

## “EVAPORATED CANE JUICE” – FDA RELEASES FINAL GUIDANCE CRITICAL OF THE TERM

MAY 2016

On May 25, 2016, the United States Food and Drug Administration’s Office of Nutrition and Food Labeling in the Center for Food Safety and Applied Nutrition (“FDA”) published a final guidance for industry entitled “Ingredients Declared as Evaporated Cane Juice.” The guidance reinforces FDA’s longstanding requirement that ingredients in food be declared by their common or usual names. FDA advises industry that sweeteners derived from sugar cane, including those derived from sugar cane syrup, should not be declared as “evaporated cane juice” on food labels.

FDA’s view is that the term “evaporated cane juice” is false and misleading. “Evaporated cane juice” suggests that the sweetener is fruit or vegetable juice or is made from fruit or vegetable juice and does not reveal that the ingredient’s basic nature and characterizing properties are the same as sugar or cane syrup. The guidance recommends that ingredients currently labeled as “evaporated cane juice” be re-labeled to use the term “sugar,” optionally accompanied by a truthful, non-misleading descriptor (e.g., “cane sugar”) because “evaporated cane juice” is not the common or usual name for any type of sweetener.

In FDA’s view, the common or usual name for the fluid extracted from raw sugar cane is not “juice,” which is defined as “the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree” because sugar cane is not a “fruit” or a “vegetable.” Sugar cane-derived products exist in many different forms, but FDA determined their common or usual name fits more closely with the terms “sugar” or “cane syrup.”

The final guidance is scheduled to be published in the Federal Register on May 26, 2016. Like all FDA industry guidance documents, the guidance is not binding and does not create any rights for any person – it merely reflects FDA’s current thinking on application of the regulations. Nonetheless, firms that market sugar cane-derived sweeteners or products that contain a sugar cane-derived sweetener should consider whether their labeling terminology accurately describes the basic nature and characterizing properties of the sweetener used. Going forward, other regulators, plaintiffs’ class-action lawyers, and courts may point to FDA’s guidance as setting the standard that supports legal liability under various theories.

### ADDITIONAL INFORMATION

For more information, please contact:

- [NDUBISI EZEOLU](mailto:ndubisi.ezeolu@tuckerellis.com) | 213.430.3239 | [ndubisi.ezeolu@tuckerellis.com](mailto:ndubisi.ezeolu@tuckerellis.com)
- [MATTHEW KAPLAN](mailto:matthew.kaplan@tuckerellis.com) | 213.430.3309 | [matthew.kaplan@tuckerellis.com](mailto:matthew.kaplan@tuckerellis.com)

This Client Alert has been prepared by Tucker Ellis LLP for the use of our clients. Although prepared by professionals, it should not be used as a substitute for legal counseling in specific situations. Readers should not act upon the information contained herein without professional guidance.

© 2016 Tucker Ellis LLP. All rights reserved.