

## → Food and Beverage

Sheppard Mullin's Food and Beverage Industry Team helps food and beverage clients build their businesses, growing their brands, and increasing their bottom lines with experienced representation in brand development and protections, labor and employment issues, accessing capital, product liability, regulatory, patent and trademarks, immigration, privacy, and tax. The food and beverage industry is among the most competitive and globally-linked of all business sectors. To ensure your company is on the cutting edge, you need a law firm that understands your business and can assist you in expanding into new markets and developing new business strategies that can capitalize on the global market, while protecting your products and brands along the way.

We represent over 200 food and beverage clients, ranging from startups to multinational corporations. We represent food manufacturers, beverage manufacturers including producers of wine and craft beer and spirits, distributors, retailers, wholesalers, food equipment manufacturers, restaurants and "fast food" outlets, grocery and convenience stores, superstores, food safety companies, and industry trade associations.

### Advertising and Promotions

Food and beverage companies are utilizing new and sophisticated marketing, advertising and promotions to increase market share and brand awareness. We work with clients on virtually every dimension of new media marketing, including endorsements and viral marketing; sponsored and native advertising; social media advertising and consumer-generated content, contests and promotions, and numerous other legal issues associated with developing media channels. We specialize in these issues from both counseling and litigation perspectives.

### Americans with Disabilities Act

We are one of the few large law firms that specializes in defending disability access discrimination claims under the Americans with Disabilities Act and related state law. We have represented a number of food service clients, including national restaurant chains, supermarket chains, and specialty food and beverage stores. We advise clients on the latest developments in disability access law, including issues relating to class actions and the accessibility requirements of websites, mobile applications, and other new media. Our practice also includes advising on landlord/tenant disputes, implementing policies and procedures to train employees about accessibility laws, and interacting with state agencies to address access concerns.

### Corporate Finance/Mergers and Acquisitions

We handle the private placement of securities, representing issuers, private placement agents, equity funds, institutional investors and venture capital firms and have been on the vanguard of private financing transactions, including seed financing angel investments, venture capital financing, later stage equity or mezzanine financing, PIPES and private debt financing. And when it is time to go shopping or be shopped, we offer our clients a savvy and talented group of M&A attorneys that "does deals" throughout the United States and overseas. We advise on all types of M&A transactions and pride ourselves on our pragmatic approach to

getting deals done.

## Creditors' Rights and Bankruptcy

While your business may flourish, others you are dealing with may not always be so fortunate. Whether it is a customer in bankruptcy, a vendor in receivership, or a supplier in an assignment for the benefit of creditors, we work to protect your rights, minimize losses, and maximize the return on your claim. We also advise on buy-side distress M&A transactions, helping clients navigate acquisitions of targets in distress.

## FDA and Regulatory Matters

We advise food, dietary supplement and beverage clients on all regulatory matters involving product development, novel ingredients, food labeling, product claims and marketing. Additionally, we advise on recalls and adverse events, novel food distribution models, supply chain security, good manufacturing practices (GMP) and other matters governed by the Federal Food, Drug, and Cosmetic Act and implementing regulations, its state-law equivalents, including California's Sherman Law, the federal Food Safety and Modernization Act, and implementing regulations. We also advise on matters falling under the jurisdiction of the U.S. Department of Agriculture, including organic and claims.

## Intellectual Property

We represent and advise clients in all aspects of trademark and copyright law, including clearance, prosecution, maintenance and enforcement of trademarks and copyrights worldwide; licensing and distribution agreements; supplier, manufacturer, and vendor agreements; grey market and counterfeiting issues; marketing practices; and adversarial proceedings in U.S. courts and before the Patent and Trademark Office.

## Labor and Employment

We understand complaints and lawsuits brought by employees and former employees can be damaging to the growth, profitability, and public image of your business. We counsel and represent clients in labor relations, discrimination complaints, employment agreements and terminations, affirmative action programs, immigration, reductions in force, employee benefits, and executive compensation. We defend and advise clients on wage and hour, discrimination and harassment, and wrongful termination claims, with special expertise in wage and hour class actions involving meal and rest period compliance and tip-pooling. Our attorneys take a preventative approach and help you identify and anticipate employee complaints, governmental agency actions, and union problems.

## Litigation and Dispute Resolution

We have experience protecting our clients and their brands from false advertising and product labeling claims, not just in the "Food Court" in Northern California, but also in courts throughout California, New York, and Illinois. Many defendants feel pressure to settle quickly. Sheppard Mullin offers an alternative. Our attorneys are skilled at creating strategies that eliminate or limit false advertising cases before trial, e.g., through dispositive motions, by defeating class certification, or attacking the economics of a damages model. We also have a strong track record taking these cases to trial, when necessary. We know the law, the opposition, and the judges, and we know how to protect our clients from liability. Whatever the dispute, we partner with our clients

every step of the way to deliver solid, cost-efficient results.

## Privacy and Data Security

As food and beverage businesses expand their operations on the internet and via mobile apps, they require experienced legal counsel regarding website development and search engine agreements, trademarks and co-branding, data privacy and cybersecurity. We partner with clients to identify and resolve regulatory compliance needs, craft and implement privacy and data security policies, and address emerging developments, including the legal issues presented by the accumulation of “Big Data.” We also help clients prepare for data breach incidents, respond when such incidents occur, and provide counseling on privacy matters arising from mergers and acquisitions, joint venture and strategic alliance formations.

## Proposition 65

If you manufacture, sell, or distribute any product directly or indirectly in California – through a distributor, online or otherwise – you need to understand and comply with Prop 65. We have experience in all aspects of Prop 65, including compliance, response to notices of intent to sue, defense of lawsuits and appeals. We routinely guide clients, both large and small, through the process of responding to 60-Day Notice letters, interfacing with the California Attorney General’s Prop 65 unit, and defending enforcement actions in court. Our main goal is to help you avoid government and private enforcement actions in the first place, and when that is not always possible, we can help you assess and implement a Prop 65 compliance program that will minimize the likelihood of an enforcement action. We also can audit your website to make sure you are following best practices. We will work with you to develop creative solutions to foster early resolution of claims, from pre-lawsuit negotiations to accelerated litigation and appeal of key issues.

## Public Policy and Government Affairs

Our Washington, D.C. office has extensive lobbying and government relations expertise. We advocate on behalf of our clients at the executive, legislative and regulatory levels. We also provide our clients with the latest information with respect to government proposals and other anticipated developments in Washington, D.C., and across the country. We build upon our existing relationships to effectively communicate our clients’ positions to lawmakers and key officials. We help testify and draft legislation. We also regularly file comments during rulemaking and represent clients in agency proceedings. At the federal level, we submit comments to regulatory agencies, including to, among others, the U.S. Department of Labor, the U.S. Equal Employment Opportunity Commission, and the National Labor Relations Board.

## Real Estate Development and Leasing

We represent all types of clients in real property ownership and development and have experience in commercial leasing transactions, including the unique issues of urban and suburban mixed use retail, shopping centers, office space, industrial parks, distribution centers, and build-to-suits.

## Experience

### Representative Matters

- Represented Califia Farms, LLC and obtained a complete victory for client Califia Farms, LLC in a published decision issued by the California court of appeal in a consumer putative class action alleging Califia misled consumers related to alleged violations of California's Unfair Competition Law, False Advertising Law, and Consumer Legal Remedies Act on the grounds that Califia's tangerine juice product, "Cuties Juice," stated on its label that the juice contained "No Added Sugar" without complying with other FDA regulations.
- Represented FAT Brands, Inc. and secured the denial of class certification in two putative class action lawsuits involving claims brought under Sections 12(a)(2) and 15 of the 1933 Securities and Exchange Act related to the alleged omission of facts from its initial public offering (IPO) offering materials that rendered certain statements in those materials misleading.
- Represented Save Mart Supermarkets against a putative consumer class action filed in 2020 alleging unlawful price gouging of eggs in California in the wake of COVID-19. After filing a motion to dismiss on behalf of Save Mart Supermarkets, the plaintiff voluntarily dismissed its claims.
- Represented a large national food distributor and prepared meal distributor in connection with a sophisticated ransomware attack locking up all of their servers and threatening to disclose allegedly confidential information. Obtained favorable result in which no ransom was paid.
- Represented International Delicacies in a purported class action in the Northern District of California where plaintiffs claimed that the "no preservatives" label statement was deceptive because the product contained citric acid. Plaintiffs' counsel dismissed sua sponte after substantial litigation.
- Represented Clif Bar in two "food court" purported class actions which were dismissed by plaintiffs' counsel sua sponte after substantial litigation.
- Represented Sonic Drive-In (part of Inspire Brands) in its response to a 2017 data breach, including both notification and in defense of resulting consumer and financial institution class litigation.
- Represented major nationwide grocery store chain by prevailing on summary judgment in a hotly contested discrimination case where the client was sued for alleged age and national origin discrimination, harassment, retaliation, and wrongful termination.
- Represented major nationwide food retail store and obtained dismissal of a putative nationwide class action alleging that its label statement that a product was ethically sourced was false and misleading in violation of the California Consumers Legal Remedies Act (CLRA) and Unfair Competition Law (UCL).
- Represented Love's Travel Stops & Country Stores, BevMo!, Pinkberry, Mina Restaurants, Blue Apron, Sazerac, Tommy Bahama, Dave & Buster's, Little Caesars, Domino's, Pizza Hut, California Pizza Kitchen, Ghirardelli Chocolate Company, Taco Bell, In-N-Out Burger, Kroger grocery brands including Ralphs Grocery, and the Hillstone Restaurant Group against ADA access and website claims.
- Represented BJ Restaurants, California Pizza Kitchen, Norms Restaurants, Smith Brothers, Landry's and Nestle in wage hour disputes including class actions and claims for sexual harassment, discrimination and retaliation.
- Advised Gold Star Foods, Inc. regarding union activity and provided management training on union avoidance.
- Developed an E-2 Visa program for Noble Foods Inc.

- Represented Dr Pepper Snapple Group, Superior Grocers, and Whole Foods Markets in EEOC matters.
- Represented See's Candies in their new digital media and e-commerce initiatives and software license agreements.
- Defeated class certification in multiple class actions for a national restaurant chain regarding GMO labeling.
- Negotiated an innovative global settlement for McDonald's Corporation in the highly-publicized "French fries" litigation brought by vegetarians, Hindus and kosher Jews in California, Washington, Texas, New Jersey and Illinois state courts involving alleged non-disclosure that McDonald's fries contained beef flavoring.
- Represented El Tapatio Markets Inc., in the sale of certain of its assets to Bodega Latina Corporation.
- Represented Noble Food Group, Inc., in its acquisition of substantially all the assets for the operation of thirteen Domino's Pizza franchise stores from Team San Francisco Pizza, LLC and Team Golden Gate, Inc.
- Represented Ava Ruha Corporation in its sale of substantially all of its assets to Mill Road Capital, a private equity firm.
- Represented Native Food Holdings, Burger Lounge, McGregors Craft Beer in leasing and licensing matters for all of their locations.
- Represented Heitz Wine Cellars and Diagio in the acquisition and leasing of vineyards.
- Represented Mondelez International and Kraft Heinz's in the leasing and acquisition of property.
- Represented Vallarta Food Enterprises, Inc., in connection with a new market tax credit transaction.
- Represented Leprino Foods in a product defect claim against manufacturer of 10,000 gallon steel tanks used for the client's international manufacture of cheese products and provided CEQA compliance for waste discharge permit.
- Represented BevMo! in multiple California Proposition 65 Notices and threatened lawsuits related to products sold in their stores.