

## Food & Beverage

In the last two decades, a wave of seismic shifts, driven by consumers, scientists, and regulators, has swept the food and beverage business into an era of new opportunities — and the risks that come with them. Leaders of a food enterprise of any size now must anticipate dietary trends and consumer confidence, understand technology, and move fast, without running afoul of evolving regulatory requirements or exposing themselves to potentially devastating litigation.

In the face of unprecedented change, the attorneys at Michael Best bring a calming perspective forged through years of experience across the industry, from regulatory scrutiny of processing methods to lawsuits over word choice on packaging. Our skill in navigating the most sensitive scenarios stems not only from our deep knowledge of the law, but also from a firm grounding in the science behind food production, derived from decades working alongside both food companies and regulators.

Nothing embodies the changes affecting the food business more than the rollout of the Food Safety Modernization Act (FSMA), a set of rules that promise to transform oversight of every link in the food supply chain. As the Food and Drug Administration steadily rolls toward full implementation, our experience has proven valuable to clients. That experience includes working inside the FDA during rollout of the Hazard Analysis Critical Control Point framework, which formed the basis for the FSMA regime. Our understanding of not just what the rules are, but also how regulators think about implementation, gives our food clients a distinct competitive advantage in the industry-wide preparation for compliance with FSMA.

But even in less turbulent times, our attorneys guide food makers and marketers through the obstacles they are certain to encounter. It is possible that at some point, any food executive or entrepreneur could face a recall. Preparation is key, and during the turmoil of a recall it's vital to get seasoned, sophisticated advice early in the process. Hiccups in the food supply chain can lead not only to serious regulatory problems, but also to crippling lawsuits. Our team has experience advising companies through the pressures of a recall and dealing with the problem thereafter. We can help avoid worst-case outcomes by applying strong legal

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knowledge, crisis management experience, and a deep technical understanding of food safety and production.

Recalls caused by contamination, storage, or transit breakdowns aren't the only legal perils food and beverage makers face today. Shifting consumer preferences have become a fact of life in the food business. The availability of information about food and its ingredients, plus the ability to share new food discoveries, has allowed trends in nutrition, cooking, and dining to spring up in an instant and to spread far and wide in mere moments. While this has put many food makers on the defensive, scrambling to keep up with the latest tastes, it has also created immense opportunities for entrepreneurial food makers. Innovators who catch — or create — a new wave of consumer appetite can rapidly gain market acceptance. But growing fast in the food business brings unique and perilous challenges. Many entrepreneurs don't comprehend the difficulties of scaling a food enterprise, and the level of scrutiny they will encounter as they grow.

Our attorneys understand those risks. They've been helping food and beverage companies manage and mitigate them for decades.

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## Service Areas

### **Beer, Wine & Spirits**

In recent years, there has been rapid growth in the craft brewing, spirit distilling, and viticulture industries, with new and growing businesses joining the ranks of established operations. This exciting time presents both opportunities and challenges as new products and brands are brought to market. Michael Best's Beer, Wine & Spirits team helps clients navigate the operational and regulatory aspects of your business so that you can focus on your craft.

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### **CBD Products**

In recent years, waves of change driven by consumers, scientists, and regulators have swept food and beverage businesses into an era of new opportunities — such as CBD products — that come with new risks. With consumer demand for CBD products on the rise, and the law still in flux, it's essential to have a strategic legal partner who keeps up with the times. Michael Best is that partner.

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## Experience

### **McCain Foods**

When the world's largest maker of frozen French fries makes an acquisition in the U.S., it regularly calls on the Food & Beverage team at Michael Best.

Acquiring food-processing facilities requires compliance with complicated environmental and food regulations — and that's where our Food & Beverage team possesses a particular and uncommon

proficiency. McCain Foods is keenly interested in putting newly acquired facilities into production as quickly as possible — sometimes within days — placing an even greater premium on deep understanding of the requirements for compliance with a bevy of rules from multiple state and federal agencies.

Our lawyers know how to efficiently comb through a seller's previous disclosures and audit statements; what red flags to watch for; and how to ensure that, once the facility changes hands and production lines start rolling, our client will be protected from unforeseen breakdowns in compliance or food safety.

### **FDA Labeling**

Within 24 hours of passage of federal legislation requiring the disclosure of genetically modified organisms on food labels, Michael Best attorney Leah Ziembra got a call from a nervous client, asking her to help explain what the bill's requirements would mean for food makers.

That happens a lot for members of our Food & Beverage team, which has built a reputation for responsive, product-specific counsel to food companies. Today that ability is particularly valuable on issues of labeling, which have taken on immense importance amid increasing legal and regulatory risks associated with the language on food packaging.

Growing scrutiny around ingredients and labels has created a host of new potential liabilities. Any one of these can be catastrophic for a food company, given not just the scale of the industry, but also an emotionally charged environment where consumers are increasingly aware of and concerned about what they're eating, where it comes from, and what it contains. The pressure to use words like "natural" on labeling and other marketing can be intense, but food makers need to understand what that word means to consumers, to regulators, and to courts.

That goes for family-owned bakeries as well as for the world's largest food makers. Our Food & Beverage team serves clients of every size and type, routinely vetting the language on their product labels, as well as their marketing and promotional materials, to help them understand the risks — and avoid risks that could lead to class actions, regulatory scrutiny, or public-relations problems.