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LEGAL UPDATES

Class Action Alert: The Not So Sweet Side of Sugar-Based Labeling

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In the ever-evolving world of nutritional guidance, sugar is the new enemy. In the '70s, it was salt; in the '80s it was fat; in the '90s it was cholesterol; and now, it's sugar. What this shift in the zeitgeist means for food producers is to take care in making statements on your product labels. Failure to do so may result in warnings from regulators or fending off costly class action lawsuits.

A recent example of this escalating trend in sugar-based labeling class actions involves Coca Cola's Gold Peak Tea products, which advertised that their reduced-sugar teas were "Slightly Sweet," "Sweetened with 50% less sugar than our original sweet tea" and "90 Calories Per Bottle." While the product does contain less than half of the sugar than in the fully sweetened tea, there was still 24 grams of added sugar in the product — an amount that represents over half of the recommended daily maximum of added sugar for adults.

Consumer class action plaintiffs took notice, filing a Complaint in February in federal court in the Eastern District of New York against Coca Cola, seeking injunctive relief and damages for consumer deception, misrepresentation, fraud and related claims. The Complaint was grounded in the National Institute of Health's statements in 2014 noting that Americans have too much sugar in their diets, much of which is added during processing and preparation. The Complaint noted recent studies citing potential adverse health effects resulting from increased sugar, including obesity, cardiovascular issues, diabetes, indirect links to cancer and even dementia. The Complaint linked these statements and studies to consumers' growing preference for products with little or no added sugar. One angle the Complaint explores is the Food and Drug Administration's regulations and enforcement history surrounding calorie- and sugar-based claims on labels. Notably, the FDA has no regulation authorizing a "low sugar" claim and has issued warning letters about using this term, though allowing for others.

In light of increasing class action filings and the FDA's interest in policing sugar-based labeling claims, companies would do well to analyze their labels for claims based on their products' sugar (or lack of sugar) content, such as "low in calories," "fewer calories," or the like, and assess the risks associated with these claims versus the rewards in the marketplace.

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