



Food & Beverage

As a leading law firm with decades of experience representing the interests of food and beverage clients, Winston has a dedicated multinational and cross-disciplinary team of attorneys that focuses on the unique and varied ways in which laws, regulations, and market forces impact our clients in this sector.

Our food and beverage clients include family-owned businesses, Fortune 500 companies, and portfolio companies, consisting of global producers, packaged food makers, ingredient manufacturers, restaurant chains, trade organizations, bakeries, dairies, grocery stores, private label manufactures, and distributors, among others. Reflecting our track record of success in this area, we have been named a “Food & Beverage Group of the Year” and “Consumer Protection Practice Group of the Year” by Law360, which recognized our strong capabilities in false advertising class actions, product liability litigation, defamation and disparagement litigation, antitrust and securities litigation, capital markets, and mergers and acquisitions.

We also counsel food and beverage clients in connection with breach of contract litigation; preparation of customer contracts, supply agreements, and co-manufacturing agreements; employee benefits and compensation; environmental counseling and litigation; “first-of-their-kind” financings; brand protection; labor and employment; and international trade.

Key Contacts

Ronald Y. Rothstein

Christina Tate

Areas of Focus

Antitrust/Competition

We have decades of experience representing food, beverage, and agriculture clients, including domestic and international trade associations, importers and distributors, and multinational food companies, with antitrust and competition issues. We have counseled clients on cartel defense, civil and criminal litigation, government investigations, mergers and acquisitions, and regulatory counseling and compliance.

To avoid antitrust risk, we counsel clients on exclusive dealing; tying; monopolization; supplier and distribution arrangements; Robinson-Patman and Hart-Scott-Rodino Act compliance; relationships with competitors, trade associations, and industry groups; the formation and operation of joint ventures; and merger planning. We regularly devise antitrust and competition compliance programs and have been successful in keeping our clients clear of regulatory concerns as well.

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Consumer-Fraud Litigation

We are ideally positioned to defend companies aggressively against a full spate of consumer fraud complaints, and we have developed a strong reputation for our record of success defending consumer-fraud class action cases. Our profile is unique because we are one of only a handful of large U.S. law firms with a comprehensive practice and attorneys dedicated to litigating false advertising matters, including under the Lanham Act and California's false advertising laws. We are a go-to firm for clients in this sector who find themselves under siege by consumer-fraud claims alleging mislabeling, false advertising, and failure to properly disclose ingredients and additives. Not only do we understand the complex legal issues involved, but we are also familiar with our opponents' strategies and have the experience necessary to resolve consumer-fraud litigation successfully. We have handled matters involving various nutritional claims, "all-natural" labeling, slack-fill packaging, "handmade" and "handcrafted" labeling, country-of- and geographic-origin, as well as litigation involving GMOs, nutritional supplements, pet and animal feed, and high fructose corn syrup, among other products.

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Defamation, Disparagement & Business Tort Litigation

Today's food and beverage companies increasingly find themselves the targets of campaigns and added media "controversy" surrounding what is in a product, how it is manufactured, and the impact of its consumption. We understand that—in the food and beverage industry in particular—a company's success depends on its reputation and consumers' perception of their products. We help to defend that reputation and obtain recovery for our clients when consumers' perception has been skewed by false information. Our attorneys represent industry clients in defamation and disparagement matters, and we have been successful in immediately addressing and/or attempting to mitigate the impact of false information. We have represented both plaintiffs and defendants in some of the largest cases ever brought or tried in this area.

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Employee Benefits & Executive Compensation

Our top-ranked Employee Benefits & Executive Compensation (EBEC) Practice includes more than 25 lawyers, including an attorney who previously served as in-house counsel at a major bottler and food service products distributor. We offer food and beverage clients the full suite of employee benefit services, including:

- public company reporting and executive compensation;
- employee benefits issues in mergers and acquisitions;
- qualified retirement plans and Title I investments;
- health and welfare benefit plans;
- ERISA litigation;
- employee stock ownership plans (ESOPs); and
- international HR matters.

Our EBEC food and beverage clients include multinational coffee and restaurant chains, beverage and brewing companies, and wholesale distributors.

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Environmental Regulatory Enforcement, Transactions & Litigation

Our environmental attorneys assist food and beverage clients with enforcement actions brought by the Environmental Protection Agency (EPA), counseling on wastewater compliance at manufacturing plants and providing ongoing compliance assistance on various matters, including issues related to per- and polyfluoroalkyl substances (PFAS). We also regularly perform due diligence activities for our clients to assist them in evaluating potential risks involved in buy- and sell-side corporate and real estate transactions.

Our seasoned environmental practitioners are aware of emerging PFAS-related legal and regulatory issues and have handled the investigation into and defense of claims related to PFAS for years. Many of the issues in PFAS litigation mirror claims our lawyers have also successfully defended clients against for decades. We know how to work with experts, consultants, and co-counsel across the U.S. to combat junk science, navigate the regulatory environment, successfully try these cases, and achieve results. Our experience covers all courts—state, federal, and appellate—including the challenge of agency regulations in these venues.

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Global Trade & Foreign Policy

The global compliance environment is becoming more complex with every passing day. Failure to comply with these regulations can lead to civil and criminal penalties, substantial administrative burden, legal expenses, and unsatisfied business objectives. Our International Trade, CFIUS, Customs, Export Controls & Sanctions Practice advises clients in connection with complex international trade issues affecting all areas of their business. Particularly for the food and beverage industry, complying with U.S. trade regulations includes both navigating sanctions and export-control restrictions. We help multinational food and beverage companies, such as fast-food franchises, alcoholic beverage companies, and agricultural exporters, navigate transactions with complex international trade issues and frequently work in tandem with regulatory agencies such as the Office of Foreign Assets Control (OFAC) sanctions. Our attorneys also conduct internal investigations that help clients identify control weaknesses and minimize future risk and defend companies that find themselves the target of law enforcement inquiries or investigations.

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Intellectual Property & Brand Management

Our intellectual property (IP) lawyers protect and defend some of the world's most valuable brands. We help food and beverage clients build powerful brands and protect their IP assets by using innovative and cost-effective strategies. For food and beverage clients, including one of the world's largest produce producers, we provide services related to trademark development, maintenance, and prosecution; copyright prosecution; advertising/publicity counseling; licensing; and commercial contract work. We are also involved in significant brand enforcement work for food companies, including trademark opposition and cancellation proceedings, UDRP and related domain name proceedings, and related global enforcement. We represent food and beverage clients in patent matters, including *inter partes* reviews, and have prevailed in several matters before the U.S. Patent and Trademark Office's Patent Trial and Appeal Board (PTAB).

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Labor & Employment

Our team has defended food and beverage clients against employment litigation filed by single plaintiffs, as well as in multi-plaintiff and major class and collective actions, covering all types of employment law issues, including wage and hour, discrimination, retaliation, wrongful termination, harassment, and other claims. Our lawyers are not only seasoned litigators, but also experienced employment counselors who provide practical, litigation-minimizing advice to our clients. We regularly conduct in-house training seminars for clients and develop, review, edit, and implement personnel policies and employee handbooks for national and international clients.

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M&A & Private Equity

Our transactional attorneys have a deep client base in this sector, representing privately and publicly held soft beverage and alcoholic beverage companies; distributors; manufacturers; food service products companies; pet food companies; ingredient suppliers; and restaurant chains in North America, Latin America, and Europe, in connection with public takeovers, private acquisitions, leveraged buyouts and recapitalizations, divestitures, and joint ventures. We deliver value throughout each phase of a transaction. We take an integrated approach to mergers and acquisitions, providing seamless deal teams that draw upon not only our corporate and finance practices, but also on tax, antitrust, employment, government relations, IP, environmental, and employee benefits, depending on the client's needs.

We have established a successful track record of advising and representing food and beverage clients in cross-border transactions and assisting them in expanding their operations to the U.S., Europe, Asia, and other key international markets. We advise industry clients on all types of cross-border strategic investments, acquisitions, and joint ventures and help clients navigate complex cross-border transactional issues.

Learn more about our [M&A](#) and [Private Equity](#) Practices

Product Liability Litigation

We recognize the magnitude of the risk and the complexity of law involved in product liability cases faced by food, beverage, and agriculture clients. Our attorneys have handled substantial, multi-million-dollar exposure claims for these clients, ranging from tampering, contamination, spoilage, and food poisoning to alleged adverse health effects caused by specific ingredients, additives, or packaging. In cases of recalls, we work with clients through the notification and response period and handle all the indemnification issues and claims, including product liability and customer contract disputes, as well as negotiations with the supplier and insurance carriers.

As lead trial counsel, we have defended clients in precedent-setting litigation involving allegations of wrongful death, negligence, product liability, and related claims. We have directed national, regional, and local strategies for the defense of specific products in product liability trials. We also provide representation in mass tort and insurance coverage matters, adding another dimension to our extensive product liability resources and capabilities.

Outside of the courtroom, we have served as product safety counsel for several Fortune 500 companies, advising our clients regarding compliance with state and federal product liability laws and regulations.

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Securities Litigation

In response to a decline in stock price following the release of negative news about a product's nutritional quality, safety, ingredients, or labeling, consumers may claim the company deceived and defrauded investors, making damages claims that are typically in the multi-million-dollar range.

We have extensive experience representing food and beverage companies and connected individuals in class actions brought by shareholders and other investors alleging securities or financial fraud. We have secured numerous dismissals in federal courts nationwide of securities fraud class actions alleging violations of SEC Rule 10b-5 and Sections 11 and 12 of the '33 Act pursuant to the Private Securities Litigation Reform Act and recent U.S. Supreme Court jurisprudence. We are also conversant in cutting-edge approaches to attacking "demand futility" allegations in shareholder derivative suits alleging *Caremark*-type "failure-of-oversight" claims, which we frequently litigate in the Delaware Court of Chancery and other state and federal courts nationwide.

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Venture Capital

Our Venture Capital Group regularly represents food and beverage companies in their venture, emerging growth, and strategic venture transactions and programs. We represent industry participants in venture investment transactions, including priced equity, debt, convertibles, secondaries, exits and other dispositions. In addition to venture capital transactions, we have assisted food, beverage, and consumer-packaged goods (CPG) companies in the full spectrum of strategic venture activities, including investment program and fund structure, incubator and accelerator initiatives, board, fiduciary, and conflict counseling, and ongoing portfolio management.

Our team is dedicated to assisting companies in achieving their venture goals as part of their larger corporate development and commercial strategies by tailoring our advice and approach to strategic objectives, whether pre-acquisition, information gathering, supply chain support, new product investigation or development, or traditional financial returns. We offer clients an integrated team approach, as well as extensive experience working with venture professionals, sophisticated in-house legal departments, and corporate development groups.

Related Capabilities

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|-----------------------------------|--|---------------------------|---------------------|
| Antitrust/Competition | Trademark Litigation, Prosecution & Brand Protection | | |
| Class Actions & Group Litigation | Commercial Litigation & Disputes | | |
| Copyright-Infringement Litigation | Advertising Litigation | International Arbitration | |
| Labor & Employment | Patent Litigation | Intellectual Property | |
| Product Liability & Mass Torts | Trade Secrets, Non Competes & Restrictive Covenants | | |
| Capital Markets | Employee Benefits & Executive Compensation | | Finance |
| Mergers & Acquisitions | Private Equity | Environmental | International Trade |
| Privacy & Data Security | | | |

Recent Experience

Winston Represents KeHE Distributors, LLC in a \$750.0 Million Senior Secured Notes Offering

FAGE International S.A. and FAGE USA Dairy Industry, Inc. Modified Dutch Auction Cash Tender Offer For \$107.5 Million of Senior Notes

Secured Another Massive Summary Judgment Victory in Chickens Price-Fixing Case for Claxton Poultry Farms

KeHE Distributors' Acquisition of DPI Specialty Foods

Farmer Bros.'s Sale of Its Direct Ship Business to Treehouse Foods

Braiin Ltd. Announces Business Combination with Northern Revival Acquisition Corp.

Winston Represented Health Brands Company in Trademark Infringement Case

NTG, LLC's Sale of Nick the Greek Restaurant Chain to Anil Yadav's YTG Enterprises LLC

Oterra Acquisition of Food Ingredient Solutions

Terold Acquisition of Majority Stake in WX Brands

Resources

[Class Action Insider](#)

Related Insights & News

WEBINAR

Bite-Sized Insights: Legal Trends Impacting the Food & Beverage Industry

MAY 21, 2024

BLOG

A Potential Shield: FDCA Preemption in Product Liability and Mass Torts Litigation

MAY 6, 2024

NEWS

Represented Suntory Global Spirits in its Sale of Courvoisier

APRIL 30, 2024

SPONSORSHIP

Winston & Strawn Sponsors Enterprise GC 2024 Conference

29-30, APRIL 2024

SPEAKING ENGAGEMENT

Shawn R. Obi Explores Recent Class Actions Decisions Impacting the Dietary Supplement Industry

SEPTEMBER 28, 2023

BLOG

USDA and State AGs Join Forces to Target Competition Concerns in Food and Agriculture

AUGUST 3, 2023

CLIENT SUCCESS

Winston Scores Another Massive Summary Judgment Victory in Sprawling Broiler Chickens Price-Fixing Case for Client Claxton Poultry Farms

JUNE 30, 2023

NEWS

Winston Proves “Natural Cure” Patent Is Invalid at PTAB

APRIL 27, 2023

CLIENT SUCCESS

Winston Defeats Kerry Group in IPR Involving a Patent for a Natural Meat-Cure Process, Preserving FFP’s Strategic Market Share

APRIL 1, 2023

BLOG

Class Action Insider Spotlight on Partner Chris Murphy

MARCH 6, 2023

BLOG

Dark Chocolate Manufacturers Face Wave of Heavy Metal Exposure Litigation

JANUARY 24, 2023

CLIENT SUCCESS

Winston Defeats Series of Consumer False-Advertising Class Actions Alleging Kraft Misled Consumers by Mislabeling Its Bagel Bites Pizza Snacks

AUGUST 3, 2022