

## Food and Beverage

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### Overview

When it comes to the food and beverage industry, we believe in getting to know the business – not just the law. We understand the significant challenges facing clients in all segments of the highly competitive food and beverage industry – from the receipt of harvests and subsequent processing and packaging through the delivery of food products to the grocery stores and restaurants that serve consumers. For decades, we have been helping clients not only surmount these hurdles, but also to realize the opportunities available in an evolving industry.

Food and ingredient processors and distributors, grocery chains, marketing cooperatives, dairy businesses and restaurants are among our many food and beverage clients that have benefited from our guidance on a full spectrum of issues from attorneys experienced in intellectual property, labor and employment, litigation, franchising and distribution, advertising, commercial financing, partnership and mergers and acquisitions law, as well as in financial markets regulation with respect to food and agriculture companies hedging price and risk exposure to commodity products.

It is this range of experience -- coupled with our thorough comprehension of our clients' business needs and goals -- that supports our ability to help our clients not only grow and protect their brands but achieve success.

We are trusted advisors to clients ranging from start-up and early stage manufacturers of ingredients to privately held food product and flavoring companies that we have represented for several generations; from national processing and marketing cooperatives of farmers who produce the food to publicly-traded integrated food companies and U.S. subsidiaries of global food and beverage giants.

For many of these clients, we serve in a general counsel role, working closely with senior management on all aspects of their legal issues. When necessary, we coordinate our services with those of firm colleagues to provide exceptional representation in:

- General business litigation
- Franchise and distribution litigation
- Acquisitions and divestitures
- Joint ventures
- Patents
- Trademarks and trade dress matters
- Labor and employment counseling and litigation
- Trade secrets and unfair competition
- Finance
- Financial markets and products
- Securities, commodities and swaps regulation and litigation
- Supply chain negotiations and contracting
- Employee benefits
- Environmental compliance

### Labor and Employment

By taking a client-centric approach to traditional labor law, we have built long-standing relationships with a number of Fortune 500 companies in the food and dairy industry. We represent these and other food and beverage clients in all aspects of employment law.

Clients turn to us for guidance in navigating the shifting landscape of federal and state employment, wage and hour, employee benefit, and anti-discrimination laws and regulations. We regularly negotiate labor agreements and represent clients in labor arbitrations. Our lawyers provide union avoidance counseling, guidance during union organizing campaigns and representation before the National Labor Relations Board.

## Intellectual Property

We understand that the food and beverage industry is both a high-tech and a brand-focused industry, home to some of the most innovative companies developing cutting-edge technologies and marketing strategies. We partner with our food, beverage and ingredient manufacturing and distribution clients in developing, protecting and commercializing their inventions and trademarks. Our intellectual property attorneys work alongside our business, finance and corporate counselors to advise clients on how best to protect, exploit and enforce their patent, trade secret and trademark portfolios.

For food and beverage clients, success is often dependent on both brand recognition and brand reputation. We help our clients defend and protect their brands through litigation when necessary, including trade dress rights. We also have litigated successfully to protect our clients' copyrights and design rights. Our patent trial lawyers have enjoyed success in litigation involving patented food industry products ranging from stuffed pizza crust and sausage topping to high quality cookware. We are also experienced in policing and enforcing popular, well-known trademarks such as Thermos ® and Sterno ®.

## Litigation

For food and beverage clients, success is often dependent on both brand recognition and brand reputation. We help our clients defend and protect their brands.

We have litigated successfully to protect a wide range of copyrights and trademarks in the industry, as well as to protect our clients' design patent and trade dress rights.

We prosecute cases involving disputes among food and beverage producer/marketers and their distributors. In one such case we were retained to challenge a state law that was enacted to protect a politically influential beverage distributor from termination or other penalties for poor performance. We persuaded a federal court to strike the law down under the "contracts clause" of the U.S. Constitution, whereupon the state legislature repealed the law.

Having successfully developed the trade secrets doctrine of "inevitable disclosure" in the milestone case of *PepsiCo, Inc. v Redmond* 54 F. 3d 1262 (7th Cir. 1995), our trade secrets lawyers have continued to counsel clients and litigate, when necessary, on cutting edge trade secrets issues and applications in the food and beverage industry.

## Business Operations, Transactions, Acquisitions and Divestitures

We have successfully represented Fortune 500 companies and agribusinesses in their day-to-day operations and in the structure, negotiation and completion of high profile food and beverage joint ventures, transactions, acquisitions and divestitures. Experienced in the full range of business operations, expansions, financings and M&A related transactions, from small private companies to multi-billion dollar business organizations, Schiff Hardin attorneys are able to anticipate and address food and beverage client needs – and help them realize their business objectives.

## Capital Raising and Financing

We work with numerous growth companies in the food, beverage and ingredient space in negotiating, documenting and closing their equity and debt financings. This includes early-stage capital from angel investors active in this arena, and subsequent A, B and C rounds as these companies mature and expand their product offerings. We are often also on the investor side, representing strategic investors in their minority and controlling investments in food and beverage and ingredient companies. For our larger food and beverage companies we serve as on-going legal counsel in their financing activities, assisting with strengthening their lender relationships to support their growth.

## Bankruptcies and Restructurings

Schiff Hardin's Restructuring Group has an in-depth understanding of the relevant federal and state regulatory laws implicated by restructurings in this industry. This understanding enables our Restructuring Group to provide clients with legal and business solutions to complex challenges in distressed situations. We have served as counsel to several large food and beverage companies in significant bankruptcy proceedings throughout the country. We understand the unique nature of the product our clients deliver, and the particular rights and regulatory scheme that enables our clients to recover on often-perishable commodities delivered to an insolvent or bankrupt customer. We have also represented equipment lenders to franchisees across the country effectively protecting their interests in a sale, a liquidation or transition to another franchisee. Similarly, our restructuring attorneys have advised restaurants and retail food suppliers, navigating them through the restructuring process, making our restructuring lawyers some of the most experienced practitioners in this industry.

## Experience

- We have defended a major food company regarding allegations by the government and others of excessive quantities of naturally occurring chemical in various fried products.

- We represented founder and chairman of an Asian food wholesale and distribution company in litigation arising out of a property development project. We won summary judgment granting our clients control of an international supermarket constructed on the property, then won arbitration award granting our clients ownership of the entire project along with millions of dollars in damages.
- We have proudly served as counsel to Bunn-O-Matic Corporation, a leading manufacturer of coffee brewing, hot and cold beverage equipment, for over 25 years. In that role, we have advised the company with respect to cross-border agreements, regulatory compliance, product launches, protection of its intellectual property rights, online policies, customer and distribution agreements, labor and employment policies, and the full range of legal issues that companies in the food and beverage sector face on a daily basis.
- We successfully represented a manufacturer of an industry-leading travel tumbler in a case against a nationwide chain of gourmet coffee stores and its supplier of vacuum-insulated beverage containers offered for sale in its stores.
- We applied the "inevitable disclosure" doctrine in the service of two key brands of an international beverage company. When a major advertising agency that had worked on advertising for these premier brands announced plans to take on two directly competing brands of a major competitor, we filed separate injunction actions to prevent the same creative personnel at the agency from working on the new, directly competitive brands. After we won a fast-moving, hotly contested restraining order preventing the competitor's personnel from meeting with the agency regarding its bottled water product, the agency consented to the entry of injunctive relief requiring its abstention from handling the competitor's brands for a prescribed time period.
- We represented Kraft Foods Global, Inc.'s \$280 million sale of its Minute Rice(R) brand and assets to Spanish food producer Ebro Puleva SA.
- We represented Koch Foods Incorporated in its acquisition of certain commodity poultry operations from Tyson Foods, Inc.
- We represented Kraft Foods in its \$4.9 million acquisition of General Mills' breadcrumb manufacturing facility and business.
- We have represented one of the nation's largest dairy companies and a substantial Midwest grocery chain since the late 1980s, primarily handling arbitrations, federal court litigation, union organizing campaigns and proceedings before the NLRB.
- We successfully represented a large commercial bakery in New York to maintain non-union status for more than thirty years, including representation before the NLRB and the D.C. Circuit Court of Appeals.
- We represent a leading food and beverage provider in a variety of insolvency matters involving customers, contract parties and suppliers.
- Ranch\*1, Inc., et al. – we represented the debtors, a restaurant chain, in their successful Chapter 11 proceeding.
- Gilbert Robinson, Inc., G/R Holding Corp., Inc. (Houlihan's restaurants) – we represented the Official Committee of Unsecured Creditors, involving a \$200,000,000.00 chapter 11 proceeding.
- We represented a leading national franchise finance company in chapter 11 cases, involving hundreds of Burger Kings, Taco Bells, Dunkin' Donuts and other franchises in several jurisdictions.
- We represent a leading private manufacturer of ingredients for commercial use in food and beverages in all aspects of their corporate, financing, intellectual property and litigation needs
- Pudgie's Famous Chicken, Inc. – we represented the Official Committee of Unsecured Creditors in the restaurant chain's chapter 11 proceeding.
- We represented a large publicly owned food and beverage company in the negotiation of its strategic divestitures of its non-core businesses, including certain well-known brands.
- We helped establish World's Finest Chocolate as a market leader through various complex transactions including:
  - the strategic acquisition of the Queen Anne candy brand and cordial cherry production assets including a long-term cherry supply agreement with the world's leading maker of maraschino cherries, ensuring our client will have a low-cost, reliable source of the product
  - the recent sale of its cocoa-bean manufacturing operation to Swiss-based Barry Callebaut, the world's largest manufacturer of chocolate, in exchange for a long-term supply contract, ensuring a lower-cost reliable source of chocolate
- We advise a consortium of manufacturers of food and beverage ingredients in their formation, capital raising, governance and investment activities, including recent \$6 million preferred stock investment in an Ecuador-based beverage ingredient manufacturer.
- We represented MetaBrand Capital in its \$6 million Series B investment in Runa LLC, a manufacturer of a guayusa leaf-based "clean energy" beverage brand.
- We have represented Riceland Foods, Inc., the country's largest rice processing and marketing cooperative with over \$1 billion in sales, in the commercial and transactional aspects of its business, including tax issues, joint ventures, acquisitions, financings, corporate governance and membership issues.
- We recently designed and implemented the legal aspects of the acquisition by Best Rice, LLC, an Arkansas limited liability company, of an instant rice processing business and the organization of related acquisition financing, joint ventures for the ownership of the processing facilities and bond financing transactions.
- We have advised Riceland Foods, Inc. on tax matters including state income exemption, a federal private letter ruling request and federal tax audits.

- Lawyers in our San Francisco office represent Riceland Foods, Inc. in connection with Proposition 65 litigation regarding the presence of lead and arsenic in consumer food products.
- We have advised Riceland Foods In connection with the expansion of business operations into Mexico and the Caribbean and have worked with local country counsel in meeting entity organization, licensing and other requirements.
- We defended chemical manufacturer in suit alleging sale of defective acid used in the manufacturing of cornstarches by the largest processor of corn products.
- We represented largest private label juice manufacturer in suit arising out of purchase of \$40 million private label juice business from largest grower of cranberries.
- We represented TreeSweet Products, manufacturer of frozen and shelf-stable citrus juices, in breach of fruit processing agreement.

## AWARDS & HONORS

- **BTI “Innovation Builder”**

We were singled out by corporate counsel as one of only 28 percent of law firms clients view as a BTI “Innovation Builder,” which recognizes firms that bring change to the legal market through new technology, services, strategies, or structures.