

## Food & Beverage Group Of The Year: Sheppard Mullin

By Lauren Berg

*Law360 (January 29, 2019, 3:36 PM EST)* -- Sheppard Mullin Richter & Hampton LLP's food and beverage team showed its expertise in many legal specialties with transactional and litigation accomplishments that include securing favorable outcomes for Starbucks Corp. and Taco Bell, landing it among Law360's 2018 Food and Beverage Groups of the Year.

With a team of about 100 lawyers in 11 offices around the country, the group represented some of the industry's largest companies, developing an in-depth understanding of the food and beverage arena that gives it the ability to tackle everything from mergers and acquisitions to labor and employment to consumer class actions, according to the firm.

Sascha Henry, a Sheppard Mullin partner and leader of the firm's food and beverage industry team, attributed the group's success to its versatile team members who cover just about every legal specialty and collaborate regularly to keep everyone up-to-date, as well as proactively provide clients with insights on legal issues affecting their businesses.

"The practitioners in our firm tend to be very specialized in their practice areas," Henry said.

"Our food and beverage team combines that specialization and educates each other about the issues facing the food and beverage industry," she said. "This allows our attorneys to bring a generalist approach to our clients and can help clients anticipate issues and proactively address legal issues."

Sheppard Mullin began 2018 by helping Starbucks beat a proposed consumer class action that accused the coffee giant of ripping off customers by underfilling lattes and mochas.

The consumers said the sizes offered at Starbucks — a "tall" being 12 ounces, a "grande" being 16 ounces and a "venti" being 24 ounces — are misleading, because the standard latte recipe instructs baristas to fill a pitcher with steamed milk up to an etched line corresponding with the size ordered, pour espresso shots into the serving cup and top the drink off with foam, leaving a quarter inch of space at the top.

However, the company's cups hold just the number of fluid ounces in each size, so when factoring in the foam and the extra space, Starbucks is cheating customers out of all the drink they were promised, the consumers alleged.



But Starbucks hit back that it actually orders cups with slightly larger volumes than the advertised 12-, 16- and 20-ounce drinks precisely because it directs baristas to leave a quarter inch of space at the top.

A judge granted Starbucks' motion for summary judgment, saying that "no reasonable consumer would be deceived into believing that lattes, which are made up of espresso, steamed milk, and milk foam, contain the promised beverage volume excluding milk foam."

Henry said the case was similar to, but not quite the same as, the "slack fill" lawsuit trend percolating in 2016 and 2017, a concept related to opaque product containers — such as a box of candy — that might have nonfunctional space and could be misleading to customers.

But since Starbucks won its case, Henry said fewer slack fill cases were filed in 2018 and that the trend will probably continue.

In July, Sheppard Mullin led Taco Bell to a win in an employment class action when the Ninth Circuit ruled the fast food company doesn't have to give break pay to workers who get discounted food through its policy of subsidizing workers' meals as long as they stay in the restaurant while on break.

The breaks are not compensable time under California wage rules, because it's up to the worker whether to take advantage of the offer, and the policy appears to block employees from working while on break, the unanimous panel said.

The firm also represented California-based Paletteria La Michoacana Inc., a frozen snack maker, in a trademark infringement action accusing a Mexican ice cream shop, Productos Lacteos Tocumbos, S.A de C.V., or Prolacto, of selling paletas featuring a girl dressed in indigenous clothing that infringe on PLM's trademark.

The firm won the case at trial, and the D.C. Circuit upheld the judgment on appeal in August.

The D.C. Circuit also affirmed the lower court's holding that PLM's use of the girl and of the phrase "La Michoacana" did not infringe on any Lanham Act rights that may be held by Prolacto, given that the examples presented by the Mexican company were not sufficiently distinctive.

While Prolacto did use "La Michoacana" in the Houston market before PLM did, the appellate court agreed with the lower court's determination that the term is commonly used for the treats, and is associated with the Michoacan region of the Latin American country.

Looking into the future of food and beverage industry, Henry said she thinks technology and the new mechanisms of how people are getting food, preparing it and having it delivered will play a big role in what kinds of cases will be filed, how cases will play out in court and what kinds of information companies will need to navigate the business.

"I think the industry as a whole is going to be one to observe as new technology brings changes," Henry said. "I think food companies will change and we'll see new litigation arise out of such changes."

"It's not surprising; it's an interesting industry that is growing and changing," she said.

--Additional reporting by Kat Greene, Braden Campbell and Kevin Penton. Editing by Nicole Bleier.