KILPATRICK TOWNSEND

5 KEY TAKEAWAYS

Recent Trends in Food & Wine Industry and Their Legal Implications

Meat & Dairy Labeling Laws

Kilpatrick Townsend Partner Joseph R. Snyder and Del Monte General Counsel William Sawyers recently spoke at the Contra Costa County Bar Association's 25th Annual MCLE Spectacular in Walnut Creek, California on "Recent Trends in Food & Wine Industry and Their Legal Implications." Their presentation focused on the ever-evolving issues surrounding "Meat & Dairy Labeling Laws."

Mr. Snyder's five key takeaways from the presentation, include:

1

In view of the growing area of plant based and clean meat products, cattle states such as Missouri, Arkansas, Mississippi and others have passed legislation to ensure that only animal products be called meat. The laws are intended to protect the animal agriculture industries such as cattle, pork and poultry industries and stem competition from alternative meat products. In Arkansas, the law also bans the marketing of a product as rice, unless it contains one of four specific species of rice.

2

The laws are being challenged on constitutional grounds such as free speech, commerce clause and due process violations.

3

In addition to the cattle and poultry industries, the dairy industry has fought the term milk being used for products of plant origin. Despite almond milk not being labeled "imitation milk," the 9th Circuit upheld a lower court's dismissal and found "'[n]o reasonable consumer could be misled by [Blue Diamond's] unambiguous labeling or factually accurate nutritional statements.'" *Cynthia Cardarelli Painter v. Blue Diamond Growers*, case number 17-55901 (2018), in the U.S. Court of Appeals for the Ninth Circuit.

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In addition, the 11th circuit reversed a district court case saying it violates a creamery first amendment free speech not to allow it to truthfully use the term "skim milk" for a product which is diary milk from which the cream has been skimmed. If the speech concerns lawful activity or is not inherently misleading, government may only regulate the speech if its restriction satisfies intermediate scrutiny under *Central Hudson's* three-prong test. (*Central Hudson Gas & Elec. Co. v. Public Serv. Comm. of N.Y.* 447 U.S. 557 (1980)).

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The Food and Drug Administration (FDA) is holding public hearings to discuss FDA's efforts to modernize standards of identity as part of the agency's Nutrition Innovation Strategy.

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