

Food & Beverage Group Of The Year: Jenner & Block

By **Dave Simpson**

Law360 (January 25, 2019, 4:27 PM EST) -- Ingredient-related consumer class actions were on the rise last year for Jenner & Block LLP's food and beverage practice, which fended off claims against Hain Celestial Group Inc., Mondelez International Inc., and Kraft Foods Group Inc., landing the firm among Law360's Food & Beverage Groups of the Year.

Consumers hit Hain in New York federal court in October 2017 with claims the specialty food company had duped them into paying premium prices for "100% raw" and "unpasteurized" BluePrint fruit and vegetable juice that was actually neither raw nor unpasteurized. The lawsuit, filed by four plaintiffs from New York and California, said the products are marketed that way in an effort to sway health-conscious consumers and charge a premium price for the products.

But a judge tossed the bulk of a proposed class action in April, and, after the plaintiffs waived their appeal, it was settled for a nominal amount, according to Jenner & Block.

Dean N. Panos, a partner and litigator within the group in Chicago who led the Hain defense, said there's been a trend of larger companies in the food and beverage space acquiring smaller companies — such as the case for Hain and BluePrint — which is increasing the amount of mergers and acquisition work his practice is seeing, but also consumer class actions.

"It has led to a different litigation risk profile, because you're buying smaller brands with smaller operations," he said. "You're inheriting, in most cases, the good and the bad related to those businesses and how they were run. And so the litigation risk profile for some when you buy those has gone up a little bit."

On the acquisition side of that equation, the firm represented Snyder's-Lance in its \$6 billion sale to Campbell Soup Co., completed in March, which Panos said, "shows the M&A prowess along with sort of the food and beverage expertise that we bring."

In another display of teamwork, Jenner & Block's food and beverage practice joined forces with its appellate practice to revive claims by Kraft Foods Inc. and others that certain suppliers conspired to fix



the prices of eggs. The Third Circuit had ruled in February, in an issue of first impression, that direct purchasers of an allegedly fixed-price product can sue even if some of the products come from nonconspirators.

"We can touch all the bases, and pretty much all of their needs," Panos said. "We have leaders in consumer class actions because we handle so many of them."

Panos said the firm is handling cases in many areas, including commercial litigation, supplier, distributor, joint venture disputes, M&A, insurance coverage, antitrust and obviously investigations and enforcement.

"So we have the bench strength to hit all of those areas in our food and beverage practice," he added. "It's not just totally a litigation practice: it is transactional, litigation, and, I would say, a counseling practice."

He pointed to a suit filed by Jenner & Block in October on behalf of Mondelez against Zurich American Insurance Co., over coverage for \$100 million in losses the snack food giant suffered in a 2017 cyberattack that the U.S. and its allies blamed on Russia, saying the firm's insurance team will carry a lot of weight in that case, but the food and beverage team can bring indispensable nuanced understanding.

"Our overall background knowledge and experience of representing food companies helps us to understand how a cyber hack like this would have a material impact on their businesses," he said. "I think that's a very unique part of our practice that many don't have."

Consumer class action claims related to ingredients and sourcing continue to rise, Panos said.

In June, the firm helped Kraft Heinz decertify and trim the claims of a class of consumers accusing it of falsely advertising artificially colored, fat-free cheddar cheese as "natural," when a California federal judge said the class didn't give enough evidence to show its members deserved restitution.

"We bring a lot of efficiency, because we bring a lot of experience and knowledge," Panos said. "We're not learning on the job. We understand, as best as an outside counsel can, the business pressures our clients face and how these businesses are run so that we are being a net positive to their work environments and not a drain."

Panos said his firm recognizes that companies are "under all sorts of pressures" to keep down legal costs, and so "we need to bring strategy and judgment as to where we spend the money, how we spend the money, in terms of how they use outside counsel."

--Editing by Nicole Bleier.