

### Food and Beverage Class Actions: Reasonable Consumer Defense in False Advertising and Deceptive Labeling Cases

Webinar

07.30.2024 | 1:00-2:30 PM EDT

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The torrent of food labeling class actions has not slowed, though over time specific labeling issues may ebb and flow. Defendants include major food companies to small, family-owned businesses. A gauntlet of federal laws, agency regulations (FDA, FTC, USDA), and state consumer protection laws apply.

To prevail on a claim for deceptive advertising/labeling, plaintiffs must plead and prove that a subject statement or label is likely to deceive reasonable consumers. The analysis requires considering all the information available to the consumer and the context in which that information is being provided. *McGinity v. P&G* may offer defendants some leverage at the motion to dismiss stage. In 2023, at least eight decisions involving the reasonable consumer defense were issued by the Second and Ninth Circuits.

Much of the litigation focuses on specific chemicals, such as PFAS, or certain additives, such as citric acid and malic acid, which plaintiff's assert render "all natural" or "no artificial flavors" or "no preservatives" false and misleading. The use of terms such as "sustainable," certified, and claims about carbon footprints or other "green" issues may be new versions of traditional themes.

Listen as this panel discusses best strategies for either obtaining or avoiding dismissal of false labeling claims, current trends, and recent case law.

#### Outline

1. Food and beverage class actions
  1. False advertising
  2. Mislabeling
2. Reasonable consumer standard
3. Resolving ambiguous claims
4. Strategies at the certification stage
5. Strategies at trial

#### Benefits

The panel will review these and other key issues:

- What is the effect of *McGinity v. Procter & Gamble Co.*, 69 F.4th 1093 (9th Cir. 2023)?
- What defense approaches can prevail at certification and trial in food and beverage class claims?
- What are the latest legislative and case law developments impacting food and beverage claims?

#### Speakers:

- Sascha Henry, Partner, Sheppard Mullin
- David T. Biderman, Partner, Perkins Coie
- P. Renée Wicklund, Co-Founder, Richman Law & Policy

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## Attorneys

Sascha Henry

## Practice Areas

Class Action Defense

## Industries

Food and Beverage