

Food & Beverage Group Of The Year: Winston & Strawn

By **Emily Field**

Law360, New York (January 20, 2016, 5:54 PM ET) -- In 2015, Winston & Strawn LLP's food and beverage practice group notched key victories for some of the industry's largest leaders, including consumer labeling class action wins for liquor giant Beam Suntory, landing it a spot on Law360's Food & Beverage Groups of the Year.



A series of wins last year for the spirits manufacturer in high-profile suits in Florida and California claiming that Beam Suntory falsely advertised its Maker's Mark and Jim Beam brands as "handmade" have stemmed the tide on similar suits against liquor makers over "handcrafted" labeling claims, according to Amanda Groves, who co-chairs the practice group, comprised of about 60 attorneys, including 30 litigators, across 11 offices worldwide.

"There was a concern that this was going to be a new area for the plaintiffs bar, but we haven't really seen a lot of filings challenging ["handmade" label claims] since the cases were dismissed," Groves said. "It's significant for our client, but also for the industry."

In May, a Florida federal judge tossed out a proposed class action with prejudice that accused the company of misleading drinkers into thinking its Maker's Mark bourbon is handmade, ruling that the term's literal meaning obviously can't be applied to alcohol.

Winston & Strawn quickly chalked up another win for the company when a California federal judge in July dismissed with prejudice another proposed class action that claimed Maker's Mark drinkers were tricked by labeling claims, finding that no reasonable consumer would interpret "handmade" as meaning the liquor was made literally by hand, with no equipment involved.

And a month later, another California federal judge reached a similar conclusion when he tossed a suit with prejudice when he decided that if a liquor maker uses "handcrafted" to appeal to consumers' association of the word with high-end products — as claimed by the Jim Beam drinker bringing the proposed class action —

then the term is vague, generalized and unspecified.

"The rulings really reflected common-sense approach to resolving these types of cases and that was refreshing to see," Groves said. "That ... is why we haven't seen a lot of 'handmade' cases being filed since these rulings."

The firm also helped Diamond Foods Inc. reach a favorable settlement last year that ended a trio of class actions alleging the company mislabeled its Kettle Brand chips as "all natural," with "reduced fat" and "nothing artificial."

In another mislabeling proposed class action, Winston & Strawn has delivered significant rulings for Costco Wholesale Corp., which is accused of touting its Kirkland Signature products as containing zero grams of fats.

The suit is currently stayed, along with a bevy of other labeling cases awaiting Ninth Circuit rulings in a trio of similar suits, but in a case of first impression, a California federal judge held that the dealer immunity statute in California's Sherman Law applied to consumer class actions.

The firm is also currently representing TreeHouse Foods Inc. in its antitrust battle with Keurig Green Mountain Co., part of multidistrict litigation over the Keurig 2.0 coffee brewer, which features technology that allows it to detect whether a cartridge is one of Keurig's K-Cups. The machine will not brew from cartridges made by a third party that doesn't have a licensing agreement with the company.

And on the transactional side, Winston & Strawn represented TreeHouse in its November \$2.7 billion deal to acquire ConAgra's private brands business, financed through \$1.8 billion debt issuance and the issuance of \$1 billion in stock.

The firm also guided VMG Partners and plant-based protein shakes and supplement maker Sequel Naturals Ltd. — maker of Vega plant-based proteins — in the \$500 million sale of Sequel to The White Waves Foods Co., which manufactures So Delicious, Earthbound Farm and International Delight products.

In the past year, Groves said that the practice group has expanded its reach to include significant dietary supplement litigation, as it's recently been engaged to represent a major supplement maker and three large retailers facing false advertising claims in multidistrict litigation consolidated in Illinois federal court.

Winston & Strawn also represents Beef Products Inc. in its long-running \$1.2 billion defamation battle accusing American Broadcasting Cos. Inc. and journalist Diane Sawyer of defaming a beef trimmings maker by referring to its product as "pink slime."

Partner Erik Connolly said this is believed to be one of the largest defamation cases in U.S. history in terms of the damages at issue.

The 2012 suit, accusing ABC of making nearly 200 false and disparaging statements about BPI and its lean finely textured beef, or LFTB, product during 11 news segments, has survived four dismissal rounds, Connolly said.

They're set to wrap up the fact discovery phase at the end of the month and begin expert discovery this year, with a trial date slated for June 2017, according to Connolly.

--Editing by Catherine Sum.

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