

→ Food and Beverage

The food and beverage industry is among the most competitive, innovative, and globally-linked of all business sectors. Technological innovations are changing the way food is delivered and marketed, how food safety is protected, and the industry's relationship with its consumers. Companies face emerging legislation and rulemaking at federal and local levels that address their workforce, the privacy of their consumers' information, supply chain and waste, among other issues.

Sheppard Mullin understands your business and can assist you in expanding into the global market and developing new business strategies, while protecting your products and brands along the way. Sheppard Mullin counsels food and beverage clients with experienced representation in brand development and protections, product liability, patent, trade secrets, and trademarks, immigration, privacy, regulatory, tax, and labor and employment issues.

Advertising and Promotions

Advise on every aspect of new media marketing, including endorsements and viral marketing; sponsored and native advertising; social media and consumer-generated content, contests and promotions, and numerous other legal issues associated with developing media channels.

Corporate Finance/Mergers and Acquisitions

Work with domestic and international companies and investors on formation of businesses, equity financing transactions from angel investments to public offerings, private and public debt financing transactions, mergers and acquisitions, capital markets transactions, licensing and joint venture arrangements and more.

Substantial knowledge and experience in the food and beverage industry allows us to understand well our clients' needs and to use a pragmatic approach to getting deals done and helping clients achieve success.

Creditors' Rights and Bankruptcy

Advise clients who are in bankruptcy, vendors in receivership, or suppliers in an assignment for the benefit of creditors, to protect the client's rights, minimize losses, and maximize the return on a claim.

Advise on buy-side distress M&A transactions, helping clients navigate acquisitions of targets in distress.

FDA and Regulatory Matters

Advise food, dietary supplement and beverage clients on all regulatory matters involving product development, novel ingredients, food labeling, product claims and marketing.

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 regulations.

Advise on matters falling under the jurisdiction of the U.S. Department of Agriculture, including organic claims.

Intellectual Property

Help clients build brands, provide memorable consumer experiences, and keep over-zealous competitors in line.

Guide clients in the acquisition of trademarks, copyrights and patents (by applications, purchases or licenses) and with supply-chain or distribution agreements.

We work to safeguard our client's trade secret rights through effective confidentiality protections, reviewing and clearing trademarks and advertising, and efficiently challenging competitor's false or misleading product claims and advertisements in administrative and legal proceedings.

Labor and Employment

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.

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.

Advise on preventative approaches to anticipate employee complaints, governmental agency actions, and union problems.

Advise clients on COVID-19 employee protocol and policies.

Litigation and Dispute Resolution

Represent clients facing any legal dispute related to their company and brand, including false advertising and product labeling claims, not just in the "Food Court" in Northern California, but also in courts throughout California, New York, Illinois, and Texas.

Work with clients to create 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.

Privacy and Data Security

Counsel clients on website development and search engine agreements, trademarks and co-branding, data privacy and cybersecurity.

Identify and resolve regulatory compliance issues, craft and implement privacy and data security policies, and address emerging developments, including the legal issues presented by the accumulation of “Big Data.”

Help clients prepare for data breach incidents, respond when these occur, and counsel on privacy matters arising from mergers and acquisitions, joint venture and strategic alliance formations.

Proposition 65

Guide clients 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.

Represent food and beverage manufacturers, suppliers, and retailers, as well as advising retailers on critical time-urgent issues such as the extremely short “retailer safe harbor” exemptions.

Public Policy and Government Affairs

Draft legislation and advocate/lobby at the federal executive, legislative and regulatory levels.

Provide the latest information on government proposals and other anticipated developments in Washington, D.C., and across the country.

Submit comments to regulatory agencies, including the Department of Labor, the EEOC, and the NLRB.

Real Estate Development and Leasing

Represent clients in real property ownership and development.

Represent clients 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 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.