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How Food and Beverage Manufacturers Can Minimize their Exposure to the Wave of Citric Acid Based Lawsuits

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A recent wave of consumer class action lawsuits is targeting food and beverage makers that use "all natural," "no preservatives," or similar labels on their products. One common group of targeted products are those which contain citric acid, an ingredient that is widely used in many food and beverage products as a flavoring agent and as a mild preservative. Although citric acid is found naturally in citrus fruits, the type of citric acid commonly used in food and beverages is commercially manufactured through an administered fermentation process involving fungi microorganisms, such as *Aspergillus niger*, converting certain sugars into citric acid.

In particular, the use of citric acid as a preservative in a food or beverage product marketed as "all natural," "containing no artificial preservatives," or words to either effect, can attract consumer class action lawsuits premised on an alleged inconsistency between the product label and the utilization of fermented citric acid. These lawsuits do not allege physical harm to the consumer but rather claim that the product labeling is false, misleading, or deceptive, which has caused consumers to pay a higher price (or a price premium) for a (perceived) more natural product.

As reflected in various opinions, many federal courts have been reluctant to dismiss consumer labeling claims and have allowed this type of litigation to proceed on the merits. Not only does such litigation result in substantial legal expenses, but it could also cause reputational damage to food and beverage manufacturers and retailers. Several well-known companies have been recently targeted with citric acid class actions in federal court: *Minondo v. B&G Foods, Inc.* (E.D.N.Y. 2023) (Emeril-branded pasta sauces); *Wright v. Ocean Spray Cranberries Inc.* (N.D. Cal. 2023) (various cranberry-flavored juice products); and *Laura Willis-Albrigo v. Mott's LLP* (S.D. Cal. 2024) (Bloody Mary mix).

The Coca-Cola Company is the latest company targeted. A proposed class action filed in the United States District Court for the Central District of California alleges that Coca-Cola's Sprite and Fanta products labeled "100% Natural Flavors" are falsely advertised as containing no artificial flavoring ingredients and synthetic substances despite using additives like citric acid, aspartame, and acesulfame potassium. The plaintiff's complaint in *Palmer v. The Coca-Cola Co.*, Case No. 2:25-cv-04777 (C.D. Cal. 2025) alleges that these soft drinks are mislabeled so as to appeal to health-conscious consumers who prefer organic or natural products. The *Palmer* Complaint argues that citric acid is recognized as a preservative by the FDA and states that the products incorporate industrially manufactured citric acid, which plaintiff alleges is a synthetic compound that significantly influences the flavor profile of the soft drinks. The Complaint further alleges that consumers would not have paid as much for the products, or purchased the soft drinks at all, had they known that the "100% Natural Flavors" representation was false. As of the date of this Client Alert, Coca-Cola has yet to file a responsive pleading in *Palmer*.

In a separate and relatively new citric acid case, *Delvalle v. Coca-Cola Co.*, Case No. 24-CV-6163 (VEC), 2025 WL 1489257, *1 (S.D.N.Y. May 23, 2025), Coca-Cola has suffered defeat on its motion to dismiss. In *Delvalle*, plaintiff alleges that Coca Cola's "No Preservatives Added" claim on its label for its Minute Maid Fruit Punch drink was false because the drink allegedly contained citric acid as a preservative. Coca-Cola (in its

motion to dismiss) based its argument that the "No Preservatives Added" label is not misleading on three (3) grounds, namely that: (A) plaintiff's complaint failed to allege facts to support the assertion that citric acid acted as a preservative in the drink; (B) even if citric acid is a preservative, plaintiff failed to allege that Coca-Cola intended for citric acid to function as a preservative in the drink; and (C) plaintiff failed to sufficiently plead that the citric acid in the drink was "chemically processed" or was otherwise unnatural. As the court in *Delvalle* emphasized, dismissal was not appropriate at such an early stage because the factual disputes between the parties regarding the nature and function of citric acid require factual discovery and further proceedings prior to resolution.

Indeed, the *Delvalle* court's reasoning in denying dismissal illustrates the primary irritant that this recent rash of citric acid cases poses for the food and beverage industry, namely increased litigation costs from courts' reticence to dismiss cases prior to costly discovery in the face of arguably insufficiently-pled allegations regarding a naturally-occurring ingredient that is commonly manufactured through the metabolic process of fermentation and which is commonly included in products for reasons other than its preservative qualities.

What Can You Do to Minimize Your Risk?

There are several steps – some easy, some more difficult – food and beverage producers can take to minimize the risk of these consumer class action lawsuits and the associated financial burdens of complex litigation:

1. **Change the Label**: One alternative is to eliminate the "all natural" or "no preservatives" labeling statements, but there is often pushback from the marketing and development teams because of the perception that such labeling increases sales. Label changes can also be expensive and time-consuming.
2. **Change the Ingredients**: Some food and beverage producers choose instead to tweak the recipe to eliminate citric acid as an ingredient. Food and beverage producers who want to continue using "all natural" or "no preservatives" labeling should closely evaluate the need for citric acid and all other problematic ingredients in the product.
3. **Check your Insurance Coverage**: If neither modifying the label nor the ingredients is an option, a thorough review of your existing insurance is in order. Insurers typically will not cover such claims under a standard general liability policy because these claims do not allege physical harm to consumers (they do not), but instead, are asserted as false advertising claims. If your policy does not cover such advertising claims, then it is time to add such coverage if continued use of citric acid is expected in the product.
4. **Review Supplier Agreements for Indemnification**: The indemnity provisions in your supplier contracts certainly warrant a review. The Byzantine indemnity language in a contract (or purchase order, or other standard terms and conditions) typically gets short shrift in the review process, relegated to "fine print" or "standard language" status. It is anything but. We can help you with this by focusing on the following questions:

Does the indemnity language make your company liable for the consequences of your counter-party's decisions, such as mandated ingredients or required labels?

Does the indemnity language require your company to pay defense costs for third-party lawsuits, without the ability to control that defense (such as the choice of counsel)?

Does the indemnity language only cover consumer harm or physical damages, but does not cover false advertising damages or other consumer protection liability?

Is there a corresponding limitation of liability provision, which guts the coverage provided by these indemnity provisions?

For the foreseeable future, citric acid/false labeling claims – and the resulting risk of defense costs, or liability – will continue to go hand in hand. The same is true with various other products that push the "all natural" or "no preservatives" label boundaries given their ingredients.

In short, the contractual risks your company faces can be managed. If they cannot be managed (such as in the case of unequal contractual bargaining power), then at least they can be understood, which will provide a food producer a reason to adjust its pricing.

If you have any questions or would like to discuss how you can implement the suggested mitigation measures or require litigation representation and support, please contact any of the authors, [Sam Felker](#), [Mark Duedall](#), [Will Fagan](#), [Desislava Docheva](#), or any member of our [Food and Beverage](#) team.