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Trends and Tips for Food Businesses Regarding California Consumer Claims

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A massive wave of consumer class actions targeting food manufacturers, distributors, and retailers is sweeping across industries as the plaintiffs' bar aggressively targets product labeling and advertising under California's powerful consumer protection statutes—including the Consumers Legal Remedies Act (CLRA), Unfair Competition Law (UCL), and False Advertising Law (FAL). These claims, often filed or threatened as putative class actions, challenge everything from product ingredient representations to packaging to "clean" and "natural" claims, even where such claims appear frivolous and unfounded.

According to a 2024 Lex Machina Consumer Protection Litigation report, in 2023, a total of 14,515 consumer protection cases were filed in federal district courts, representing a 7.6 percent increase from 2022. Between 2021 and 2023, the highest number of consumer protection cases was filed in the Central District of California. The report states that individual plaintiffs are some of the most active plaintiffs. From 2021 to 2023, a staggering USD$13 billion in total damages were awarded as approved class action settlements.

In today's environment, nearly any marketing claim—on package, online, or in store—is a potential litigation trigger. Plaintiffs are not waiting for regulators; they are using broad statutory tools to pursue injunctive relief, restitution, and attorneys' fees, creating significant legal exposure for brands selling into the California market, even if they are located out of state. Since other states beyond California have strong consumer protection laws, claims are often filed or threatened in a multitude of states, increasing exposure and risk to companies selling products nationwide.

It is fairly easy for plaintiffs' firms to bring these threatened claims; they often require minimal effort aside from purchasing the product and claiming that the plaintiff

has somehow been misled or the statements made on product packaging are erroneous. Plaintiffs often use "form" demand letters to churn out more claims against unsuspecting businesses, while seeking significant attorneys' fees. Companies should be aware of these practices and develop a plan to lessen the risk of receiving such claims.

Overview of the Laws

- **CLRA** prohibits a wide range of deceptive practices in connection with the sale or advertisement of goods to consumers, including misrepresentations about product quality or benefits. It authorizes consumers to sue for actual damages, including attorneys' fees and punitive damages, and seek injunctive relief for alleged violations. Written notice, commonly referred to as a demand letter, must be sent to the business detailing the alleged violation before a lawsuit can be brought. Enacted in 1970, CLRA has been a cornerstone of the plaintiffs' bar due to the potential recovery of attorneys' fees.
- **UCL** broadly prohibits "unlawful, unfair, or fraudulent" business acts and can serve as a catch-all claim based on violations of other laws or general unfairness. Plaintiffs often combine CLRA and UCL claims in the same demand.
- **FAL** targets false or misleading statements made in advertising or promotional materials.

Key Risk Areas

Companies are seeing increased consumer demand letters and class action filings targeting:

- "Natural," "clean," and "non-toxic" claims without qualification.
- Ingredient disclosures and omissions, especially around allergens, synthetics, additives, or controversial compounds (e.g., preservatives, stabilizers, dyes, fragrances, trans fats, MSG).
- Environmental marketing claims, including "sustainable," "organic," "recyclable," "compostable" or "eco-friendly."
- Health benefit claims that a product will cure disease or medical conditions not supported by competent and reliable scientific evidence.
- Pricing claims including "fake discount" claims that are unclear as to the meaning of a reference price or "strikethrough" price, or "drip pricing" claims alleging that a list price does not include all cost elements (e.g., fees, taxes).
- Privacy claims including those brought under the California Consumer Privacy Act (CPRA) and the Telephone Consumer Protection Act (TCPA).
- Packaging claims alleging that product packaging is difficult to open, misleading, or underfilled (e.g., slack fill).
- California Proposition 65 claims alleging failure to provide a "clear and reasonable" warning to California consumers before exposing them to chemicals listed by the state as causing cancer and/or reproductive harm.

Defense Considerations

Defending against these claims often hinges on:

- *Robust substantiation:* Marketing claims and representations regarding product ingredients should be backed by appropriate factual, scientific, and/or consumer perception evidence.
- *Legal compliance:* Careful analysis of the law is imperative to determine whether an actionable claim exists.
- *Preemption arguments:* In some cases, federal law (e.g., Food and Drug Administration or

Federal Trade Commission regulations) may preempt state law claims.
- *Standing and injury challenges:* Plaintiffs must allege concrete injury and reliance, especially in class actions.
- *Disclosures and disclaimers:* Clear and conspicuous language can reduce risk.

Proactive Steps for Businesses

- Know the law and monitor changes. Laws in this space are evolving at an alarming pace, and it is crucial to stay abreast of new regulations and statutes in all states with strict consumer protection laws.
- Conduct a labeling and advertising audit, particularly for California-marketed products.
- Train marketing and legal teams on risk areas in consumer-facing statements.
- Keep an eye on statements made across all marketing platforms, including social media, company websites, third-party platforms, and traditional marketing. Non-traditional marketing platforms are often the subject of a claim and discovery.
- Maintain records of claim substantiation, including testing reports, surveys, or regulatory guidance.
- Monitor enforcement trends and competitor litigation to stay ahead of developing standards.
- Have a plan in place should your company be targeted by a consumer claim, and use the notice period to your advantage to develop a response strategy and come into compliance, as applicable.

Final Thoughts

With California and other states continuing to serve as a hotbed for consumer litigation, companies should ensure that their advertising, pricing, and labeling practices are legally defensible, factually supported, verifiable, and aligned with consumer expectations. Companies should not assume that previously compliant labeling and marketing claims continue to be valid or legal, as laws change constantly.

Early consultation with counsel can mitigate risk and reduce the likelihood of costly class action exposure. If a company receives a demand letter, it should seek legal advice as soon as practicable to ensure that a strong response strategy is in place. ■