For Your Consumption

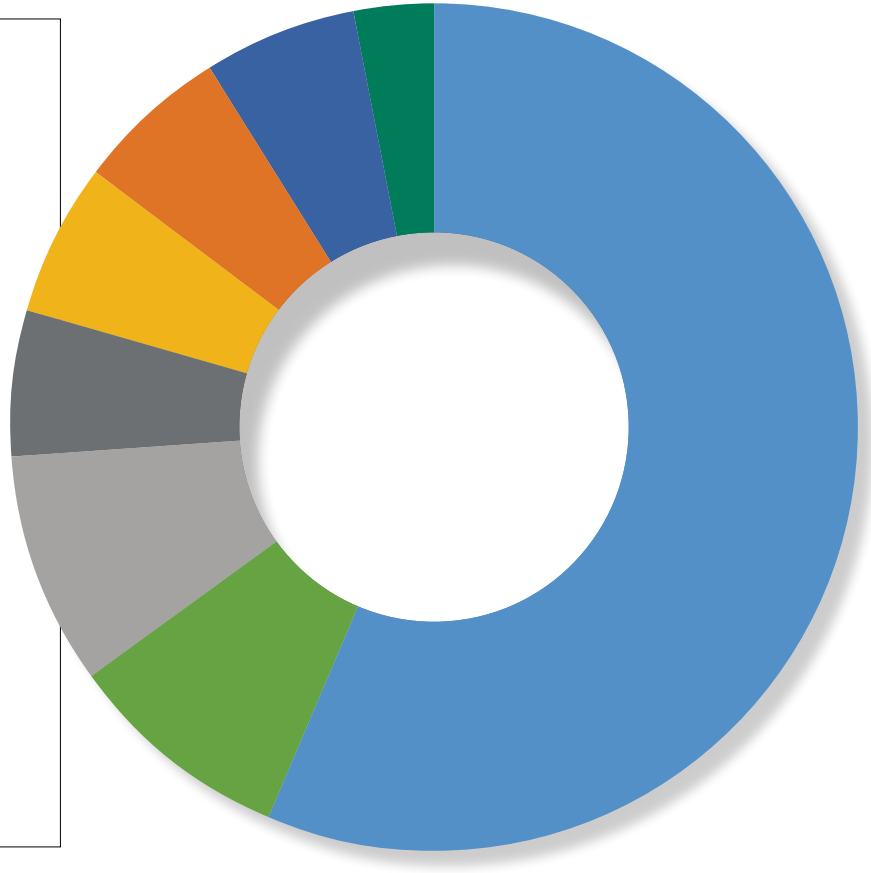
FOOD & BEVERAGE DIGEST

JULY 2025

ALSTON & BIRD

For an amuse-bouche, we've gathered the details and served up a chart highlighting the variety of 69 new suits (with 39 new "natural" ingredient cases!) filed in May and June—a taste of the latest labeling claims.

39	"Natural" Ingredient Claims
6	Health & Wellness Claims
6	Nutrient Content Claims
4	Environmental, Social & Governance Claims
4	Flavor/Ingredient Claims
4	Foreign Substances
4	Servings per Container
2	Slack-fill



Where's the Beef? A Reprise

Coleman v. Burger King Corp., No. 1:22-cv-20925 (S.D. Fla. May 5, 2025).

Over 40 years after an ad campaign famously roasted fast food competitors for paltry patties, one of those global burger chains is getting grilled once again for allegedly missing meat. A putative class representative alleges that visual advertisements led him and fellow customers to expect burgers pushing unencumbered into a frontier well beyond their buns' borders, only to be served a meager disc perfectly satisfied with the confines of its carb capsule.

As readers might recall, the burger chain secured a limited victory in 2023 when it dismissed claims brought under all 50 states' consumer-protection statutes, as well as the plaintiff's claim that "out-of-store ads" gave rise to a breach of contract claim. But the court allowed the plaintiff to have it his way with an amended complaint, and the burger chain again ordered a whopper of a dismissal of the plaintiff's claims. Much to the defendant's likely disappointment, the court did not deliver.

The court acknowledged that exaggerated and idealized imagery is "extremely common" in the quick service restaurant industry. And yet, the court found that the plaintiff had adequately alleged more than that he simply was catfished by a glam shot. The complaint makes no claim that the chain undelivered on any sort of express promise about the size of the burger patties, but the court still credited allegations comparing the size of the burgers in current advertisements to those in former advertisements, which supposedly resulted in an impression that the burger patties increased in size by 35%. That, at least for this court, was sufficient to state plausible consumer protection claims and a negligent misrepresentation claim. While it was a "close call," the court also held that the plaintiff's allegation about being deceived into purchasing itty bitty burgers supported an unjust enrichment claim under Florida law. And because the in-store depictions of the burgers could be reasonably understood as a binding offer under Florida law, the court ruled the plaintiff stated a viable claim for breach of contract when he received a burger that did not resemble that visual depiction.

I Had a Joke About This Lawsuit over Maltodextrin in Popcorn, but It Was Too Corny

Wilson v. Smartfoods Inc., No. 1:24-cv-12814 (N.D. Ill. May 5, 2025).

For any food & beverage manufacturers out there using maltodextrin in their products, get your popcorn ready and take note of this motion-to-dismiss decision out of the Northern District of Illinois. In the suit, the plaintiffs allege that the claims "No Artificial Flavors" and "No Artificial Preservatives" on the labels of Smartfood White Cheddar Popcorn are false and misleading because the popcorn contains maltodextrin—allegedly both an artificial flavor and an artificial preservative. The manufacturer responded that the plaintiffs' allegations were overcooked. According to the defendant, the plaintiffs failed to plausibly allege maltodextrin is artificial, did not allege that maltodextrin imparted the White Cheddar Popcorn's "characterizing flavor" (as required to be classified as an artificial flavor), and failed to allege maltodextrin functioned as a preservative in the popcorn. The results were a mixed (microwaveable) bag.

First, the court rejected the argument that maltodextrin could not be artificial because it was made from natural ingredients using water and enzymes. The plaintiffs alleged that industrial processing of an ingredient derived from natural sources could render the ingredient artificial and that reasonable consumers believed "artificial" meant "made by people." The court found this was sufficient at the pleadings stage, even if evidence could eventually show the maltodextrin used in the popcorn was not artificial.

Second, the court sided with the food manufacturer over whether the maltodextrin was an artificial flavor, explaining that the FDA distinguishes between "flavors" (which simulate, resemble, or reinforce the characterizing flavor) and "flavor enhancers" (which supplement, enhance, or modify the original taste of a food). The plaintiffs had alleged that maltodextrin imparts a "sweet flavor into a food product," but never claimed it created or reinforced the popcorn's cheddar flavor, so they had not plausibly alleged maltodextrin is an artificial flavor.

Third, the court found that the plaintiffs sufficiently alleged that maltodextrin functioned as a preservative in the popcorn (regardless of whether that was the food maker's intent) by alleging, and citing articles supporting, that maltodextrin has preservative qualities and acts by reducing water activity and inhibiting the growth of microorganisms. Discovery could show maltodextrin did not actually function as a preservative in the popcorn—or isn't a preservative at all—but that was a (fact) question for another day. And another bowl of popcorn.

OMGhee! Class Certification Denied in Clarified Butter False Labeling Suit

Effinger v. Ancient Organics LLC, No. 3:22-cv-03596 (N.D. Cal. May 23, 2025).

A ghee-loving plaintiff's motion for class certification was churned away for lack of numerosity, commonality, and adequacy. (Side note! If you knew that "ghee" is a kind of clarified butter, snaps for you.)

The plaintiff alleged that label claims such as "EAT GOOD FAT" and the "very best fat one could eat" on ghee led her to believe that the product was healthy even though the ghee purportedly contains "dangerously high levels of saturated fat." The plaintiff sought to certify nationwide and California classes but failed to meet even the most basic elements of Rule 23. As evidence of numerosity, the plaintiff introduced an undated ledger sheet devoid of information about the number of purchasers or units sold, arguing that "general knowledge and common sense" demonstrated that this element was satisfied. The court disagreed, noting that the plaintiff provided zero evidence to support a calculation of units sold. Evidence supporting commonality was also lacking. Clarifying that at the class certification stage, the plaintiff must prove, not just plead, that the putative classes satisfy commonality, the court found that the plaintiff failed to meet the threshold step—establishing that the label claims at issue were false. Finally, adequacy was not satisfied due to the plaintiff's repeated requests for extensions of time, failure to meet discovery obligations, and failure to pursue discovery necessary to support class certification.

Consumer's Claims Don't Bear Fruit in Supplement Label Dispute

Spivey v. Evig LLC, No. 1:24-cv-00781 (N.D. Ill. June 9, 2025).

An Illinois district court squashed a lawsuit against a dietary supplement manufacturer that alleged some of its product labels and advertising were misleading because they misrepresented the supplements' nutritional value. The plaintiff argued that phrases like "Real Food—Real Science—Real Nutrition" were overripe, suggesting the supplements provided a "nutritionally meaningful substitute for eating real food such as a serving of fruits and vegetables."

However, the court found the plaintiff was making a strained interpretation of the labels, which the court determined truthfully state the supplements are made from real food and provide real nutrition, and did not promise a cornucopia of nutrition or scientific backing as the plaintiff claimed. The court ultimately held that a reasonable consumer wouldn't have the same expectations of the product as the plaintiff did.

The plaintiff's misleading advertising claims were also peeled away because he couldn't identify any specific ad he saw or relied on, as required by Illinois law to state a claim under the Illinois Consumer Fraud Act. The judge noted that attacking the general "flavor" of the advertising was insufficient to survive the motion to dismiss. And the plaintiff's remaining claims for unjust enrichment and breach of warranty were also dismissed because they depended on his failed consumer fraud claims and his misreading of the product labels.

"Alexa, Call My Lawyer": There's a New Heavy Metals Class Action

Wright v. Amazon.com Inc., No. 2:25-cv-00977 (W.D. Wash. May 23, 2025).

So much for the honeymoon. It's back to work for Jeff Bezos (after a fairytale wedding) as he now has to defend his scrappy, upstart online bookstore against a class action alleging that it sold third parties' rice products with undisclosed high levels of heavy metals. The good news for Jeff & Co. (unreliable, self-serving reports suggest that we could be on a first-name basis in a couple hundred years) is that he should have plenty of good defenses at his fingertips. For starters, the plaintiffs base their allegations that they purchased contaminated products on a third-party study, rather than any testing of the particular products they purchased. Sure, some courts have said that's enough to clear the low bar to establish standing, but many other (better reasoned) decisions have recently demanded more—a link between the third-party study and the plaintiff's purchase. Did you obtain the product at issue from the same place the third-party testers got their samples? Did you make purchases close in time to the testing? Without these types of allegations, it isn't plausible you actually purchased a contaminated product just because some third party performed testing on the same product. Another strong defense? Conclusory assertions aside, the plaintiffs never explain how Amazon personally participated in or had sufficient control over the allegedly unlawful marketing.

Serving Size Surprise: Plaintiffs Chew Out Supplement Companies

Nyman v. NHS US, No. 517262/2025 (N.Y. Sup. Ct. Kings Cnty. May 24, 2025).

Cantwell v. Olly Public Benefit Corp., No. 716262/2025 (N.Y. Sup. Ct. Queens Cnty. June 5, 2025).

Carter v. Nature's Truth LLC, No. 811754/2025E (N.Y. Sup. Ct. Bronx Cnty. May 27, 2025).

In a trio of new class actions filed in New York state courts, the plaintiffs are chewing out supplement makers for allegedly pulling a fast one on consumers. The suits accuse the defendants of misbranding their products through some gummy gimmicks. Whether it's vitamin C, melatonin, or calcium, the plaintiffs allege they thought they were getting a full dose per chewable, but it turns out they needed two chews to successfully ingest the number of milligrams advertised on the front label. According to the complaints, the front labels promise a full-strength punch per piece, but the fine print on the back quietly reveals that a serving size is actually two gummies.

Attorney Spencer Sheehan, one of our most reliable muses for this publication—and discontent for food and beverage manufacturers across the country—is behind the complaints, which feature exposés on packaging psychology, invoking 19th-century market practices and quoting consumer advocate "MrConsumer" to hammer home his points. Seeking to certify classes of New York consumers, each complaint alleges one cause of action under New York's General Business Law, asserting that the defendants sour the deal by making it tough to compare the value between products and seeking damages for the "premium" the plaintiffs allegedly paid on the products.

Hit Me with Your Best Shot (of 100% Agave Tequila)

Pusateri v. Diageo North America Inc., No. 1:25-cv-02482 (E.D.N.Y. May 5, 2025).

A proposed class action filed in the Eastern District of New York alleges that the alcohol giant defendant has been serving up a misleading cocktail by advertising its tequila products as "100% agave," when in fact the spirits are allegedly watered down with significant amounts of cane or other types of alcohol rather than pure tequila. The plaintiffs—including a mixologist, a restaurant, and a consumer—claim they paid top-shelf prices for what they thought was pure tequila, only to discover they'd been left with a watered-down experience.

The complaint alleges that the defendant's labeling left consumers with a hangover of disappointment because tests revealed the products were not the straight up 100% blue Weber agave tequila promised, but rather a blend with other spirits. The plaintiffs argue they wouldn't have shelled out the extra cash for these "premium" pours if they'd known the truth.

The suit highlights that tequila's production process is no walk in the bar—blue Weber agave takes years to mature. The plaintiffs allege that both U.S. and Mexican regulations require strict limits on non-agave ingredients in tequila and that the defendant's products don't make the legal proof. The class action seeks to distill justice for consumers in New York and New Jersey, asking the court to pour out damages, interest, and attorneys' fees and to bar the defendant's allegedly deceptive practices.

The Protein Pile-On

Shahinian v. IQBAR Inc., No. 8:25-cv-01112 (C.D. Cal. May 23, 2025).

Blackett v. Vital Amine Inc., No. 2:25-cv-05217 (C.D. Cal. June 9, 2025).

Ruchman v. Alpha Prime Supps LLC, No. 5:25-cv-01442 (C.D. Cal. June 10, 2025).

Plascencia v. InScience Solutions LLC, No. 2:25-cv-05533 (C.D. Cal. June 18, 2025).

Desert hikers are not the only ones claiming to have seen mirages in the Central District of California. In a series of lawsuits filed in rapid succession, numerous plaintiffs contend they saw glistening promises of protein on product labels, only to come up dry. Their disappointment flowed from at least one of three grievances related to front-label protein claims—quality, quantity, and omission. They bring a combination of California consumer protection law claims, breach of warranty claims, and claims for unjust enrichment.

Those challenging protein quality cry "PDCAAS," which readers know by now is not a culinary incantation, but a "Protein Digestibility Corrected Amino Acid Score." The greater the quality of protein, the higher the PDCAAS. Given the front-label protein claims, the plaintiffs contend PDCAAS must be—but was not—baked into the percentage daily value of protein on the nutrition panel, obscuring the actual amount of bioavailable protein. Those serving up challenges to protein quantity do not similarly include a side of alphabet soup. They simply contend that they tested the products they purchased and found lower amounts of protein than advertised. And as for one plaintiff's lawsuit, the complaint

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does not directly challenge quantity but contends that a product's front-label protein claim required disclosure of the protein's percentage daily value, which was missing from the nutritional panel altogether. Because, the plaintiff alleges, the product's protein contained lower-quality protein, the percentage daily value amount should have been reduced by the protein's PDCAAS, if properly displayed.

New Popcorn Suit Pops Up

Flexer v. Smartfoods Inc., No. 1:25-cv-03623 (E.D.N.Y. June 30, 2025).

A New York resident seething over the purported inclusion of a synthetic ingredient in a popular popcorn product sued the popcorn manufacturer for allegedly adorning its product packaging with representations that the popcorn contains "no artificial colors or flavors" and "no artificial preservatives." Yet the plaintiff contends that the popcorn is chock-full of a synthetic preservative called maltodextrin, an assertion she bases solely on "the investigation of her counsel" and her "information and belief."

While this suit just recently popped up, we described similar claims that survived a motion to dismiss against the same manufacturer-defendant. So, while it remains to be seen whether there are any kernels of truth to this plaintiff's allegations, at least one federal judge already found that similar claims raised sufficient factual questions to survive a motion to dismiss. This recently popped complaint asserts claims for purported violations of New York General Business Law §§ 349 and 350, as well as breach of express warranty, and the plaintiff seeks to represent a nationwide and New York subclass of consumers who purchased the product.

A Dash of Danger? Suit Claims Spices Are Seasoned with Lead

Kolker v. Badia Spices Inc., No. 1:25-cv-03099 (E.D.N.Y. June 4, 2025).

One consumer's spice rack is now the subject of a federal class action. The consumer alleges a spice manufacturer's popular ground ginger and ground cinnamon products contain lead—and that the company conveniently left that detail off the label. According to the complaint, independent lab testing supposedly showed lead levels in the company's ground ginger that clocked in at a spicy 973 parts per billion (ppb), a number the suit compares unfavorably to FDA guidelines for food safety for children (with limits of 10–20 ppb for various products), which the plaintiff claims is an appropriate comparator because the challenged products "are commonly used condiments for families."

The story goes that the New York Department of Agriculture and Markets had previously issued a consumer warning about elevated lead levels in the company's ground spices, urging the public not to consume them. Despite this, the lawsuit alleges, the company continues to market the spices as "only the finest quality," touting their kosher, gluten-free, halal, and MSG-free status—without disclosing the alleged presence of a neurotoxin. The plaintiff argues that listing these health-conscious claims would lead any reasonable consumer to believe the products are safe for consumption and free from harmful substances like lead. According to the complaint, these omissions violate New York consumer protection laws and amount to a breach of warranty and unjust enrichment.

The suit claims that consumers paid a premium for what they believed were safe pantry staples and seeks to certify a nationwide and New York subclass to pursue damages, restitution, and injunctive relief—seeking to put a lid on the defendant's marketing of its spices as safe without disclosing potential contaminants.

Manufacturer Accused of Cutting Corners on Packaging

Reyes v. PepsiCo Inc., No. 2:25-cv-04951 (C.D. Cal. June 1, 2025).

A new consumer class action accuses a snack giant of cutting major corners with the packaging for its (admittedly delicious, yet mysteriously amorphous) hybrid chip-popcorn snack, PopCorners. The complaint alleges the manufacturer uses intentionally opaque packaging to conceal the fact that its product is almost entirely empty space, or nonfunctional "slack-fill," deceiving consumers into paying more for less.

The plaintiff seeks to represent a class of California residents who purchased PopCorners in the last four years and brings claims under California's unfair competition, false advertising, and consumer protection statutes. Only time will tell whether the plaintiff's allegations pop under pressure or prove to be more than just air.

Bubbly Trouble: Sparkling Beverage Maker Sued over Drinks High in Sugar

Calangian v. Nestlé USA Inc., No. 3:25-cv-04005 (N.D. Cal., May 8, 2025).

A sparkling beverage manufacturer known for its stylish cans and flair was hit by a new lawsuit claiming its sparkling fruit beverages are high in sugar. Two California consumers allege that the company is misleading shoppers by marketing the drinks as "natural" and good for you while packing in as much as 26 grams of added sugar per can. The plaintiffs claim they were drawn in by the labels' talk of "natural origin" ingredients and sunny fruit imagery. What they didn't expect, according to the complaint, was that sugar would be the second-most-abundant ingredient after water—beating out even the fruit concentrate, fruit extract, and flavoring. And while the beverage manufacturer skips artificial sweeteners, according to the complaint, that doesn't mean the drinks are light: A single serving contains up to 52% of the FDA's daily value for added sugars, and depending on whom you ask (like the American Heart Association), potentially even more than what's advisable in an entire day.

The suit contends that by emphasizing the product's "naturalness," its use of Italian and Mediterranean ingredients, and the absence of artificial flavors or sweeteners, the beverage conveys a misleading impression of being healthy or supportive of physical activity and overall well-being—an impression that is not supported by its actual nutritional content. The plaintiffs say the brand benefits from this misleading impression, allowing it to charge a premium and attract health-conscious consumers who might otherwise steer clear of sugary sodas.

The complaint alleges violations of California's Consumers Legal Remedies Act, unjust enrichment, and breach of the implied warranty of merchantability. It seeks both monetary damages and injunctive relief, including a requirement for affirmative front-of-pack sugar disclosures. The filing also suggests that the product's labeling could benefit from adopting industry-led initiatives, such as the "Facts Up Front" icons commonly found on other food and beverage products.

Chasing Arrows Accountability?

Losey v. Califia Farms LLC, No. 25STCV17229 (Cal. Super. Ct. June 13, 2025).

Thompson v. Orgain Management Inc., No. 25CU025033C (Cal. Super. Ct. May 15, 2025).

Cham v. Quest Nutrition LLC, No. 25STCV17164 (Cal. Super. Ct. June 13, 2025).

California plaintiffs—and, more specifically, a single plaintiffs' firm—are talking trash … literally. One San Diego-based law firm has spearheaded multiple class actions against companies for the alleged false and misleading advertising that their products—here, oat milk and protein shakes sold in aseptic cartons—are recyclable. According to the complaints, despite the products containing the "chasing arrows" symbol and earth-friendly language like "Please Recycle" and "Empty and Replace Cap," these cartons are not actually recyclable and are headed for California's landfills. To label a product as recyclable, California requires that a majority of consumers have access to recycling facilities that will in fact be able to recycle the product, but the plaintiff alleges that recycling facilities in California cannot recycle aseptic cartons. The complaints seek to certify classes of similarly situated California consumers and seek relief based on alleged violations of California's false advertising and unfair competition laws.

While the complaints allege that the aseptic cartons cannot be recycled, the consumers' attorneys are doing some recycling of their own: the allegations across the three complaints are nearly identical, filed by the same firm, and are similar to California recycling-related allegations filed by the same firm earlier this year.

Looking for a Grain of Truth

Baum v. Frito-Lay Inc., No. 5:25-cv-01408 (C.D. Cal. June 5, 2025).

One California plaintiff is feeling salty over the labeling of the manufacturer's popular SunChips products. The plaintiff claims that each time she purchased SunChips, she was exposed to, read, and relied on the representation that the products were "100% Whole Grain," prompting her to believe that all the grain ingredients in the products were whole grains, as opposed to refined or enriched grains. But to the plaintiff's dismay, she allegedly recently discovered that one of the primary grain ingredients in the product is maltodextrin, which is made from corn. According to the complaint, maltodextrin is a high glycemic index food and is not a whole grain; rather, it is a highly processed and refined grain.

The plaintiff alleges she would not have purchased the SunChips, or would have paid less for them, had she known the product contained a refined grain like maltodextrin. Since she believes others were similarly seasoned with deception, she seeks to certify a class of California residents, alleging violations of California's Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law.

No Preservative Cran-troversy: Acids Don a Cranberry Cape

Avilez v. Ocean Spray Cranberries Inc., No. E2025010875 (N.Y. Sup. Ct. May 15, 2025).

A popular juice maker is being squeezed in a new complaint over "No Preservatives" claims on its signature product. The complaint alleges that despite the wholesome promise splashed across the label, the juice quietly contains citric acid and ascorbic acid—ingredients the plaintiff argues are synthetic preservatives in disguise. The complaint, filed in New York by notorious food label hall monitor Spencer Sheehan, contains lofty scientific conclusions and literary flair, tracing the industrial origins of these acids and detailing their preservative capabilities. Sheehan even gives Upton Sinclair a shoutout, referring to his 1905 book The Jungle. So much for just a splash of cranberry.

Despite Sheehan's pleading eccentrics, there's not much else original about this suit. Over the past few years, this Digest has featured suits where producers of cough syrup, sour fruit snacks, canned tomatoes, fruit juice, mac n' cheese, baby food, gelatin snacks, Bloody Mary mix, goldfish crackers, energy drinks, and gummy supplements, among *plenty* of others, have faced challenges to "no preservative" or "no artificial preservative" claims based on plaintiffs' allegations that citric acid and ascorbic acid are artificial preservatives.

Trotting out the well-worn playbook, this Sheehan-represented consumer claims the label misleads health-conscious consumers into paying a premium for what they believe is a preservative-free product. The suit argues that the acids' preservative-like functions—antioxidant, antimicrobial, buffering, and more—should have been disclosed clearly, not buried in fine print or masked by marketing.

Presentations

Alan Pryor spoke on the panel "An Overview of Food Labeling Laws, Regulations, and the Components of a Compliant Label" during the American Conference Institute's Food Law and Regulation Boot Camp on July 22.

Publications & Media

Sam Jockel and **Ashley Yull** wrote the ***Food Safety Magazine*** article "Prepare Now for New State Restrictions on Food Packaging Materials." (June 19, 2025)

Sam Jockel and **Angela Spivey** wrote ***The Journal of Federal Agency Action*** article "U.S. Department of Health and Human Services Moves to Eliminate Self-Affirmed GRAS Pathway for Food Ingredients." (July-August 2025)

Other Resources

Washington Trade Watch Blog – International trade laws, regulations, and executive orders are constantly evolving, and the pace of change has never been greater than it is now. The Trump Administration has promised further sweeping changes in U.S. trade policy that will impact virtually all industries and companies engaged in global trade and investment. Alston & Bird's International Trade & Regulatory Team is working with clients to anticipate and respond to these developments in this blog. We aim to post useful content in real time to help you understand, prepare for, and remain in compliance as the international trade landscape evolves during the Trump Administration.

Executive Order, Action & Proclamation Task Force – We are tracking and analyzing White House executive orders, proclamations, memoranda, and guidance and providing our clients with timely insights into their legal and regulatory impact. While all presidential actions can be found on The White House website, our attorneys and policy advisors break down the implications across industries, helping clients navigate compliance challenges and seize emerging opportunities. Whether you need strategic counsel or real-time updates, we are your dedicated partner in understanding and responding to executive actions that shape the legal landscape. We are here to help you stay informed, stay compliant, and stay ahead.

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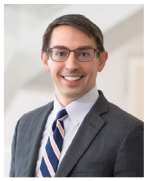

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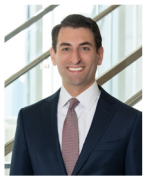

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