

OVERVIEW

Tucker Ellis provides a wide range of legal services to food, beverage, cosmetics, personal care, and nutritional supplements manufacturers, distributors, online and bricks-and-mortar retailers, and restaurants.

We provide regulatory and business services to ensure compliance with state advertising laws and statutes and regulations enforced by the Federal Food and Drug Administration (FDA), the Federal Trade Commission (FTC), and other regulatory agencies. We also conduct advertising, claim substantiation, and labeling reviews to ensure compliance with state and federal law.

Our trial attorneys defend clients in nationwide consumer class actions asserting misbranding, false advertising, and product labeling claims under consumer protection statutes, unfair business competition and false advertising laws, the California Consumer Legal Remedies Act, and the Lanham Act. We represent clients in disputes with vendors, customers, landlords, and other commercial entities, and we counsel clients on pre-litigation avoidance strategies.

Our corporate and business attorneys work with public and private companies – both established and start-ups – in all stages and aspects of their businesses, including formation; finance and growth capital; commercial contracts, distribution contracts, and licensing agreements; M&A and divestitures; real estate; tax; labor and employment; and ongoing operations. We regularly advise executive management and boards on corporate governance and legal compliance matters, and structure and implement compensation agreements and equity incentive arrangements.

Our intellectual property attorneys assist clients with developing and managing their portfolios and obtaining trademarks, copyrights, and patents in the United States and around the world. We have extensive experience protecting our clients' intellectual property rights and, where necessary, enforcing those rights in litigation. Our online brand protection team is highly effective in both finding and stopping problems that occur online. We also assist our clients in licensing, monetizing, and selling their intellectual property.

AREAS OF EMPHASIS

- Regulatory compliance, including FDA, FTC, Fair Packaging and Labeling, automatic renewal programs, and slack-fill requirements
- FDA and FTC enforcement actions
- California Proposition 65
- False advertising and labeling
- Advertising review and counseling
- Intellectual property and brand protection
- Licensing
- Litigation and dispute resolution
- Corporate formation, structure, financing, and growth capital
- Business services, including negotiation of NDA, manufacturing, supply, vendor, and distribution agreements
- Import/Export
- Insurance and risk management issues
- Environmental matters
- Real estate
- Labor and employment services
- Privacy and cyber security
- Product recalls
- Crisis management

REPRESENTATIVE MATTERS

- Represent consumer product, cosmetic, skin care, and hair care companies in nationwide consumer class actions challenging their use of the term “natural”
- Represent cosmetic and skin care companies in nationwide consumer class actions challenging product efficacy claims under false advertising, consumer legal remedies, and unfair business practices acts
- Defend companies in consumer class actions under California Automatic Renewal Law
- Represent international skin care company in nationwide consumer class action challenging advertising and disclosure practices
- Represent food company in nationwide consumer class action challenging use of the term “No Trans-Fat” on product labels
- Represent leading manufacturer of baby wipes in consumer class actions challenging use of the term “unscented”
- Defend protein powder company in class action alleging protein spiking and mislabeling
- Defend protein powder company in class action alleging false “Made in U.S.A.” claims
- Advise supplement company on FDA and FTC compliance and conduct advertising review of website and promotional material
- Counsel companies selling nutritional supplements on proper labeling, advertising, and disclosure requirements
- Analyze studies and conduct risk analyses to advise nutritional supplement companies on claim substantiation support
- Assist start-up cosmetic device company with obtaining provisional patent and capital raise
- Advise international personal care company on requirements for entering U.S. market, including advertising and regulatory review
- Advise foreign client on importing and marketing medical foods in the U.S.
- Represent international skin care company in nationwide class action challenging consumer disclosures
- Represent international skin care company in domain name disputes; recovered numerous domain names from infringing parties
- Develop online brand enforcement strategy for international skin care company
- Represent marketer and seller of vitamins, health supplements – including free testosterone boosters – and personal care products in class actions challenging claim substantiation, advertising, and consumer disclosure practices
- Represent skin care company in personal injury actions
- Conduct product labeling, advertising, and marketing reviews of personal care products, including cosmetics, skin care, and nutritional supplements
- Conduct product labeling, advertising, and marketing reviews for food manufacturers
- Prepare non-disclosure and customer purchase order documentation for food manufacturers
- Serve as mergers and acquisition counsel for buy and sell side for food companies
- Conduct FDA regulatory review of cosmetic, skin care, food, and supplement products
- Conduct patent review and prosecution for hair care product company
- Prosecute patent for chewing gum company
- Secured dismissal of Prop 65 action filed against foreign consumer products company
- Defend numerous companies across industry sectors, including cosmetic and health supplements companies in Prop 65 lawsuits
- Perform patent and trademark registration for cosmetic, skin care, and cosmetic device companies

REPRESENTATIVE MATTERS (CONTINUED)

- Advise clients on slack-fill packaging requirements
- Advise personal care companies on brand management strategies and review trademark and patent portfolios
- Defend online marketer and seller of health supplements in false advertising and unfair business practices class action alleging improper shipping & handling charges
- Represent online retailer of health and nutrition supplements in online counterfeiting case; successfully shutdown counterfeiter's website, Facebook, and Twitter accounts
- Obtained dismissal of trademark infringement action on behalf of regional brewery
- Defend company in customs investigation and audit of business operations in dispute over duty exemption and valuation claims, NAFTA eligibility, and accuracy of prior disclosures
- Obtained dismissal of class action false advertising, unfair competition (Business & Professions Code § 17200), and Consumer Legal Remedies Act case for national food manufacturer involving alleged violation of FDA nutritional content labeling requirements
- Negotiated non-payment dismissal of class action false advertising, unfair competition (Business & Professions Code § 17200), and Consumer Legal Remedies Act case for anti-wrinkle cream cosmetic manufacturer
- Manage the international trademark portfolios for cosmetic companies
- Counsel hair color company on regulatory and patent issues

SPEAKING ENGAGEMENTS

- "Claim Substantiation: Best Practices for Avoiding Unwanted Attention from Government Regulators and Private Plaintiff Lawyers," New York Society of Cosmetic Chemists, Edgewater, New Jersey – Ronie Schmelz (September 2016)
- "Natural Beauty: The Wave of the Current Beauty Industry," The Fashion Group International of Los Angeles, Inc. (FGI) and the Fashion Institute of Design & Merchandising (FIDM), Los Angeles, California – Ronie Schmelz (December 2015)
- "Claims Substantiation: Best Practices for Avoiding Unwanted Attention from Government Regulators and Private Plaintiff Lawyers," New York Society of Cosmetic Chemists (September 2016)
- "Regulatory Update: Strategies for Avoiding Class Actions and Complying with FDA and FTC Guidelines," Society of Cosmetic Chemists (SCC) Suppliers' Day, Long Beach, California (October 2015) – Ronie Schmelz
- "Proposition 65 Recent Developments," Valley Industry & Commerce Association (VICA), Encino, California (September 2015) – Ronie Schmelz
- "Knowledge is Power: What you Need to Know to Protect Your Business," Cosmoprof North America, Panel Participant (July 2015) – Ronie Schmelz
- "Is Your Business Ready for the US Marketplace?," Panelist, Sabor Latino, Latin Food Industry Trade Show (May 2015) – Matt Kaplan
- "Proposition 65 and Its Impact on the Cosmetics Industry," ICMAD Cosmetic Technical/Regulatory Forum, Newport Beach, CA (February 2015) – Ronie Schmelz
- "California Privacy & Advertising Laws ~ How Are They Different...," Brand Activation Association/PMA Marketing Conference, Chicago, IL (November 2014) – Ronie Schmelz
- "Prop 65 – Updates, Wins and What You Must Know," ICMAD West Coast Business Meeting, Los Angeles, CA (October 2014) – Ronie Schmelz
- "Are You Ready to Import into the USA?," ICMAD Cosmoprof North American Conference, Las Vegas, NV (July 2014) – Ronie Schmelz
- "California Prop 65 & Consumer Class Actions in the Cosmetics Industry," ICMAD FDA Cosmetics Regulation Workshop, New York, NY (April 2014) – Ronie Schmelz
- "Proposition 65 Update," Grocery Manufacturer's Association (GMA) Annual Litigation Conference, Dana Point, CA (February 2014) – Matt Kaplan

SPEAKING ENGAGEMENTS (CONTINUED)

- “Around the Beauty World in 60 Minutes: A Prop 65 Alert,” Cosmoprof North America (July 2013) – Ronie Schmelz
- “ABA May 2013 Consumer Protection Update,” ABA Section of Antitrust Program (June 2013) – Ronie Schmelz
- “The Evolution of Consumer Fraud Class Actions against the Food Industry,” Challenges Facing the Food & Beverage Industries in Complex Consumer Litigations, New York, NY (June 2013) – Matt Kaplan
- “Presenting Food Science to the Judge or Jury,” ABA Section of Litigation’s Food & Supplements Third Annual Workshop, Oak Brook, IL (June 2013) – Dick Dean

TRADE ORGANIZATION PARTICIPATION

- Association for Corporate Growth (ACG)
- Beauty Industry West (BIW) – Legal Advisor to the Board
- Cosmetic Executive Women (CEW)
- Cosmoprof North America
- Dairy, Deli Bakery Council of Southern California
- Expo West and Engredea
- The Fashion Group International (FGI)
- Food Industry Business Roundtable
- Independent Cosmetic Manufacturers and Distributors (ICMAD)
- International Trademark Association
- National Products Association (NPA)
- Provisors Food Affinity Group
- Society of Cosmetic Chemists (National Affiliate)

PUBLICATIONS

- “FTC Distinguishes Between ‘Natural’ and ‘All Natural,’” *Nutrition Industry Executive* (September 2016) – Ronie Schmelz and Amanda Villalobos
- “FDA Tackles Terrorism and Adulteration,” *Food Quality & Safety* (September 2016) – Matt Kaplan
- “FDA’s New Rule on Sanitary Transport of Food,” *Nutraceuticals World* (September 2016) – Matt Kaplan and Ronie Schmelz
- “FTC Distinguishes Between ‘Natural’ and ‘All Natural,’” Tucker Ellis Client Alert (July 2016) – Ronie Schmelz and Amanda Villalobos
- “Federal Jury Clears Leading Homeopathic Flu Remedy Manufacturer in Class Action Trial,” Tucker Ellis Client Alert (June 2016) – Ndubisi Ezeolu, Matt Kaplan, and Ronie Schmelz
- “‘Evaporated Cane Juice’ – FDA Releases Final Guidance Critical of the Term,” Tucker Ellis Client Alert (May 2016) – Ndubisi Ezeolu and Matt Kaplan
- “FTC Targets ‘All Natural’ and ‘100% Natural’ Products and Defines Terms,” Tucker Ellis Client Alert (April 2016) – Ronie Schmelz and Lauren Bragin
- “Website ‘Terms of Use’ May Not Bind Users,” *Nutraceuticals World* (March 2016) – Matt Kaplan and Ronie Schmelz
- “FDA Warning Letters Target Internet Testimonials,” *Nutraceuticals World* (February 2016) – Matt Kaplan and Ronie Schmelz
- “Congress Loses Its COOL, Repeals Meat Labeling Rule,” *Law360* (February 2016) – Ndubisi Ezeolu and Matt Kaplan

PUBLICATIONS (CONTINUED)

- “FDA Warning Letters Target Internet Testimonials,” Tucker Ellis Client Alert (January 2016) – Ndubisi Ezeolu, Matt Kaplan, and Ronie Schmelz
- “For the COOL – Congress Repeals Country-of-Origin Labeling Rule for Beef and Pork,” Tucker Ellis Client Alert (December 2015) – Ndubisi Ezeolu and Matt Kaplan
- “OEHHA Adds Aloe Vera, Non-Decolorized Whole Leaf Extract and Goldenseal Root Powder to List of Cancer-Causing Chemicals Under California Prop 65,” Tucker Ellis Client Alert (December 2015) – Lauren Bragin, Matt Kaplan, and Ronie Schmelz
- “Seller Beware!! What You Need to Know About Prop 65 Before Selling Products to California Consumers,” *Cosmoprof North America eNewsletter* (April 2015) – Ronie Schmelz
- “Subscription Services Beware! Failure to Follow Automatic Renewal Laws May Convert Your Sales into Unconditional Gifts to Your Customers!”, Tucker Ellis Client Alert (February 2015) – Matt Kaplan and Ronie Schmelz
- “FDA Issues Proposed Rule on Topical Anti-Microbial OTC Drug Products,” *ICMAD Digest* (February 2014) – Ronie Schmelz
- “Recent FTC Settlements Alert,” *ICMAD Digest* (February 2014) – Ronie Schmelz
- “Federal Courts in California Split Over Standing to Sue for ‘Unlawful’ Food Labeling” – *Washington Legal Foundation Legal Opinion Letter* (March 2014) – Bill Dance
- “GM Foods: Can We Afford for States to Set Their Own Regulations?”, *Food Quality and Safety* (December 2013/January 2014) – Jeff Whitesell and Don Butte
- “Finding the Sweet Spot in Evaporated Cane Juice Cases,” *Law 360* (November 2013) – Bill Dance
- “Keeping Tabs on ‘Natural’ Beauty and Food,” *Law 360* (June 2013) – Bill Dance and Matt Kaplan
- “The FDA Must Define ‘Natural’ Soon,” *Food Processing* (May 2013) – Jeff Whitesell and Don Butte
- “No Touch Up on ‘Natural’ Beauty by California Court,” *Law360* (February 2013) – Bill Dance
- “The Latest in California ‘All Natural’ Food Litigation,” *Law360* (August 2012) – Bill Dance
- “Cosmetics E-tailers at Risk Amid Trending Auto-Renewal Class Actions,” *The Rose Sheet* (April 2015) – Ronie Schmelz
- “Whole Foods Sued Over Disputed Non-GMO Project Logos on Almond Milk; But Is This a One-off or a Fertile New Source of Class Action Lawsuits?”, *Food Navigator* (December 2014) – Bill Dance
- “FDA: You Can’t Call HPP-treated Juice ‘Fresh’ ... (But Can You Call It ‘Raw?’),” *Food Navigator* (February 2014) – Bill Dance and Matt Kaplan
- “Ben & Jerry’s Creams Plaintiff in ‘All-Natural’ Lawsuit,” *Food Product Design* (January 2014) – Bill Dance

MEDIA QUOTES

- “House Cosmetic Bills Conflict on Preemption, Cast PCPSA as Compromise,” *The Rose Sheet* (September 2016) – Ronie Schmelz
- “The US Microbead Ban: Are There Teeth, and Would PHAs Pass Through?”, *The Rose Sheet* (July 2016) – Ronie Schmelz
- “California Appeals Court Says Skin Care Labeling Deal Was Fair,” *Law360* (June 2016) – Ronie Schmelz
- “FTC Action Against ‘All Natural’ Claims Likely to ‘Embolden’ Plaintiffs,” *The Rose Sheet* (April 2016) – Ronie Schmelz
- “OEHHA Starts Prop 65 Rulemaking to Update Max Allowable Lead Level,” *The Rose Sheet* (August 2015) – Ronie Schmelz
- “Cosmetics E-tailers at Risk Amid Trending Auto-Renewal Class Actions,” *The Rose Sheet* (April 2015) – Ronie Schmelz

MEDIA QUOTES (CONTINUED)

- “PAGA Case Not Removable Under CAFA; Statute, Rule 23 ‘More Dissimilar Than Alike,’” *Bloomberg BNA Class Action Litigation Report* (March 2014) – Ronie Schmelz
- “FDA: You Can’t Call HPP-Treated Juice ‘Fresh’ ... But Can You Call it ‘Raw?’,” *Food Navigator-USA* (February 2014) – Matt Kaplan and Bill Dance
- “PepsiCo and Goya Foods Targeted in Lawsuit Over 4-MEI,” *Food Navigator-USA* (February 2014) – Bill Dance
- “Ben & Jerry’s Creams Plaintiff in ‘All Natural’ Lawsuit,” *Food Product Design* (January 2014) – Bill Dance
- “Cosmetic Firms Held ‘Hostage’ By Prop 65 Litigators; Law Changes Possible,” *The Rose Sheet* (September 2013) – Ronie Schmelz
- “Zhang Ruling Yanks Insurer Shield Against UCL Claims,” *Law360* (August 2013) – Ronie Schmelz
- “Food Companies Confront Spike in Consumer Fraud Lawsuits,” *Thomson Reuters* (June 2013) – Matt Kaplan
- “Attorney on ‘All-Natural’ Lawsuit vs. Monster Bev Corp: I Think Most People Would Look at This and Think It’s Getting Crazy,” *Food Navigator-USA* (December 2012) – Bill Dance
- “California Court Exposes Hole in 9th Circuit Food Labeling Ruling,” *Law360* (November 2012) – Bill Dance