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September 18, 2017

Rulings, Orders, Settlements – September 18, 2017

### **Court Denies Motion to Dismiss in False Advertising Action Involving Iced Tea** [Martin, et al. v.](#)

[TradeWinds Beverage Company](#), No. 2:16-cv-09249 (C.D. Cal.): The Court entered an order denying Defendant's motion to dismiss this putative class action for violations of California's CLRA, UCL, FAL, and for breach of express warranty. Plaintiffs alleged that Defendants falsely advertised that its iced tea is labeled as "All Natural," when in fact, it contains artificial coloring, caramel color. The Court rejected Defendant's argument that Plaintiffs' claims are barred by the doctrines of express preemption, conflict preemption, field preemption, and implied preemption on the grounds that the FDA, vested by Congress with the sole authority to regulate the use, manufacture, and labeling of color additives, has the first and last word on the issue of color additives. Similarly, the Court rejected Defendant's argument that its compliance with the FDA's labeling requirements for caramel coloring provides it a safe harbor under California law. The Court also found that Plaintiffs sufficiently alleged a misleading statement. Finally, the Court denied Defendant's motion to dismiss on the basis that the First Amendment protects its commercial speech.

### **Court Grants Final Approval of Class Action Settlement in False Labeling Class Action Involving Mycoprotein** [Birbrower v. Quorn Foods Inc.](#), et al., No. 2:16-cv-01346

(C.D. Cal.): The Court issued an order granting final approval of settlement in this putative class action alleging violations of California's CLRA, UCL, FAL, and fraud/fraudulent concealment. Plaintiff claims that Defendant has been misrepresenting on all of its product packaging that "mycoprotein" – the main ingredient in all of the products – is the same or substantially similar to a mushroom, truffle or morel. In truth, "mycoprotein" is a term invented by Quorn to mislead consumers and hide the fact that its products are actually made of mold. The final settlement terms are as follows: Defendant is ordered to forever remove from its product packaging and all other forms of advertising the following language or its functional equivalent: "There are believed to be over 600,000 varieties of fungi in the world, of which are among the most sought after foods like varieties of mushrooms, truffles and morels." The Court awarded as attorneys' fees to Class Counsel the amount remaining from the \$1,500,000 Settlement Fund after all administrative costs, Plaintiff's \$5,000 incentive award, and \$46,690 in litigation costs have been paid from the Settlement Fund. The Court approved an incentive award of \$5,000 to Plaintiff Kimberly Birbrower. The amounts remaining in the Initial Settlement Fund of \$2.5 million, after the payment of (a) the valid Claims to the Settlement Class Members in the amount of approximately \$735,856, (b) the attorneys' fees award provided above, (c) costs in the amount of \$46,690, (d) an incentive award in the amount of \$5,000, and (d) the Claims Administrator's total costs (expected to be approximately \$200,000), shall be distributed to FARE in accordance with the terms and timelines of the Settlement.

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