



Food and Beverage News and Trends

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[COVID-19 Alert](#)

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This regular publication by DLA Piper lawyers focuses on helping clients navigate the ever-changing business, legal and regulatory landscape.

- **COVID-19 economic relief.** The \$2.9 trillion coronavirus relief package proposed by the White House on February 3 includes a \$25 billion grant program for struggling restaurants. While the details are still being negotiated, the measure would allow eligible food service and drinking establishments to file for grants of up to \$10 million, to compensate for revenue lost to the pandemic. Grants would be available to eateries that are not part of a chain or franchise with more than 20 locations, which opens funding to a broad swathe of small businesses, ranging from restaurants and bars to wineries and food stands. The so-called Biden restaurant grants would not need to be paid back unless grantees permanently closed or did not spend the grants on eligible expenses. In those cases, the grant would become a low-interest loan.
- **Wonder Bread maker will change labeling concerning whole grain.** On January 25, Flowers Foods, the maker of Wonder Bread, announced an agreement with the Center for Science in the Public Interest to change its labeling for its Wonder White Made With Whole Grain product. According to the CSPI and the company, the front of the package of this bread will now feature the word “White” more prominently than the words “Whole

Grain.” It will continue to state that the bread offers eight grams of whole grain per serving and will now also say explicitly that 34 percent of the grains are whole grains. The back of the package will advise consumers about the existence of the company’s Wonder 100% Whole Grain bread, which is a 100 percent whole grain product with 26 grams of whole grains per serving. The changes, said CSPI Litigation Director Lisa Mankofsky, “will help consumers understand the exact whole grain content of the bread.”

- **Nonprofit argues that key ingredient of Impossible Burger needs more study.** On January 28, the nonprofit Center for Food Safety filed a brief in a case against the FDA and Impossible Foods Inc., alleging that soy leghemoglobin, a color additive in Impossible Foods’ plant-based meat products, has not received enough government scrutiny over possible safety and health issues. In the brief, the center urged the US Court of Appeals for the Ninth Circuit to reject the FDA’s earlier ruling that the additive is safe. Soy leghemoglobin, also known as GE heme, is produced by using genetically engineered yeast. The organization contends that because GE heme is new to the human diet, and substantial quantities of it are added to the Impossible Burger, the FDA should have required extensive safety testing before approving its use as a color additive.
- **Whole Foods must face class action concerning its graham crackers.** On February 2, a federal district judge declined to dismiss a proposed class action against Whole Foods that claims the company deceived consumers about the contents of its 365 Organic Honey Graham Crackers. The US District Court for the Southern District of New York found that the plaintiff in the case plausibly alleged that the words “Honey” and “Graham” on the package mislead reasonable consumers into thinking that the crackers contained more whole grain flour than non-whole grain flour, and that honey rather than sugar was the main sweetener. “It is not implausible that consumers would understand the words on the box to say what they mean,” Woods wrote. The box also shows a honey dipper in a bowl of honey. Whole Foods responded that the complaint was “unreasonably literal” and pointed out that the actual ingredients are clearly listed on the box.
- **Supermarket charged with overstating the amount of coffee that can be brewed from its cans.** On February 2, Market Basket, a supermarket chain based in Tewksbury, Massachusetts, was accused in a class action of overstating the amount of coffee that can be made from its store-brand coffee cans. According to the lawsuit, which was filed in the US District Court for the District of Massachusetts, the cans were labeled as containing enough coffee to produce 79 cups of regular and 76 cups of decaffeinated coffee. According to the complaint, there was only enough to brew 39 and 37 cups, respectively. The complaint said that as a result, consumers “were cheated out of 51% of the servings they paid for, in both cases, based on the advertising, marketing, and labeling of the Products.” The complaint also said consumers had, as a result of the alleged deception, purchased more of the coffee and paid a higher price than they would have otherwise.
- **Icelandic, or not?** On January 23, a class action was filed against Icelandic Provisions, Inc. in the US District Court for the Southern District of New York over the actual origin of the company’s “skyr” product. Skyr is an Icelandic cultured dairy product similar to yogurt. The complaint alleged that the company misleadingly implied that the product was made in Iceland, when it was in fact manufactured in New York state. The complaint noted that the packaging of the product shows a snow-covered backdrop appearing to be part of Iceland, that the product is called “Traditional Icelandic Skyr,” and that the name of the company is “Icelandic Provisions” – leading consumers to believe that the product is made in Iceland.

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