

Thompson Hine's Experience in the Food Industry

Thompson Hine has an interdisciplinary group of lawyers who work together to counsel clients in the food industry. Our Life Sciences lawyers regularly counsel manufacturers, distributors and retailers on issues unique to the industry, ranging from government regulations to advertising laws to international trade; our Product Liability lawyers represent companies faced with allegations of contaminated, adulterated or misbranded food products; and our Environmental lawyers address pesticide and other contamination issues relative to the food industry.

We advise food industry clients on a variety of regulatory issues, including the interplay of FDA, USDA and EPA regulations governing the production, distribution and promotion of human and animal food products, including food ingredients, food additives, food contact substances and dietary supplements. We understand the framework involved in bringing food products to market and maximizing market opportunities. Our primary focus is providing practical advice to help clients reach their commercial and operational goals while complying with the law.

Our FDA, USDA and EPA experience includes assisting companies with product development and strategy to minimize regulatory costs; advising on labeling, advertising and manufacturing requirements at the state and federal levels; and handling other issues that arise during progression from concept development to commercialization.

Our lawyers also participate in activities related to industry and trade regulation in the food products and service industries. One of our partners serves on the President's Advisory Committee for Trade Policy and Negotiations (ACTPN) and another serves on the Industry Trade Advisory Committee for Customs Matters and Trade Facilitation.

Representative Experience

Regulatory Counseling

- Counsel clients in the application of regulations governing product labeling, advertising and promotional activities (e.g., FDA, FTC).
- Assist clients with California Proposition 65 compliance specific to presence of certain compounds present in food products and food additives.
- Drafted food label for imported organic food product that required analysis of the availability of certain health claims, negotiation with FDA on rewording health claim, analysis of potential tort liability with respect to food allergen issues and application of Food Allergen Labeling and Consumer Protection Act of 2004.
- Advise clients on the pre-market and post-market requirements for bringing a food product to market (including notification requirements, food additive petitions and registration).
- Counsel clients on the Organic Foods Production Act (OFPA) requirements for establishing and maintaining an organics program.
- Advise clients with regard to product classification and market entry requirements (including GRAS food ingredients, food additives and animal food).
- Advise clients on manufacturing regulations, compliance and related internal and external audits (e.g., cGMP, HACCP).
- Counsel clients on AAFCO animal feed definitions and listing standards.
- Serve as regulatory counsel for global manufacturer of human and animal food ingredients and food additives.
- Counsel clients on registration and notification requirements of the Public Health Security and Bioterrorism Preparedness and Response Act.

- Advise clients on NSF certification standards for water treatment applications.
- Counsel food franchisors in a variety of areas, including the enforcement of system standards and advising on local and state government regulation of food service businesses.
- Advise clients on requirements of food sanitation under the Sanitary Food Transportation Act of 1990.
- Provide advice on the application of various state and federal regulations with respect to bottled water, which is regulated as a food under federal and state laws, for various parties, including municipal water providers.
- Assisted a large commercial cooking operation in a very significant air permitting matter.
- Involved in EPA matters with respect to food producers and cooking operations, involving both air and wastewater emissions.

Adulterated Food Litigation

- Defended a manufacturer of food flavoring ingredients against claims that exposure to certain chemicals contained in food flavorings caused personal injury.
- Defended a class action for a food establishment cited as the point of origin of a Hepatitis A outbreak.
- Defended a wrongful death claim that resulted in summary judgment on behalf of a local seafood restaurant whose customer contracted a rare viral infection after consuming a raw oyster.
- Defended a major agricultural and food company against allegations that its product caused personal injury because it was unfit for human consumption and adulterated.
- Handled a contaminated bulk cheese case for a major packaged food company. The allegation was regarding the delivery to a major pizza food chain of bulk cheese that had been contaminated with chlorine.

Administrative and Legislative Advocacy

- Led negotiations with FDA, OIG and Department of Justice in investigations and enforcement proceedings with respect to alleged regulatory and statutory violations regarding pre-market notifications, food additive petitions, product recalls, labeling matters, adulteration and misbranding warning letters, FDA inspections and audits.
- Obtained Customs ruling that permitted temporary importation of food ingredients without payment of antidumping duties.
- Represented FDA-regulated manufacturer in state, federal and international government affairs including lobbying, policy and administrative advocacy over preceding six years in dynamic legislative landscape.
- Represented a dairy farm in connection with USDA and EPA regulatory compliance requirements.
- Defended an egg farm in an EPA enforcement action arising out of a claim of improper discharge of wastewater into a stream.

International

- Develop import and export compliance programs for multinational corporations in the agricultural and prepared foods industries.
- Train lawyers and import and export compliance managers on import and export laws and regulations, as well as international trade agreements.
- Serve as international trade counsel for large U.S. food and food ingredients company, including development and implementation of import compliance program for several operating units, assistance with Customs-focused assessments and requests for information, and development of related party valuation methodologies.
- Advise food ingredients company on trade agreements and access to markets in Asia and Latin America.