

Food, Beverage & Supplements

All natural. All organic. GMOs. rBGH. Low fat. Low sodium. Sugar-free. Gluten-free.

Few industries have undergone as rapid a transition as the food, beverage and supplements industry has in the past 20 years. As a result food companies are facing new, more challenging legal issues when it comes to food safety, labeling, marketing and advertising, storage and distribution of fresh, frozen and pre-packaged foods and beverages.

The extraordinary growth of the world's interconnected food markets, combined with the passage of the 2011 Food Safety Modernization Act (FSMA), has created something of a legal maelstrom for the food and beverage industry.

Kaye Scholer's Food, Beverage & Supplement Group offers a multidisciplinary approach to respond to, resolve or successfully litigate matters that threaten or challenge growers, manufacturers, distributors and sellers of food, beverage and supplement products.

How We Can Help

- Defend against product liability and mass tort allegations
- Case manage mass action suits in single or multiple jurisdictions to map out effective legal and procedural strategies, prep expert witnesses, and coordinate cases with relevant local defense counsel
- Defeat class certification at the trial court level or on appeal
- Defend against false advertising and consumer fraud claims, including before the FTC
- Challenge the methodology of studies used to support consumer fraud and false advertising claims, and utilize existing and litigation surveys to refute claims of presumed materiality and reliance
- Utilize *Daubert* and other rules governing scientific evidence to get claims dismissed early on
- Defend food and beverage executives against Park Doctrine prosecution by the FDA
- Respond to USDA and FDA enforcement claims
- Counsel on labeling, packaging and other marketing materials and strategies, including labeling requirements in China
- Protect food and beverage brands in trademark and trade dress infringement disputes
- Effectively project manage matters to contain litigation costs and eliminate

“surprises”

Experience Matters

Drawing on more than 50 years experience representing consumer products and life sciences companies in complex disputes and government investigations, we have a proven track record representing some of the world’s biggest and best known brands, including The Hershey Company, Tropicana Products, Chiquita Brands, DuPont, Pfizer and Novartis, to name just a few.

We have particular experience coordinating and litigating multi-district and multi-state class and mass actions, regularly serving as national counsel in class and mass action matters, including overseeing case management for all of a client’s outside law firms involved in the defense of a particular product.

We also have significant experience protecting food brands’ trademark rights—including serving as Hershey’s outside IP counsel for more than a decade—and defending them in false advertising allegations. We also have represented food and beverage companies in corporate, bankruptcy, antitrust, national security and tax matters.

We Know the Science

A successful defense starts with reviewing how the scientific claims being made regarding the health benefits of your product or ingredients are supported by credible and reliable science, and that the science has been fairly applied. This is a particular strength of Kaye Scholer, as we have been extremely successful in refuting allegations filed against our pharmaceutical clients by demonstrating how plaintiffs’ scientific methodology is faulty.

What’s more, we can explain the science behind your product in a way that makes sense to both judges and juries alike. Many of our lawyers also have degrees and/or strong backgrounds in the sciences, and we also have on-staff scientific advisors, as well as consumer perception researchers. Because of our ability to strip away at the scientific jargon and truly examine the methodology and research employed by opposing counsel, we are highly adept at using *Daubert* and scientific evidence gathering to help get cases dismissed early in the process.

Proven Results

While our aim often is to remedy situations at the pre-trial stage, our bench of trial lawyers is always ready to effectively manage any case including multi-jurisdictional litigations. Drawing on our team whose experience covers every aspect of a product’s life cycle, our track record speaks for itself: since 2002, our work as national counsel defending a life sciences product has resulted in 17 out of 25 defense wins, plus two hung juries and one new trial granted.

Representative Clients

- Bodybuilding.com
- Coffeeheaven International
- The Cooper Spirits Company
- Corn Products International (Ingredion)

- Friendship Dairies
- Hearthside Food Solutions
- The Hershey Company
- Lifestyle Brands
- Sidney Frank Importing
- Tequila Avion
- True Fruits
- United Distillers and Vintners

News

Pogust Talks Craft Brew Labeling Issues with Corporate Counsel

May 13, 2015 • Media Mentions

Kaye Scholer Secures Preliminary Injunction Against Maryland State Senator's Copying of Hershey's Trade Dress

17 July 2014 • Client Successes

Kaye Scholer's Lori Leskin and Aaron Levine Win 2014 Burton Award for Distinguished Legal Writing

9 June 2014 • Firm News

Glenn Pogust Discusses Lack of FDA Guidance on the Labeling of “Natural” Foods in Corporate Counsel

14 May 2014 • Media Mentions

Hershey Victorious Before Trademark Trial and Appeal Board Regarding MILKSHAKE Trademark

8 January 2014 • Client Successes

Partner Lori Leskin Weighs in on Controversy over “Natural” Foods in The Wall Street Journal

6 November 2013 • Media Mentions

Partner Glenn Pogust Weighs in on Food Industry Response to Government Shutdown in Food Quality & Safety

18 October 2013 • Media Mentions

Partner Glenn Pogust Discusses Jensen Farms Criminal Charges in Food Quality & Safety

18 October 2013 • Media Mentions

Partner Glenn Pogust Describes the Government Shutdown's Affect on Food Safety in Corporate Counsel

9 October 2013 • Media Mentions

Partner Glenn Pogust Weighs in on the Legal Implications of Labeling Caffeine “Organic” in Food Manufacturing

Publications

Navigating the Emerging Regulatory and Litigation Challenges to the Food Industry

3 June 2015 • Newsletters

Food Labeling for Companies Manufacturing or Distributing Food in China

February/March 2015 • Articles

Sweet and Savory: Popular Ingredients with Possible Lawsuits

February/March 2015 • Articles

The FDA's Enforcement Powers Under FSMA: Recipes for Compliance

6 November 2014 • Articles

The Perils of Navigating Legal Issues in Bringing a New Food Product to Market

24 October 2014 • Articles

Energy Drink Cos. May Find State AG Suits Hard To Swallow

29 August 2014 • Articles

Rethinking the FDA's Food/Supplement Framework

2 April 2014 • Articles

Targeting Audiences: Marketing Practices May Open New Front in Energy Drink Litigation

Spring 2014 • Articles

After the Shutdown: Long-Term Considerations for Food Producers

5 November 2013 • Articles

Utilizing the Newly Proposed Imported Food Safety Rules as a Risk Management Tool

20 August 2013 • Articles

Events