

# OUR PRACTICE

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## Food and Beverage

**Baker Donelson's interdisciplinary team of attorneys provide comprehensive legal counsel to domestic and cross-border clients that manufacture, distribute, and sell a variety of foods, including meat and poultry, processed foods, seafood, fruit and vegetables, seasonings and spices, and beverages. We also represent companies that serve the food and beverage industry, including staffing firms, logistics, refrigerated storage, cooperatives, and related enterprises critical to food and beverage manufacturing and sale.**

We assist clients in every stage of food and beverage manufacturing and distribution including business transactions, commercial matters, cybersecurity, employment issues, lending and restructuring, litigation, intellectual property, and regulatory compliance. Our attorneys regularly advise clients on regulations governing labeling, food ingredient disclosures, import and tariff issues, weights and measures, and net contents disclosures and represent them in matters involving various state and federal agencies such as the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA).

When contamination events and product recalls occur, [Baker Donelson's Food and Beverage Incident Response team](#) is available 24/7/365 to provide real-time legal advice. Our experienced team of lawyers and advisors work with food manufacturers across the U.S., to prepare for and execute recalls and manage communication with regulatory agencies and the public. We work with clients on the development and implementation of robust incident preparedness plans.

Our team can provide counsel for your food and beverage business in the following areas:

### **Antitrust**

Clients in the food and beverage industry rely on us to provide antitrust advice on issues ranging from distribution agreements to defending antitrust cases. Our antitrust litigation experience includes multidefendant nationwide class actions, multidistrict litigation, state class action cases, and state attorney general suits. We also advise clients in state and government investigations, criminal antitrust matters, mergers, and transactions before federal agencies (including Hart-Scott-Rodino filings), and Robinson-Patman Act price discrimination and resale price maintenance issues. Our antitrust attorneys counsel Fortune 500 clients on horizontal and vertical matters, monopolization, benchmarking, acquisitions, and consumer protection issues.

### **Corporate**

We represent food and beverage companies in complex financings, mergers, acquisitions, and restructurings, "roll-up" and "carve-out" transactions, public and private offerings, capital markets and lending transactions, executive compensation issues, corporate governance, ESG investments, corporate finance, tax and related services, strategic business planning, entity formation, and domestic and cross-border commercial transactions. We also have substantial experience in the complexities of production/supply agreements, distribution agreements, commercial contracts, and similar matters our food and beverage clients address on a day-to-day basis.

### **Corporate Restructuring and Bankruptcy**

Our lawyers have been deeply involved in complex food and beverage workouts, recapitalizations, distressed sales and acquisitions, and bankruptcies. We have represented virtually every constituency in such matters including senior lenders, junior lenders, creditors' committees, key suppliers and distributors, and distressed

companies. We have multiple restructuring lawyers licensed in Delaware and Houston – the two most prevalent bankruptcy courts. Our work on issues under the Perishable Agricultural Commodities Act (PACA) in insolvency matters is nationwide, and our writings in this arcane area have been cited by multiple courts. Likewise, we have substantial experience working with agricultural lenders, both on origination and throughout the lifecycle of the loan, including default issues in agricultural loans. Distressed matters in the food and beverage industry require a unique level of familiarity that Baker Donelson attorneys can ably demonstrate.

### **Compliance and Regulatory**

We assist clients in navigating complex regulatory issues and premarket approval/clearance processes as well as compliance and enforcement challenges. Our team represents processor and producer groups in proceedings before the FDA, the USDA, and various state agencies in matters such as the Perishable Agricultural Commodities Act (PACA), the National Organic Program (NOP), the Food Safety Modernization Act (FSMA), GRAS Affirmation Notification (GRASN), and food additive petitions. Our attorneys also counsel clients on food labeling requirements under the Nutrition Labeling and Education Act (NLEA) as well as other labeling issues such as those related to artificial growth hormones and cloning, food allergens, food safety, and standards of identity as well as food health and other label claims. We assist and represent clients in matters involving food current good manufacturing practices (CGMPs) and inspections, food product recalls, seizure actions, as well as government or private litigation involving food products. Our team is also experienced in serving as regulatory counsel in mergers and acquisitions.

### **Data Protection, Privacy, and Cybersecurity**

With the increase in bad actors targeting essential industries such as food manufacturing; data protection and cybersecurity are more important than ever. Our team collaborates with the more than 30 attorneys on Baker Donelson's Data Protection, Privacy, and Cybersecurity Team who are experienced in all areas of information management, from privacy and data security planning and design to compliance, data breach, and litigation management. They also provide guidance on technology vendor contracts, digital marketing compliance, and artificial intelligence best practices.

### **Environmental, Health, and Safety**

With extensive experience in traditional air, water, and waste programs, we work with business clients to streamline permitting, ensure proactive compliance, and manage environmental risks and costs. Our environmental lawyers work regularly on the Resource Conservation and Recovery Act (RCRA) generator and treatment, storage, and disposal facility (TSDF) issues; state and federal Superfund sites and brownfield developments; the national pollutant discharge elimination system (NPDES) and pretreatment permits; Title V and other air permitting; litigation, risk management including "greenwashing" issues, and chemical regulation under Toxic Substances Control Act (TSCA); the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and California Proposition 65. In addition, our lawyers have advised and represented clients on compliance, strategy, and risk management surrounding the use of per- and polyfluoroalkyl substances (PFAS) in products and packaging.

### **Intellectual Property**

Baker Baker Donelson's Intellectual Property lawyers have extensive experience in the food and beverage industry, inclusive of alcoholic beverages, and have assisted clients with patent, trademark, trade secret, and copyright matters for food and beverage products, product manufacturing processes, advertising, packaging, and other technologies utilized in the industry. We have decades of experience in drafting and reviewing contracts related to packaging, co-packing, distribution, and private-label agreements, as well as extensive experience advising clients regarding labels and substantiation of advertising claims. We also have the experience to guide clients through the pertinent FTC guidelines (including the Green Guides) and labeling laws.

We design and conduct tailored audits for clients in the food and beverage industries to help clients identify, catalog, and develop strategies to protect trade secrets and employ enforcement strategies for maintaining and protecting trade secrets and confidential information. The audits typically involve touring food or beverage manufacturing facilities and plants, reviewing existing protocols, and drafting additional protocols and guidelines based on information learned about the client's specific operations and proprietary products and processes.

Baker Donelson's Intellectual Property lawyers have successfully handled numerous federal court cases across the country involving advertising, labeling, and infringement issues for our food and beverage industry clients, including pursuing or defending numerous trademark opposition and cancellation proceedings before the Trademark Trial and Appeal Board to help protect the client's brand and competitive advantages in the marketplace.

### **Labor & Employment**

We provide full-service labor and employment legal services, from helping food and beverage clients create policies and implement effective training, to wage and hour, Equal Employer Opportunity Commission (EEOC) charges, workers' compensation, Occupational Safety and Health Administration (OSHA) compliance, labor laws, and reduction in workforce, among other legal and operational issues. We provide counseling, training, and strategic advice on all employment-related laws and regulations, and when necessary, we defend our clients in district and federal courts across the country. Additionally, we provide strategic guidance and immigration counseling services to companies and their employees, including immigrant and non-immigrant visa processing. Baker Donelson's attorneys regularly appear before the National Labor Relations Board (NLRB), the EEOC, the Department of Labor (DOL), and occupational health and safety boards.

### **Licensing**

We assist clients with their business and alcoholic beverage licensing and permitting matters, including preparing and submitting licensing and permitting initial applications and renewals and interfacing with appropriate state and local government entities, boards, and departments when processing such applications. We also assist clients with ensuring compliance with various state and federal laws related to business and alcoholic beverage licensing and permitting requirements by conducting compliance reviews of policies and procedures and helping clients respond to notices of violations of their business and alcoholic beverage licenses and permits.

### **Litigation**

We represent companies in the food and beverage sector in significant litigation, multidistrict litigation (MDLs), and class actions involving product labeling and food safety matters. We defend food product manufacturers, major food retailers, and distributors in litigation matters in state and federal courts across the country. When insurance issues arise from recalls or contamination events, we advise clients on coverage questions and litigate insurance claims to safeguard our clients' financial stability and operational integrity. Our experience enables us to navigate complex legal challenges effectively, helping our clients maintain their reputation and compliance in this highly regulated industry.

### **Logistics and Supply Chain**

Our logistics and supply chain experience allows our attorneys to support food and beverage manufacturing clients in navigating the complexities of their operational frameworks. We assist clients in addressing disruptions within the supply chain, ensuring compliance with Department of Transportation (DOT) and Federal Aviation Administration (FAA) regulations, and managing appropriations concerns. Our team is equipped to provide [24-hour emergency accident investigation assistance](#), helping clients respond swiftly and effectively to unforeseen incidents that may impact their operations. With a deep understanding of the industry's unique

challenges, we deliver strategic legal guidance to enhance resilience, minimize risks, and ensure smooth, compliant logistics processes.

## Trade and Investment

We provide service to food and beverage clients that operate both domestically in the U.S., and globally. Our international trade and corporate cross-border team offers comprehensive support in site selection and the expansion of existing facilities, helping clients navigate the complexities of economic incentives and regulatory requirements. We assist with a range of issues, including export and import regulations, tariff matters, and supply chain optimization. Additionally, we provide strategic guidance on reshoring manufacturing or distribution operations to enhance operational efficiency and competitiveness.



## Representative Matters

### Antitrust

- Lead counsel in a multi-defendant class action defending a poultry processor against a putative nationwide class of hourly and salaried poultry workers bringing claims under antitrust laws alleging suppression of plant worker compensation and/or benefits by the industry through information sharing, serving as liaison counsel for a large group of defendants.
- Defended a major meat processor in a multi-defendant antitrust class action alleging compensation fixing of thousands of independent contractors arising out of alleged information sharing, benchmarking, and no poach agreements.

### Corporate Restructuring and Bankruptcy

- Represented the largest shareholder in a buyout and recapitalization for a major food distributor.
- Defended a poultry processor against claims brought by former broiler grower alleging breach of contract and breach of duty of good faith and fair dealing for failure to deliver poultry under broiler-growing agreement.
- Defended a poultry processor against claims brought on behalf of bankruptcy estate of former broiler grower alleging processor breached contractual obligations and violated Packers and Stockyards Act in connection with broiler-growing agreement.
- Served as lead drafter and negotiator of contract and ancillary documents for a multinational food group with projects throughout the Midwest and Southeastern U.S.

### Data Protection, Privacy, and Cybersecurity

- Assisted a major nationwide food chain with response to data breach involving customer's credit card information.

### Labor & Employment

- Successfully defended a major food processing company in the trial of a \$1.7 million sexual harassment and retaliation lawsuit by a former employee.
- Successfully defended a major food processing company in a \$2 million federal lawsuit filed by a former employee alleging discrimination claims under 42 U.S.C. 1981 and Title VII. Obtained dismissal of multiple claims via a motion to dismiss and a motion for summary judgment, and obtained a complete defense verdict on the remaining claims following a jury trial. The district court's ruling was affirmed on appeal.
- Represented a food manufacturer in an appellate victory that involved the client's ability to obtain discovery from class members regarding their attempts to obtain U-Visas based on the allegations of the case. Argued that the plaintiff fabricated their allegations as a means to obtain the U-Visas. In a case that received national attention, the court upheld the client's rights to obtain the information, with certain limitations.
- Obtained a summary judgment for a food manufacturing company where five named plaintiff's alleged race, national origin, color, age, and religious discrimination, constructive discharge, and negligent supervision claims.

- Defended a distribution facility in action for alleged wrongful termination in violation of Family Medical Leave Act.
- Defended a distribution facility in arbitration brought under the National Labor Relations Board (NLRB) for alleged violations of collective bargaining agreement.
- Successfully resolved an ICE I-9 audit for an Illinois manufacturer where approximately one-third of floor workers were found to be potentially unauthorized to work in the U.S., resulting in no fine, no admission of civil or criminal liability and an extended period of time for workforce transition.
- Assisted a food manufacturing client in a Department of Labor child labor audit, resulting in a favorable consent judgment.
- Represented a major national meat processor on an intensive, multi-week wage and hour audit by the U.S. Department of Labor, during which department representatives were onsite for approximately three weeks. The audit involved more than 1,000 employees and included dozens of positions and categories of workers. The audit also involved our team reviewing and responding to numerous DOL requests and questions and setting forth the Company's position on multiple and complex wage and hour legal issues. No back wages were assessed.
- Successfully represented and advised a manufacturer in an exhaustive, two-year audit by the Department of Labor (DOL). The audit involved up to four DOL investigators being on site at the company for weeks interviewing employees and reviewing documents regarding payroll and time-tracking issues. Defense of the matter included arguing the company's positions on various issues such as exempt/nonexempt issues and time-tracking issues. The DOL ultimately decided not to seek back pay on behalf of any employees or former employees.

## Litigation

- Represented a major national beef producer in an investigation of potential E. coli contamination of beef patties supplied to fast food chain locations. Assisted the client with testing protocols and negotiated testing terms with opposing counsel, successfully concluding the matter when test results confirmed the beef product was negative for E. coli.
- Represented clients in FDA food contamination recalls involving peanut butter products and ingredients.
- Represented a food manufacturer in a nationwide FDA recall of egg products due to alleged bacterial contamination. Also handled related insurance coverage issues for client to recover maximum insurance payments, and defended multiple suits by customers.
- Successfully defended a serious personal injury case in Texas alleging a national retail client sold tainted baby food products. Motion to dismiss granted by Federal Court based on innocent retailer defense.
- Obtained U.S. District Court dismissal on filed rate doctrine grounds of nationwide class action alleging damages from purported improper reporting of end-product prices used by the United States Department of Agriculture to establish federal minimum prices payable to dairy farmers. *Carlin, et al. v. DairyAmerica, Inc. et al.*, 690 F.Supp.2d 11 (E.D. Cal. 2010).
- Obtained preliminary injunction on dormant commerce clause grounds against the Pennsylvania Milk Marketing Board's new regulation changing the method of calculating and distributing the Pennsylvania mandated premium for raw milk. *Fair Oaks Farm et al. v. Kriebel et al.*, M.D. PA 10-1591, slip opinion, (September 16, 2010)
- Intervened on behalf of the Pennsylvania Association of Milk Dealers in support of a decision by the Pennsylvania Milk Marketing Board not to extend its over-order premium pricing program to reach milk distributed in adjoining states and that decision was upheld on appeal. *DairyLea et al. v. Pennsylvania Milk Marketing Board et al.*, Commonwealth Court of Pennsylvania, slip opinion (August 6, 2010)
- Intervened in support of regulations adopted by the U.S. Department of Agriculture, which were alleged to restrict access to the fluid milk market, but which were upheld on procedural and substantive grounds. *White Eagle v. Conner*, 553 F.3d 467 (7th Cir. 2009)

- Obtained affirmance on appeal following the successful defense of the Pennsylvania Milk Marketing Law against dormant Commerce Clause claims following a six-day bench trial. *Cloverland-Greenspring v. Pennsylvania Milk Marketing Board*, 462 F. 3d 249 (3d Cir. 2006)
- Prevailed in dormant commerce case brought by Nevada farmers against the California Department of Food & Agriculture; CDFR had obtained dismissal of case on grounds that Congress consented to exemption from dormant commerce clause analysis. Obtained merits decision in favor of plaintiffs on remand. *Hillside Dairy et al. v. Lyons*, 539 U.S. 59 (2003)
- Represented a major food processing and distribution company in the litigation and mediation of claims related to a catastrophic cast-in-place concrete floor collapse at a production facility, which resulted in over \$3 million in damages. Advised the company regarding interaction with OSHA, builder's risk and general liability insurance coverage, defense of counterclaims, and recovery of damages.

### **Regulatory**

- Aided a Mexican flour manufacturer with the navigation of importation and labeling requirements to market the product in the United States.
- Assisted a plant-based food maker and marketer with the product label and product name to assure FDA compliance.