

ABA SECTION OF LITIGATION

Food & Supplements

SECOND ANNUAL WORKSHOP

Presented by the Food & Supplements Subcommittee and the
Products Liability Committee of the Section of Litigation

Tuesday, June 12, 2012

Sara Lee Corporation
3500 Lacey Rd, Downers Grove, IL 60515



ABA
AMERICAN BAR ASSOCIATION
Section of Litigation

PROGRAM AGENDA

FOOD & SUPPLEMENTS CHAIRS

MARY LYNN BEDELL

VP - Senior Counsel
Sara Lee Corporation
Chicago, IL

JESSALYN H. ZEIGLER

Member/Shareholder
Bass, Berry & Sims PLC
Nashville, TN

PROGRAM CHAIRS

SARAH BREW

Partner
Faegre Baker Daniels LLP
Minneapolis, MN

KEN ODZA

Corporate Counsel, Food Safety
Kellogg Company
Battle Creek, MI



8:00 am - 9:00 am **Breakfast**

9:00 am - 10:30 am **Food Safety Modernization Act Update**

The Food Safety Modernization Act (FSMA) became law in January 2011. Many of its key provisions, such as preventative controls and administrative suspension of registration may be effective as early as July 2012. Others are already in effect and FDA has begun to exercise some of its new statutory enforcement powers. This panel will explore how implementation of the law has already changed the status quo for food businesses and litigation and what we can expect going forward.

MODERATORS:

Dr. Leon Bruner, Senior Vice President, Scientific & Regulatory Affairs, Chief Science Officer, GMA, Washington, D.C.

Elizabeth Wroe, Counsel, FaegreBD Consulting, Washington, D.C.

PANELISTS:

Dr. David Acheson, Managing Director, Food and Import Safety Practice, Leavitt Partners, Salt Lake City, UT

Ann Boeckman, Senior Counsel, Food Law, Kraft Foods, Northfield, IL

Ricardo Carvajal, Director, Hyman, Phelps & McNamara PC, Washington, D.C.

Michael Landa, Director, Center for Food Safety and Applied Nutrition, Food and Drug Administration

10:30 am - 11:45 am **Food Labeling: Riding the Tide of Consumer Fraud Class Actions**

This panel will examine recent developments in case filings and court decisions, including the latest types of labeling or marketing claims being challenged by consumers in court. The likelihood of success of certain defenses will also be discussed, such as preemption and lack of standing. We will also explore practical tips and best practices for handling these cases, including insurance considerations.

PROGRAM AGENDA

SECTION SPONSORS

LITIGATION PRACTICE SOLUTIONS
Sponsor of the ABA Section of Litigation



NAVIGANT
CONSULTING

Litigation Advisory Services
Sponsor of the ABA Section of Litigation

FIRM/COMPANY SPONSORS

Alston & Bird LLP

Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC

Bass, Berry & Sims PLC

Faegre Baker Daniels LLP

Goodwin Procter LLP

Hyman, Phelps & McNamara, PC

Kaye Scholer LLP

Keller & Heckman LLP

Kelley Drye & Warren LLP

Kutak Rock LLP

Perkins Coie LLP

Medical Resource Network

Sedgwick LLP

Sidley Austin LLP

Southern Trial Counsel, TLC

Stoel Rives LLP

Warner, Norcross & Judd LLP



MODERATORS:

David Biderman, Partner, Perkins Coie LLP, San Francisco, CA

Jessalyn Zeigler, Member, Bass, Berry & Sims PLC, Nashville, TN

PANELISTS:

Suzanne Catanzaro, Senior Counsel, ConAgra Foods, Naperville, IL

Thomas Monroe, Corporate Counsel-Litigation, Kellogg Company, Battle Creek, MI

Dean Panos, Partner, Jenner & Block LLP, Chicago, IL

Edward (Ted) Shin, Senior Corporate Counsel, Welch Foods, Concord, MA

11:45 am - 1:15 pm Lunch

1:15 pm - 2:30 pm Food Labeling: How to Avoid an FDA or FTC Enforcement Action

This panel will discuss strategies to mitigate exposure to regulatory action based on food labeling, marketing or advertising, including the regulatory landscape that influences these cases; the types of claims that have generated recent enforcement actions and litigation; emerging areas of potential exposure; and best practices for substantiating structure, function and performance claims.

MODERATORS:

John Graubert, Partner, Covington & Burling LLP, Washington, D.C.

Sarah Roller, Partner, Kelley Drye & Warren LLP, Washington, D.C.

PANELISTS:

Mary Lynn Bedell, Senior Counsel, Sara Lee, Downers Grove, IL

Melvin Drozen, Partner, Keller and Heckman LLP, Washington, D.C.

Joseph Levitt, Partner, Hogan Lovells US LLP, Washington, D.C.

Cate McGinn, Principal, Cate McGinn Law Offices LLC, Chicago, IL

PROGRAM AGENDA

REGISTRATION

Visit <http://www.abanet.org/litigation/programs/>

to register online or return the registration form with your payment (checks only) to:

Karen Woodward
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South 7th Street
Minneapolis, MN 55402

REGISTRATION CANCELLATION

Requests for refunds must be made in writing and received no later than June 6, 2012, in the ABA Section of Litigation office. Please email your request to Sharyne Tu at sharyne.tu@americanbar.org.

There will be a \$10 administrative fee deducted from the refund.

Cancellations received after June 6, 2012 will not be refunded; however, the Section will gladly accept substitutions for those unable to attend.



2:30 pm - 3:45 pm

So How Did Walnuts become Drugs? Compliance Issues for Companies that Sell Supplements and Functional Foods

If you don't keep your walnuts in the medicine chest, you might wonder: "*How does a supplement or a functional food morph into a drug?*" For supplement and functional food producers the regulatory issues have been getting more complicated each year. What is an unauthorized health claim? What constitutes sufficient claim substantiation? How do you protect your client from FDA or FTC action? Get the most up-to-date review on these hot compliance issues facing companies in the fast growing healthy living section of the industry.

MODERATORS:

Joanne Gray, Partner, Goodwin Procter LLP, New York, NY

Ivan J. Wasserman, Partner, Manatt, Phelps & Phillips LLP, Washington, D.C.

PANELISTS:

Jeffrey B. Brams, General Counsel and Vice President, Science and International Business, Garden of Life, West Palm Beach, FL

B. Keith Clark, Chief Operating Officer and Chief Legal Officer, Mannatech, Coppel, TX

Paul Coates, Ph.D., Director, ODS Director, Office of Dietary Supplements, NIH, Bethesda, MD

Ashish R. Talati, Partner, Amin Talati llc, Chicago, IL

3:45 pm - 4:00 pm

Break

PROGRAM AGENDA

MCLE CREDIT

Accreditation has been requested for this program from every state with mandatory continuing legal education requirements for attorneys. Please be aware that each state has its own rules and regulations, including its definition of CLE as well as "Ethics". Therefore, certain programs may not receive credit in some states. Please check with your state agency for confirmation of general as well as ethics approval for any program. You may contact Matthew Thurman at the ABA at thurmanm@staff.abanet.org to confirm the number of credits approved by any particular state.

HOTELS

The Westin

Lombard, Illinois
\$112 per night Sara Lee rate
Phone: (630) 719-8000
www.westin.com/chicago

Marriott Suites

Downers Grove, IL
\$99 per night Sara Lee rate
Phone: (630) 852-1500
www.marriott.com/chicago

4:00 pm - 5:00 pm

Ethical Considerations when Dealing with Complex Compliance Issues

This panel will examine the rules of professional responsibility and ethical considerations when trying to comply with unclear or seemingly contradictory laws, regulations or agency guidance; discuss how outside or in-house counsel should work with food and supplement company clients to prevent them from crossing an ethical line when the law is not clear and the business issues are all too clear; and provide practical advice on discharging professional and ethical duties when a client doesn't want to hear or follow your advice.

MODERATORS:

Peggy Smith Bush, Founding Partner, Southern Trial Counsel PLC, Orlando, FL

Anne Glazer, Partner, Stoel Rives LLP, Portland, OR

PANELISTS:

Frederick Branding, Principal Attorney, Olsson Frank Weeda Terman Matz PC, Chicago, IL

Neil Fortin, Adjunct Professor and Director, MSU College of Law, East Lansing, MI

John Koski, Partner, SNR Denton, Chicago, IL

Z. Scott, Partner, Kaye Scholer, Chicago, IL

5:00 pm - 6:30 pm

Reception at Sara Lee



REGISTRATION FORM

Name _____

Company _____

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

Email _____ ABA Member No. _____

Registration Fees

\$140 Section of Litigation Members / \$200 Non-Section members

Checks for attendance should be made payable to the American Bar Association.

I will attend the meeting and my check for \$_____ is enclosed.

Registration fee includes course materials, continental breakfast, lunch, p.m. snack and cocktail reception following the meeting.

Tax Deduction for Educational Purposes

In the United States, an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This excludes registration, travel, meals and lodging (see Tres. Reg. 1.162.5)
(Coughlin vs. Commissioners, 203 F.2d 307)

Business casual dress is encouraged for all participants.

Providing your email address allows you to receive promotions and communication from the Section of Litigation and other ABA entities.

Visit <http://www.abanet.org/litigation/programs/> to register online or return the registration form with your payment (checks only) to Karen Woodward at Faegre Baker Daniels LLP 2200 Wells Fargo Center, 90 South 7th Street, Minneapolis, MN 55402.

Registration Cancellation

Requests for refunds must be made in writing and received no later than June 6, 2012, in the ABA Section of Litigation office. Please email your request to Sharyne Tu at sharyne.tu@americanbar.org.

There will be a \$10 administrative fee deducted from the refund. Cancellations received after June 6, 2012 will not be refunded; however, the Section will gladly accept substitutions for those unable to attend.