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# Food and Beverage News and Trends

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26 MAR 2014

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This regular publication by DLA Piper lawyers focuses on helping clients navigate the ever-changing business, legal and regulatory landscape.

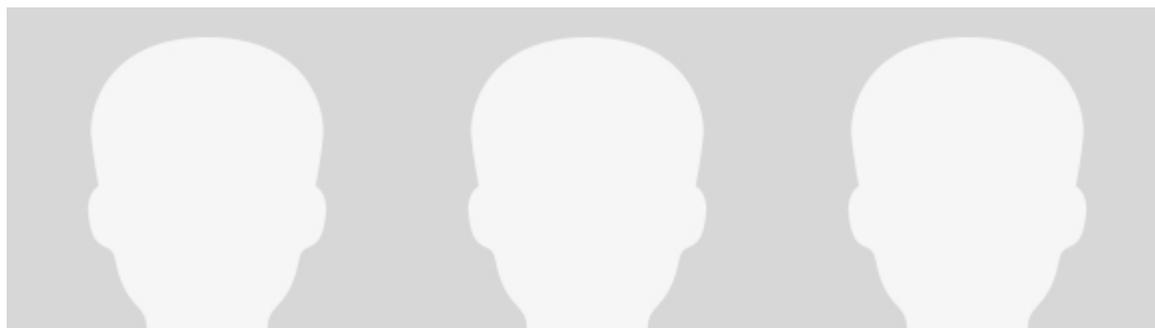
- Citizen petition filed for hummus standard of identity.** A citizen's petition has been submitted to the FDA seeking to establish a standard of identity for hummus, based on the traditional ingredients of chickpeas and tahini. The definition sought by the petitioner for hummus is "the semisolid food prepared from mixing cooked, dehydrated, or dried chickpeas and tahini" with one or more of several designated optional ingredients. Under the definition, chickpeas would have to be "the predominant ingredient by weight, except water" and the finished product would have to contain at least 5 percent tahini by weight. According to petitioner, consumers are confused by similar dips that use black beans, white beans, lentils, and soybeans instead of chickpeas.
- FTC releases study on alcohol advertising and marketing to underage.** On March 20, the FTC released its fourth major study on alcohol industry compliance with self-regulatory guidelines, including those designed to address concerns about youth access to alcohol marketing. The study compiled responses from 14 major alcohol companies regarding how companies allocate marketing dollars, ad placement, privacy concerns, product placement, and outside review of complaints. The report issued several recommendations to further address potential concerns about advertising to underage youth, including age-gating for websites, improved privacy policies, blocking technologies, increased staff training and cross-company identification of best practices.
- US senators object to EU initiative to protect cheese names.** A group of US senators recently urged the USDA to oppose an EU effort arguing names such as asiago, feta and parmesan refer to certain geographical locations and should only be used on products from those regions. According to the objecting

senators, forcing such a change would create consumer confusion while harming American dairy farmers and creating barriers to dairy trade and competition.

- **FDA to conduct studies on consumers' package reading.** The White House Office of Management and Budget approved FDA to conduct experimental studies to better understand how consumers read food packages, including the Nutrition Facts panel. The approval comes after the recent unveiling the proposed Nutrition Facts panel changes, though, according to FDA, the purpose of the study is for information on consumer usage of labels in general. Two additional studies requested that have yet to receive approval include a study on how consumers would respond to labeling “added sugars” on food packaging, and a study on how to adjust the current footnote that appears at the bottom of the Nutrition Facts panel describing Daily Values for 2,000 and 2,500 calories so that consumers better understand the % Daily Value.
- **CSPI sues FDA regarding seafood labeling.** CSPI and Mercury Policy Project recently filed suits against the FDA, alleging failure to appropriately label seafood to better communicate consumer advice and warning about mercury levels. The two groups had previously filed a petition on these issues in 2011 to which FDA never responded. The groups further alleged that FDA’s failure to respond violates FDCA provisions requiring a response within 180 days of receipt of the petition.
- **Hawaii County farmers win TRO against GMO registration.** A Hawaii circuit court recently granted an unnamed Hawaiian papaya farmer’s TRO staying Hawaii County’s Bill 113, which would require farmers growing genetically modified crops to register with the county. The plaintiff argued that requiring farmers to disclose confidential information, including detailed information about the location of crops, and development and cultivation techniques, could expose the farmers to threat of vandalism and theft. The bill was passed December 5, 2013 and just took effect March 5, 2014. It would result in a fine of up to \$1,000 per day for non-compliance.
- **Alcohol manufacturer – no duty to warn about alcoholism.** An Idaho district court recently dismissed a case brought against a manufacturer of alcoholic beverages for alleged failure to warn about the risk of alcoholism. The court held that the dangers of alcohol, including becoming an alcoholic, are obvious, and under Idaho law, there is no recognition of a common law duty to warn by alcohol beverage manufacturers. The court did not analyze preemption or primary jurisdiction implications. The plaintiffs’ appeal is currently pending before the Ninth Circuit. Alcohol manufacturers have otherwise been less common targets in commonly being leveled against the general food industry over obesity issues.

For more information, please contact your DLA Piper lawyer or a member of the Food and Beverage Sector team:

## AUTHORS





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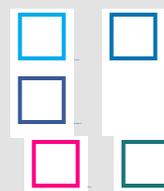
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