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NEWSLETTER

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FDA Institutes New Packaging and Nutritional Information Labeling Requirements

During the past two decades, the American public has become increasingly aware of and concerned with what is in our food. From counting calories to removing added sugars, opting for a vegan, or trying the Atkins diet, there can be no doubt that America has grown more health conscious. Politicians, too, have pushed for a healthier country, evidenced by Michelle Obama's "Let's Move!" campaign which aims to solve the childhood obesity epidemic sweeping the nation. The program encourages children to be more active by participating in sports and other athletic extracurricular activities and attempts to limit children's sugar intake by prohibiting soda and unhealthy snacks in vending machines on school property.

The White House is not the only governmental player making waves when it comes to our nutritional health. The federal Food and Drug Administration (FDA) recently issued its Final Rule requiring mandatory changes to the way food manufacturers package and label their products. In addition to notable stylistic changes to nutrition fact labels, the new rules mandate that packages include information concerning the link between diet and chronic diseases like obesity and heart disease.

New nutrition labels increase the type size of certain informational categories, such as "calories," "servings per container," and "serving size," while making the number of calories and serving size amounts boldface in the hopes consumers will better understand their caloric intake before eating. While the FDA still bases its "percentage of daily value" on a 2,000 calorie diet, food manufacturers must now list the actual gram amount of certain vitamins and minerals, as opposed to just the daily percentage.

The FDA's Final Rule also requires a new category on nutrition labels

reflecting the amount of "added sugars" in food products. According to the FDA, it is difficult for consumers to meet their daily nutritional needs if over 10% of the calories they consume comes from added sugars. The added sugar content will be listed as both grams-per-serving and percentage of daily value.

Finally, and likely the most interesting, is the fact that new labels must reflect realistic serving sizes. By law, serving sizes listed on nutrition facts labels must be based on what individuals actually eat and drink, not what they should be consuming. Yes, the FDA keeps statistics on this information. For example, in 1993, the average serving size of ice cream was ½ cup. Today, this statistic has changed, and new ice cream labels will be based on a 1 cup serving size. The average serving of soda has also changed, from 8 ounces to 12 ounces. Clearly, Americans are consuming larger portions, on average, than we were 20 years ago.

While the new requirements are supposed to make food labels more realistic, accurate and useful, not everyone is on board with the changes and they come with a few drawbacks. Mainly, new packaging formats will cost manufacturers a pretty penny. This fact was not lost on the FDA, either. Due to the costs of switching to the new labels, manufacturers that gross less than \$10 million annually in food sales will have three (3) years to comply with the Final Rule, while those grossing over \$10 million must comply by July of 2018 (two (2) years).

Moreover, and despite the FDA's claim concerning the need to be aware of and limit added sugars, critics of the new requirements claim that an "added sugar" category is useless and misleading. They argue that it makes no difference whether sugar is added to a product or occurs naturally (for instance, the fruit sugars naturally found in juices, jams, etc.), sugar is sugar!

For better or worse, the FDA has spoken, and food manufacturers / packagers must break out their checkbooks to comply with the new requirements. A sample of what the nutrition facts label will look like can be found [here](#).

"Natural" and "Healthy" Labeling

In addition to the new labeling requirements, the FDA is poised to release guidelines or rules as to what foods can be advertised as "natural." Recently, there has been public concern over the use of genetically modified or engineered ingredients in food products labeled "natural," or "all natural." In fact, there has been a surge of lawsuits against food manufactures that use high fructose corn syrup, stabilizers, chemicals derived from naturally occurring substances, or genetically engineered ingredients in products labeled "natural." However, many courts have put these lawsuits on hold pending the FDA's release of rules governing what products can be advertised as "natural."

The FDA recently completed taking public comments and consulting experts as to which food products can or should be labeled "healthy." The public should expect the FDA to issue rules for labeling food items "healthy" in the near future.

Class action lawsuits are cropping up against companies such as Quaker Oats, Kelloggs, POM Wonderful, Ben and Jerry's, Chobani, and KIND (just to name a few), that use "all natural" and "healthy" on product labels and

in their advertising. Many of these lawsuits are halted, waiting on the forthcoming clarification from the FDA, many have been settled, and some have defeated class certification. While it is clear from these lawsuits that consumers believe even trace amounts of chemicals, pesticides and genetically modified organisms should disqualify food from being labeled "natural," the FDA has not yet issued their opinion on the matter. They opened public comment in November 2015 and received over 7,600 comments before they closed the comment period in May 2016.

While this "wait and see" approach from the courts has caused a number of lawsuits to be stayed pending the FDA's ruling, one, *Morales v. Kraft Food Group, Inc.*, came to the ruling that color additives were not natural based on guidance from the FDA specific to color additives in food. The court decided that, whatever the FDA's decision regarding "natural," it was unlike to impact their previously-issued guidance on color additives. This case, however, is the exception.

If you are a California business that must meet compliance with the FDA's new Rule, or have any other corporate or employment matter, you need the help of a competent business and employment law attorney-like [Nancy Gray](#)-to assist you. Nancy Gray has decades of experience representing corporations and employers of different sizes with all of their business needs, and she is here to help you!

Call Nancy Gray today for a free consultation at (310) 452-1211 or visit her [online](#).

Meet Nancy Gray



In a diverse legal career that has spanned over three decades, attorney Nancy Gray has represented hundreds of clients in a variety of civil matters, including labor and employment (management/employee); sexual harassment, discrimination, wrongful termination; commercial, contract and business issues.

Among other highlights, Ms. Gray served as Assistant District Attorney in New York, spent seven years with a national law firm working on complex pharmaceutical and medical device cases, and successfully litigated and coordinated cases around the country. She has a unique expertise in matters pertaining to the adulteration of extra virgin olive oil.

Ms. Gray has also lectured and written on a variety of topics, including

expert testimony, drug and medical device regulation, sexual harassment, employment practices and child performer issues.

In 1997, she started her own firm, based in Los Angeles.

Having been raised in New York City, Nancy enjoys dramatic, musical and comedy theater as well as pro sports. She is a PADI-certified scuba diver. Among her favorite reading material is Bon Appetit and anything pertaining to criminal behavior and behavioral profiling.

About Gray & Associates P.C.



Attorney Nancy Gray of Gray & Associates, P.C. has more than 30 years of experience providing personalized attention and creative solutions to her clients' legal issues. Whether you need a strong litigator, a labor and employment advocate, or a savvy business law attorney, you can rely on Gray & Associates to provide you with excellent legal representation. Click [here](#) to read more.

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