

Food & Beverage Group Of The Year: Jenner & Block

By **Shayna Posses**

Law360, New York (January 22, 2018, 3:53 PM EST) -- Jenner & Block LLP's food and beverage team demonstrated its prowess in both the transactional and litigation spheres in recent months, landing among Law360's Practice Groups of the Year with accomplishments like guiding a \$1 billion secondary public offering for US Foods and securing favorable decisions in labeling suits for giants like Kraft and Kellogg.

With a core team of about 10 attorneys, the group has come to represent some of the industry's most influential companies, developing a deep understanding of the food and beverage arena that gives it the tools to tackle everything from class actions to government investigations to complex transactions, according to its lawyers.

Kevin T. Collins, a corporate partner focused on the food and beverage industry, attributed the group's success to the skill and knowledge of its attorneys, as well as the relationships they have built with people who operate in the industry.

"I think clients in the industry ... are very often looking for lawyers to work on their matters who have a good understanding of the industry in which they operate," he said, adding that they've "been able to gain the trust of these clients and potential clients to give us their most important matters."

He pointed to Jenner & Block's representation of US Foods Holding Corp. as an example.

After guiding the food distribution giant through a \$1.175 billion initial public offering in 2016, the firm again advised the company on a secondary offering last year. Launched in January 2017, the \$1 billion offering saw investment funds associated with private equity firms KKR & Co. LP and Clayton Dubilier & Rice LLC sell off millions of shares.

Collins also highlighted the team's representation of Snyder's-Lance Inc. in its roughly \$4.9 billion acquisition by Campbell Soup Co. The deal, which was announced in December, added the snack portfolio of Snyder's-Lance — including pretzel brand Snyder's of Hanover and Pop Secret popcorn — to a lineup of Campbell brands like Goldfish crackers and other Pepperidge Farm products.

Dean N. Panos, head of Jenner & Block's food and beverage litigation team, said he expects the



transactional practice to keep growing, citing the slew of consolidations and mergers that have been taking place among the industry's major players.

The Jenner & Block team also remains very busy in the litigation space, which is Panos' forte.

The firm is currently representing Kraft Foods Group Inc. and Mondelez Global LLC against a U.S. Commodity Futures Trading Commission suit alleging manipulation of the wheat futures markets that Panos said is being closely watched in the food and beverage industry and beyond because the agency is trying out new enforcement tools. The allegations have additionally spawned a proposed class action in Illinois federal court, which Jenner & Block is involved in, as well.

The suits are two of the many matters Jenner & Block has tackled for Kraft, including litigation challenging the company's labeling of iconic snack foods like Ritz Crackers and Teddy Grahams, leading to an important decision in early 2017.

In March, the Ninth Circuit affirmed a ruling awarding class counsel only a small amount of the more than \$3.2 million in fees they sought, agreeing that the requested award wasn't reasonable because the plaintiffs weren't successful in obtaining the primary recovery they sought: a certified damages class and millions of dollars in recovery for the class.

This is a significant decision because there has been a bend toward courts granting fees to plaintiffs for fairly pyrrhic victories, and if plaintiffs counsel can make these suits lucrative, "if they can even get very nominal victories and receive large fee awards, then it just brings more and more litigation," Panos said.

The team also succeeded last year in getting several other false labeling suits dismissed at the early stages, like a proposed class action accusing Kellogg Co. of falsely branding its Cheez-It Whole Grain crackers as being "made with whole grain" when the primary ingredient was enriched white flour.

A New York federal judge tossed the suit in August, holding that the plaintiffs had failed to show a reasonable consumer would be misled by the packaging. The decision is currently on appeal to the Second Circuit.

Securing an early dismissal is an ideal result for clients, noted Kenneth K. Lee, a partner in the firm's food and beverage practice.

"In these class action cases, if you can't get them dismissed at the early stage, it can be pretty costly for the company in terms of discovery, as well as the potential that, even if you're right on the merits, if a class is certified, the liability is potentially very large and companies will often settle," he said.

The fact that Jenner & Block was able to secure early dismissals on several occasions this year sends a strong message, Panos added, saying these sorts of suits will never go away entirely, but when companies prevail early, it helps chill some of the enthusiasm.

"I think we've sent a pretty strong message that these cases can be won early on, and plaintiffs need to really think whether the case is meritorious or not," he said.

--Additional reporting by Cara Salvatore, Kat Greene and Matthew Guarnaccia. Editing by Catherine Sum. All Content © 2003-2018, Portfolio Media, Inc.