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Consumer Products & Retail Update

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## The Year Ahead for Food and Beverage: Key Litigation, Regulatory, and Transactional Trends for 2026

*Gibson Dunn's Consumer Products and Retail team highlights several of the most significant legal trends we expect to shape litigation, regulatory compliance, and dealmaking for food and beverage companies in the year ahead.*

As the food and beverage industry enters 2026, companies face a changing legal environment shaped by an expanding litigation landscape, evolving regulatory frameworks, and renewed transactional activity. Shifting consumer expectations around nutrition, sustainability, and transparency, combined with heightened enforcement, plaintiff-friendly developments in key jurisdictions, and the growing influence of technology and third-party litigation financing, are driving new strategic considerations across the sector. Below, Gibson Dunn's Consumer Products and Retail team highlights several of the most significant legal trends we expect to shape litigation, regulatory compliance, and dealmaking for food and beverage companies in the year ahead.

### Litigation

1. **Ultra-Processed Foods.** An expansion of litigation challenging so-called ultra-processed foods (UPFs) is likely in 2026. Recent claims by the San Francisco City Attorney suggest this will remain an active area of litigation, including claims brought by governmental entities that have political incentives to be seen as tackling a hot-button issue.

2. **D.C. CCPA Claims.** A 2024 D.C. Court of Appeals opinion in *Earth Island v. Coca-Cola* created a plaintiff-friendly standard for claims brought by advocacy groups under the D.C. Consumer Protection Procedures Act (CPPA). The industry has since seen a steady uptick in such cases filed in D.C. challenging product labeling and marketing, with a particular focus on “sustainability” statements. We expect that trend to continue in 2026, with plaintiffs testing the limits on what can be challenged in a CCPA action, including by targeting forward-looking statements and omissions-based claims.
3. **Ingredient Challenges – Additives, Flavoring, and Preservatives.** Litigation in this area is expected to expand in 2026, with plaintiffs raising false-advertising and product-liability theories following FDA and state actions related to food color additives. Lawsuits challenging “Natural Flavors” and “No Preservatives” claims are also expected to continue, following plaintiff-friendly motion-to-dismiss decisions in key jurisdictions.
4. **Plastic and Recycling Litigation.** After early defense wins in putative class actions challenging plastics and recycling, claims by non-profit and governmental entities have reinvigorated this area. Several of those cases will likely proceed to important merits decisions in 2026, including an ongoing public nuisance case against consumer-products companies pending in California since 2020. California will also be a focus for this area as SB 343, which sets out comprehensive new rules for “recyclable” claims in the state, becomes effective later this year. Moreover, several states’ extended producer responsibility (EPR) laws are set to become effective in 2026, which may lead to regulatory action or litigation surrounding the requirements of those statutory schemes.
5. **Structural Trends.** Litigation finance and the growth of managed service organization (MSO) and insurance offerings are expected to continue fueling class and mass tort actions. MSOs provide case intake and discovery support using non-legal staff and increasingly sophisticated proprietary tools, including large-scale medical-record integration. These platforms are being rapidly capitalized and structured to operate within evolving disclosure and regulatory constraints for third-party funded litigation. Some of these platforms also offer insurance coverage for defendants facing a new generation of litigation fueled by non-recourse financing and new equity investments.

## Regulatory

1. **Front-of-Pack Labeling Rule.** FDA has announced its intent to issue a final rule on front-of-pack nutrition labeling this spring. The rule is expected to require standardized nutrition information tied to saturated fat, sodium, and added sugars on the principal display panel of certain food products, which could increase scrutiny of product formulations and labeling claims, while also providing new hooks for state enforcement and private litigation.
2. **Efforts to Reshape FDA’s Food Additive Regulatory Framework.** The long-standing food additive regulatory framework—with a focus specifically on generally recognized as safe (GRAS) determinations, remains a focus of regulators and lawmakers. FDA has announced its intent to propose a rule requiring mandatory submission of GRAS notices, which could significantly alter industry practices. We also expect continued pressure on GRAS reform from Capitol Hill, although current Congressional proposals to reform the GRAS notification lack bipartisan momentum.
3. **Continued Proliferation of State Food Laws and MAHA-Aligned Initiatives.** State food laws imposing new labeling, disclosure, and ingredient requirements are expected to continue to proliferate in 2026. Although HHS Secretary Kennedy has acknowledged concerns about the growing patchwork of state requirements, any preemptive federal

action would require congressional involvement. Recent initiatives in states including Texas and Louisiana signal continued expansion of state-level MAHA-aligned investigations and enforcement actions.

4. **Ultra-Processed Foods.** The Trump Administration continues to signal a forthcoming federal definition of UPFs, which could significantly affect litigation and enforcement at both the federal and state levels. And recent changes to the Dietary Guidelines for Americans, the new version of which targets so-called “highly processed” foods, could also herald additional regulatory action at the federal level; although nonbinding, the Guidelines help shape federal nutrition programs and state policy initiatives.
5. **Continued Tariff Uncertainty.** The Supreme Court is expected to rule on the legality of the Administration’s tariffs under the International Economic Emergency Powers Act (IEEPA) in the coming months. But even a victory for the companies challenging tariffs there will not likely be the last word. Importers may face additional hurdles to recovering already-paid tariffs, and the Administration may take steps to try to retroactively justify the tariffs through executive order or legislation. Moreover, the Administration retains the ability to quickly enact tariffs through other statutory provisions, an issue our International Trade team has provided more detail on in a [client alert](#) in October.

## Transactional

1. **Portfolio Repositioning and Optimization.** Following a strong rebound in the M&A market, with significant pent-up buy-side demand and long-held sponsor assets expected to come to market, competition for quality assets is likely to remain robust in 2026. Food and beverage companies are expected to continue portfolio rationalization, including divestitures of legacy brands affected by shifting expectations around nutrition and sustainability. As growth in certain legacy categories slows, these separations will allow companies to focus on core or higher-growth product lines, while limiting involvement in assets subject to heightened legal uncertainty and ongoing policy changes.
2. **Increased Litigation and Regulatory Diligence.** Transaction diligence may adopt a more granular focus on buyer exposure to new litigation, regulatory, and enforcement trends discussed above. Diligence efforts may be increasingly directed toward ingredient composition, labeling practices, marketing accuracy, and prior regulatory or litigation history, particularly where standards and enforcement approaches remain in flux.
3. **AI Integration in Transaction Processes.** The use of AI-enabled tools in transaction processes—particularly in diligence, document review, valuation modelling, and business analytics—is expected to continue to grow as AI becomes embedded in deal execution and asset evaluation. This reliance heightens the need for formal governance addressing data reliability, privilege preservation, oversight, and compliance.
4. **Antitrust Review.** Merger review is expected to continue an emphasis on traditional theories of harm, with agencies focusing on market overlaps, foreclosure risks, and loss of head-to-head competition rather than broader policy-driven challenges. Review processes have become more predictable, including more selective use of Second Requests, reinstatement of early termination for unproblematic transactions, and greater willingness to resolve concerns through tailored remedies.

**The following Gibson Dunn lawyers prepared this update: Andrew Fabens, Perlette Jura, Saeed Muzumdar, Elizabeth Papez, Katlin McKelvie, and Al Kelly.**

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Consumer Products and Retail practice group:

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