could shift burdens and timelines for ingredient innovation and safety substantiation—likely inviting legal challenge.

What's Changing: Key Regulatory and Enforcement Trends

As states move to quickly adapt legislation, divergent approaches are emerging in how regulators evaluate safety, labeling, and marketing for FDA-regulated products. As one example, FDA and some states are moving to regulate or define "ultra-processed foods," (UPFs) or ingredients associated with UPFs, notwithstanding the current lack of a consensus definition. These range from additive-specific frameworks to functional definitions keyed to processing methods and ingredient classes—leaving brands to reconcile overlapping and sometimes conflicting standards.

Even before most UPF laws take effect, state attorneys general are leveraging UDAP authority to

police health, well-being, and nutrition claims on certain products, signaling an appetite to proceed under existing tools based on these trends.

Beyond food, enforcers are prioritizing consumer injury theories in DTC drug promotion, especially where social media or emerging care models blur traditional guardrails on fair balance, risk disclosures, and sponsorship transparency.

Our Capabilities

- End-to-end review of claims, packaging, and digital assets for all consumer products, with substantiation analysis and risk assessments calibrated to state AG and FTC enforcement and class action trends.
- Multistate compliance mapping for additive restrictions, warning labels, and school-based prohibitions; implementation roadmaps and related support to operationalize evolving requirements.
- Strategic engagement with AGs on scope, timing, and implementation; defense of CIDs and related investigations and inquiries, including those pursuing UDAP theories targeting health and nutrition-focused advertising claims and child-directed marketing.
- Litigation readiness for class action defense and arbitrations, statutory challenges, and parallel civil actions to regulatory enforcement; coordinated defense to minimize copycat filings.
- Class action defense informed by regulatory posture, leveraging early dispositive motions, preemption, and primary jurisdiction to streamline or defeat claims.

How We Can Help: Integrated, Cross-Practice Counsel

Our team brings end-to-end support—from product formulation assessments and claim substantiation through multistate compliance builds, government engagement, and aggressive defense in investigations and litigation—all tailored to your business objectives, channel mix, and product roadmap.

Advertising and Marketing

We guide brands in evaluating whether product formulations and ingredient profiles could trigger exposure under emerging state laws, and in designing and defending “healthy,” nutrition-adjacent, and child-directed claims that account for related risk. We build substantiation strategies that anticipate AG and FTC positions, and account for up-to-date class action trends, and we align packaging, promotions, and influencer programs with evolving federal and state guidance—including helping companies market their products in ways that health-conscious consumers now expect. Our team reviews traditional and digital assets for substantiation while balancing litigation and regulatory risks with business and marketing objectives, and we routinely steer clients through NAD and Lanham Act challenges. Many of our lawyers are former senior officials at the FTC and state AG offices, bringing practical insight into agency expectations and negotiation dynamics that help close inquiries or calibrate risk-appropriate changes without sacrificing commercial goals.

Consumer Class Actions

We defend food, beverage, dietary supplement, cosmetic, and retail clients in labeling and advertising class actions—often filed in parallel with AG activity or triggered when narrow product

restrictions create a basis for private plaintiffs to challenge marketing claims—deploying early case assessments, preemption and primary jurisdiction arguments, and dispositive motion practice to contain exposure. Our record includes dismissals at the pleading stage, denials of class certification, and favorable settlements in some of the most plaintiff-friendly venues, including cases targeting “natural,” “healthy,” and many other types of product and packaging claims.

Litigation

We are trial-ready business litigators who align strategy with enterprise risk and commercial priorities, whether the matter is a challenge to a state statute, an injunction over specific ingredient-based restrictions, or a UDAP action premised on marketing claims and tentative or conflicting interpretations of scientific data. Our teams deliver cost predictability and right-sized staffing, leveraging project management and alternative fee arrangements to ensure resources track to outcomes that matter to your board and P&L.

State Attorneys General

We defend and resolve single-state and multistate AG investigations into food- and drug-related advertising, and we help companies proactively engage with AGs on policy, implementation timelines, and safe harbors. Led by a former chief of the consumer protection division in a major state AG office, our team understands intake-to-escalation workflows and multistate coalition dynamics, enabling targeted responses to CIDs, effective narrative framing, and disciplined remedial commitments. We also advise on responding to consumer complaints and third-party subpoenas and on building compliance programs that reduce the likelihood of escalation under UDAP and related state authorities.

MAHA and UPFs: Frequently Asked Questions

States are advancing divergent definitions and proxies for UPFs, from additive-specific frameworks to functional definitions keyed to processing and ingredient classes, leaving multi-state brands to reconcile overlapping and sometimes conflicting standards.

How do I know if my products could be considered "ultra-processed"?

There is no consensus definition of "ultra-processed food" at the federal or state level. Some states define UPFs by reference to specific additives, others use functional tests based on processing methods and ingredient classes, and still others avoid the term entirely and restrict individual substances. We help companies assess whether their products, ingredient profiles, or marketing claims could trigger exposure under any of these emerging frameworks—and prioritize the formulations and geographies that present the highest risk.

What happens when states restrict certain foods from schools or school lunch programs?

When a state determines that a product cannot be sold in schools or included in school meal plans, that classification can become an attempted predicate for broader regulatory enforcement and private litigation. State AGs may use existing UDAP authority to pursue companies making health or nutrition claims about products containing restricted ingredients—and plaintiffs' lawyers may seize on those same statutory definitions to support consumer class actions. Companies supplying school channels should treat these restrictions as an early-warning signal for potential wider scrutiny, litigation, and enforcement.

How should companies rethink product formulations and marketing claims in light of

MAHA?

Consumers increasingly expect transparency about ingredients and nutritional profiles—a trend the MAHA movement has accelerated. Companies should evaluate whether their ingredient formulations align with or diverge from emerging state standards, and whether marketing claims like "healthy," "natural," or "nutritious" create elevated risk when paired with targeted additives or processing methods. We counsel clients on reformulation strategies, claim substantiation, and how to market products in ways that reflect both consumer expectations and the evolving regulatory landscape.

What makes our team different?

What sets us apart is an understanding of the nuance and complexity in advertising and marketing decisions, and a recognition of sometimes conflicting positions of various federal and state regulators and how those positions impact business and marketing objectives. Former senior officials from the FTC and state AG offices, courtroom-tested litigators, and a coordinated cross-practice team enable us to close inquiries efficiently and defend critical claims while supporting growth. We understand that the absence of clear-cut standards is itself a risk—and we help clients build compliance and litigation strategies that account for the full range of state and federal approaches.

Related Services

Advertising and Marketing
Consumer Class Action Defense
Dietary Supplements and Functional Foods
Food and Drug
Litigation
PFAS and Emerging Contaminants
Proposition 65
State Attorneys General

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