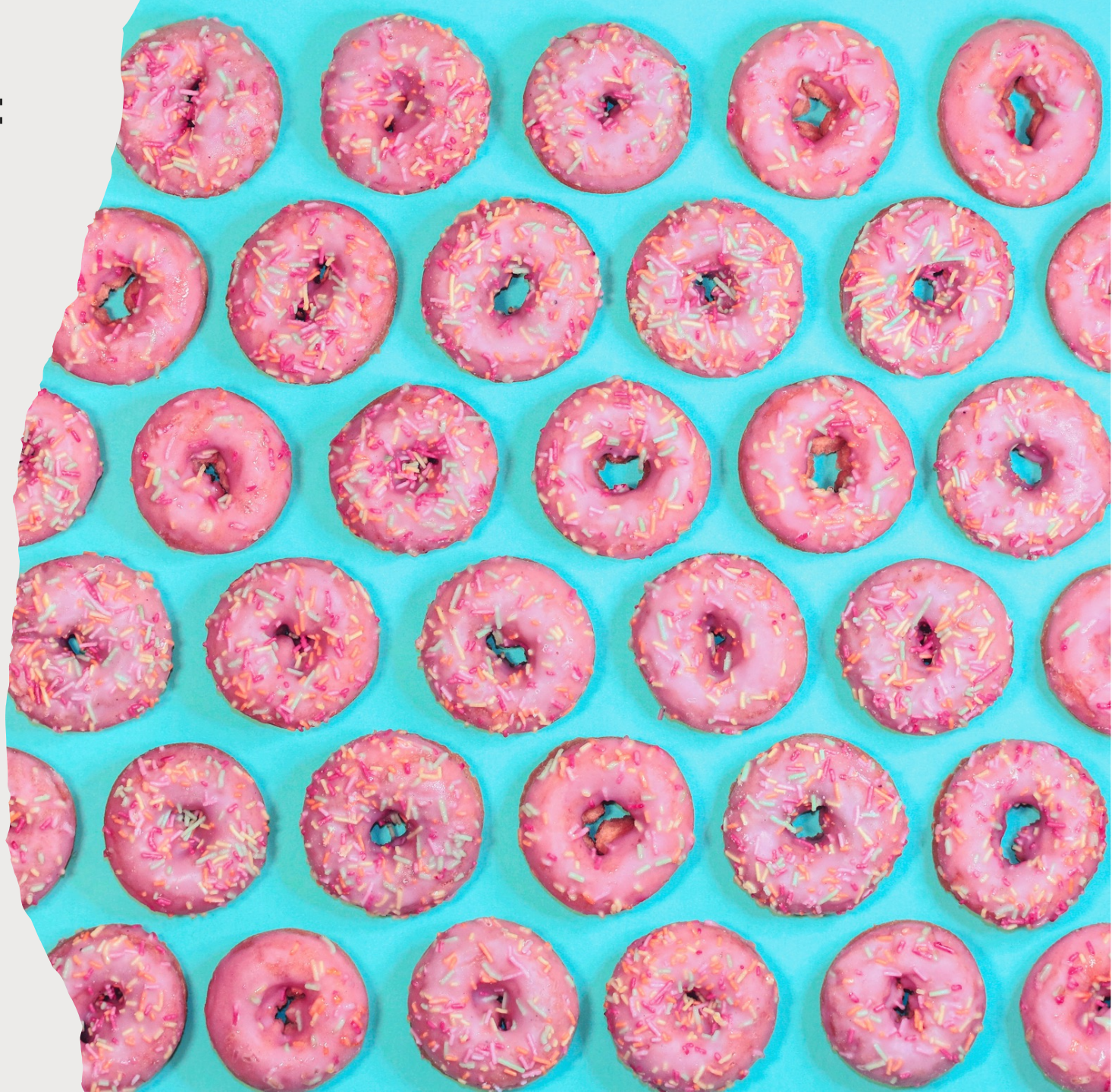


COLOR OF CHANGE: HOW NATURAL & PRODUCT CLAIM LITIGATION IS EVOLVING

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WHAT'S THE CHANGE ALL ABOUT?

Where will we go today?

- 1) Expansion of natural and product claim litigation
- 2) Three general judicial trends in product claim litigation
- 3) Does the litigation show that color additives matter? (hint: yes!)
- 4) Color additive specific litigation trends
- 5) What do I take away from all of this?



EXPANSION OF NATURAL PRODUCT LITIGATION

Beyond “natural” and “100% natural” to specific challenges based on characterizing flavor and claims on front of food package:



Claims related to SOI vanilla products



Specific flavor claims



Origin of characterizing food

TREND #1:
REASONABLE CONSUMER
LOOKS AT FULL LABEL FOR
CONTEXT



TREND #2: REASONABLE CONSUMER APPRECIATES NUANCE IN CLAIMS

Especially for claims related to the characterizing flavor of a finished food, courts may hold that a reasonable consumer treats that claim simply as a signal of the flavor





TREND #3: CONSUMER SURVEYS ARE NOT A SLAM DUNK

- Plaintiffs use consumer surveys in litigation
- Consumer surveys are not always accepted by the courts as evidence that a reasonable consumer is misled by the product claim(s)

LIMITATIONS OF THESE TRENDS?

Reasonable consumer must use full product label and advertising as context?

Moral of the story...

Facts matter

What about:



or



or





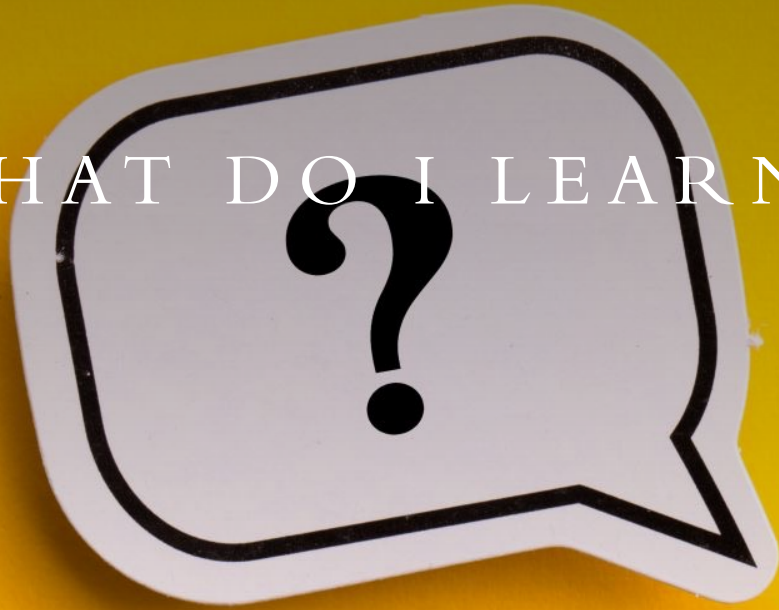


NEW CASES INVOLVING COLORS

CLASS ACTIONS CHALLENGING FOOD WITH TiO₂

- Recent litigation involving food and other consumer products that contain titanium dioxide (TiO₂)
- Allegation is that food manufacturer knew TiO₂ was toxic based on EFSA opinion and EU Commission risk management action despite regulatory authority to use in the United States
- Cases filed a new trend – beyond just food
- Diversity in finished products subject to litigation – what will the legal strategy be?

WHAT DO I LEARN FROM THIS?



1) Product claim litigation and litigation regarding food ingredients will continue

2) When thinking about mitigating risk, consider the product, claims and entire product label

3) Litigants are thinking globally





NEW CASE TRENDS ON THE HORIZON?

- Pet food claims
- Claims and ingredients in meat alternative products / plant-based products
- Claims around healthfulness – think about where color additives come into play

THANK YOU

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