

Flavor Labeling Litigation and What It Means for Your Business

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Food, Drugs, and Devices

Vanilla-flavored yogurt, ice cream, almond and soy milk have all been caught in the crosshairs recently, targeted by more than a dozen class action lawsuits filed since May 2019 by the same New York-based law firms Sheehan & Associates and Reese LLP. The complaints make largely identical claims: they argue that the labels of various vanilla-flavored yogurt, ice cream and almond and soy milk products are deceptive because they make unqualified vanilla flavor claims when the products' ingredient lists declare only "natural flavors." Plaintiffs argue that if such "natural flavor" contained only vanilla sourced from the vanilla bean, this valuable ingredient would be listed separately. They further argue that a qualifier is needed because "natural flavors" likely includes less vanilla than expected or necessary to characterize the product and likely contains other flavors not derived from the vanilla bean.

Plaintiffs have also challenged even qualified vanilla claims, including three yogurt products labeled as "vanilla with other natural flavors." The complaint asserts that this qualifier was improperly used to mask the presence and abundance of artificial vanillin, though it is unclear whether plaintiffs have any evidence in this regard.

These complaints represent an acceleration of an existing flavor labeling litigation trend. As is the case in much of the consumer fraud litigation against food companies in recent years, the manufacturers may ultimately prevail in court based on compliance with FDA regulations, but the costs of litigating can be substantial.

So what does this mean for your business? Manufacturers may wish to revisit and confirm the propriety of the labeling of all premium flavored food products—including vanilla, maple, chocolate, coffee, and even cinnamon. Manufacturers should review the qualifiers used, how flavors are declared in the ingredient list, and where appropriate, overall consumer takeaways from marketing and branding. Recognizing the trends in food class action litigation, labeling and advertising should be designed both with regulatory and litigation risk in mind. Covington will continue to monitor flavor labeling litigation trends and other similar lawsuits and keep our clients and contacts apprised of hot areas of risk and potential mitigation steps.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Food Industry Initiative:

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