

## Food & Beverage

### Related Practices

Class Action Defense  
 Commercial Lending  
 Corporate Finance  
 Employee Benefits and Executive Compensation  
 Environmental  
 ERISA Litigation  
 Franchise Services  
 Government Policy & Practice  
 Intellectual Property & Intellectual Property Litigation  
 Labor & Employment  
 Litigation  
 Mergers & Acquisitions  
 Product Liability  
 Real Estate

Our Food & Beverage Practice professionals have experience in many areas of the law, allowing us to help our clients navigate through a myriad of issues that arise from operating in the food and beverage industry. The diversity of our experience enables our attorneys and government relations professionals to guide food and beverage companies through a constantly evolving legal environment, addressing issues in regulatory matters, litigation, legislation, commercial lending, intellectual property, real estate, environmental, franchising and distribution, tax, energy, negotiations, employment, employee benefits and general operational matters.

We make it our business to fully understand all aspects of the food and beverage industry so we can provide top-tier service and contribute to our clients' growth and success. The depth and scope of our Food & Beverage Practice allows us to defend our clients' products and business operations through counseling and highly-focused litigation. Our professionals also stay on top of industry news and trends and closely monitor the political arena to forecast potential challenges to our clients' businesses and help them address such challenges before they become larger problems.

Dykema represents many leading food manufacturing, food distribution, restaurant chains, and agribusiness companies, with a cross-discipline group of attorneys and government relations professionals. Our clients include food manufacturers, suppliers, distributors, farms, cooperatives, restaurant chains, food trade organizations, beverage companies, food equipment manufacturers, animal feed and animal health product companies. Our representation of the food and beverage industry includes:

### Litigation

Our attorneys take pride in exploring cost-effective, out-of-court options, including settlements when it comes to disputes. However, sometimes it is in our clients' best interest to move forward with litigation, in which case, Dykema's nationally recognized litigation attorneys are prepared and trial ready. Our attorney's fully comprehend the critical areas of the food and beverage industry, including, but not limited to, product liability, food safety, food manufacturing and production, inspections and regulatory compliance, distribution and retailing, advertising, labelling and franchising.

Dykema attorneys have experience representing food and beverage clients in a variety of litigation ranging from unfair competition claims, commercial indemnification, consumer fraud class actions, consumer protection, government enforcement actions, foodborne illness outbreaks, labelling, employment issues, intellectual property matters and general commercial litigation. Dykema has a dedicated group of class action lawyers who can handle state and nationwide class actions in all jurisdictions.

Our attorneys also have experience with litigation specifically focused on agricultural issues. We have represented clients in litigation relating to land disputes, water and mineral rights, livestock warranties, electric utilities, cooperative environmental issues and a number of other disputes.

## Food Safety & Labeling Regulatory Advice

The food and beverage industry is one of the most closely regulated and monitored industries in the world today, facing very distinct safety issues and concerns. Compliance with applicable regulations is critical to success. Our knowledgeable and experienced regulatory attorneys and government relations professionals advise and guide our clients through the regulations and standards established by federal agencies, including the U.S. Food and Drug Administration (FDA), U.S. Department of Agriculture (USDA), Center for Veterinary Medicine, Association of American Feed Control Officials, state regulatory bodies, as well as state laws and regulations, and federal statutes such as the Food Drug & Cosmetic Act, the Food Safety Modernization Act, Food Security Act of 1985, the Federal Meat Inspection Act, the Poultry and the Perishable Agricultural Commodities Act.

To help keep our clients ahead of regulatory issues, our professionals pay close attention to industry, market and technological trends, as well as legal discussions surrounding nutritional health benefit claims, GMO issues, inspections, allergens and operational processes. Dykema attorneys and government relations professionals have counseled and represented clients on FDA, USDA and state and federal inspections and investigations, laws governing labeling compliance and content labelling—including Proposition 65 labelling, recalls, consumer fraud claims, compliance with the Reportable Food Registry, food additive and GRAS regulations, marketing, advertising, retail practices and imports and exports. Dykema attorneys also represent companies in matters adverse to FDA and USDA.

Our attorneys and government relations professionals also help our clients plan legislative and regulatory strategy, draft recall and crisis management plans, compliance plans, supply agreements and other contractual documents, product specifications, guarantees, warranties, and indemnification provisions. We also advise clients on how to conduct regulatory and food safety compliance audits, and supply chain risk mitigation and management.

## Agriculture & Rural Cooperatives

With offices located in states containing some of the best ranch and farmland in the nation, Dykema has one of the broadest agricultural law practices in the AmLaw 150.® Included in our ranks are numerous lawyers who have worked on and operated dairy and livestock farms, raised cattle and whose families have not only spent generations living on ranches and farms, but continue to do so. Our lawyers have agriculture in their genes. We know agribusiness, farm land development and family farm preservation. We understand the many laws that confront agribusiness, including the Capper-Volstead Act, the Food Security Act of 1985, and the Perishable Agricultural Commodities Act, among others.

## Intellectual Property

We understand the importance of establishing and protecting invaluable intellectual property in a highly competitive industry. Dykema's intellectual property attorneys come from a variety of legal, technical, and scientific backgrounds and are experienced in the complete set of IP matters and litigation issues.

Our intellectual property department—designated a “Recommended Firm” for intellectual property by *Managing Intellectual Property, IP Stars* (Euromoney Institutional Investor PLC, 2014)—helps clients navigate through the complex and ever-changing environment of patent and trademark procurement, portfolio management and enforcement. Whether stemming from chemistry, biochemistry, inventions, processes, mechanical technology, molecular biology, or any other area, our clients know they can rely on Dykema to deliver excellent representation and to protect their brands.

## Finance & Lending

Dykema has substantial experience in the representation of lenders and borrowers in the structuring, underwriting and documentation of loan transactions involving virtually every type of entity involved in agribusiness. We advise our many banking clients, “cradle to grave,” by providing due diligence on potential loan transactions, structuring such loans, and representing lenders in any issue that may arise thereafter, including those that occur in the event of a default. Firm lawyers understand the often special characteristics of agribusiness collateral and can assist in the evaluation thereof.

We also understand the diverse issues involved in agribusiness lending such as farm subsidies, underwriting, credit analyses, structuring and drafting of loan and security agreements and related documentation as well as loan workouts, foreclosures and exercise of creditors rights to live stock when necessary. Our lawyers have prepared unsecured and

secured loans, subordinated debt transactions, real estate loans and loans secured primarily by livestock, crops and other personal property. We have been involved in structuring workouts of distressed agribusiness loans and foreclosures of agricultural property.

Our attorneys also have experience advising cooperative and commercial banks on billions of dollars of syndicated finance transactions involving sugar, grain, oilseeds, dairy products, fruits and vegetables and protein. We have also structured and negotiated financings to agricultural producers and processors, dairies, rice companies, pesticide and chemical manufacturers and food processing companies.

## Employment & Operational Matters

Dykema attorneys can counsel clients on all labor and employment needs. From confidentiality and non-compete agreements, contracting issues, insurance, ERISA, benefits and executive compensation, immigration and migrant workers, worker safety issues—such as farm equipment injuries, OSHA and wage & hour compliance—our Food & Beverage Practice is made up of attorneys well-positioned to help.

We also can help clients with their general operational legal needs, such as corporate governance, tax and contracting issues.

## Real Estate & Environmental

Our Food & Beverage Practice includes a host of attorneys that represent clients in the acquisition, development and leasing of real estate. Additionally, we work with our environmental attorneys to address the issues that commonly come with such property.

We work with expanding companies on site selection matters and counsel on the design and construction of food and beverage facilities and research laboratories. Our representation includes international fast food franchises, farmer's markets and large food manufacturers, as well as other food industry businesses.

Dykema has also worked with agricultural clients on the real estate development of rural land into subdivisions—and the resulting needs for tax free exchanges and family wealth transfer planning—as well as environmental issues such as air emissions and wastewater discharge issues, and the representation of farmers, dairy cooperatives and ranchers in environmental litigation.

## Franchise & Distribution

Our Food & Beverage Practice includes attorneys and government relations professionals who provide a comprehensive array of services related to the unique issues food and beverage suppliers, restaurant chains and other types of franchises or distributors routinely face. We have experience handling matters dealing with litigation, antitrust and trade regulation, legislation, real estate, taxes, risk management, negotiations with vendors, intellectual property and an wide range of corporate issues.

### Franchise

Dykema attorneys have represented pizza restaurants, family restaurants, fast food and sports bar chains, ice cream shops, coffee shops and other franchisors and franchisees. We offer virtual turnkey services for franchisors and aspiring franchisors, including: trademark registration, corporate entity structuring, tax planning, drafting of key documents (franchise agreements, franchise offering circulars, area development agreements, master franchise agreements, guarantees, key-person employment agreements, confidentiality agreements and noncompete agreements), negotiating with vendors, registration with state regulators and review and (where required) filing of advertising. Attorneys on the team have excellent relationships with franchise regulators in virtually all of the 15 states which require franchise registration or notification, and with the Federal Trade Commission.

## Distribution

Our attorneys have represented numerous beverage companies, food product distributors, food wholesalers, and leading prepared foods manufacturers and produce suppliers. We advise distributors regarding recalls and related FDA regulatory interactions, retail and wholesale contracts, territorial restrictions and a host of other matters that affect food and beverage distribution.

## Experience Matters

- Successfully structured and formed agribusiness entities, such as closely-held corporations, farm and dairy cooperatives under the Capper-Volstead Act and related laws, as well as limited and general partnerships.
- Purchased and sold livestock and dairy products.
- Drafted embryo transfer agreements.
- Negotiated farming, grazing and hunting leases.
- Represented landowners in tax audits and tax appraisal disputes, including ad valorem taxes.
- Represented a large agricultural corporation during a purchase of assets of an insolvent farming corporation.
- Secured state tax incentives for agricultural processing company involved in the distribution and sale of fruit and vegetables.
- Structured, formed and represented numerous rural electric cooperatives.
- Represented a large farm organization on issues arising out of packaging, sale and distribution of vegetables.
- Structured agreements for a regional hog raising operation.
- Developed programs to inventory, sell and distribute nursery products.
- Represented a state government finance authority in a variety of direct and participated loans to farmers, including capital transactions to finance both land and equipment.
- Represented a bank in connection with farming entity's default on a variety of special purpose loans.
- Represented a bank in connection with coal rights under farmland.
- Represented a bank on a \$30+ million loan to a free range hog producer.
- Represented a bank on a \$30 million loan to a public REIT that was secured by over 30 parcels of farm land in Illinois, Colorado and Nebraska.
- Represented one of the world's largest food processors in corporate and M&A matters.
- Represented a food packaging and equipment manufacturer in its sale to a private equity firm.
- Represented an international Fortune 500 company in the sale of its confectionary business to a management group organized by an equity fund and in other investments.
- Represented a national bakery products distributor in corporate finance matters.
- Represented an ice cream ingredient processor in corporate finance matters.
- Represented a leading food and beverage company in corporate finance matters
- Represented the largest seafood wholesaler in Southern California in M&A matters.
- Represented a leading prepared foods manufacturer in M&A matters.
- Represented a supplier of frozen fruits and vegetables with its corporate transactional matters.
- Represented a national fast food chain in hot coffee litigation.
- Represented a dairy cattle drug manufacturer in litigation arising out of the regulatory approval of a dairy cattle prostaglandin product designed to regulate reproduction in large dairy cattle herds.

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- Represented dairy and farming operations through litigation arising out of the impact of stray voltage and other electric utility systems.
- Represented farming clients in boundary dispute litigation.
- Represented a beverage manufacturer in intellectual property dispute.
- Represented a food manufacturer in labeling litigation.
- Represented food manufacturers in disputes with the FDA and USDA.
- Represented meat and other food manufacturers in food borne illness litigation.
- Represented a regulatory director in a criminal FDA prosecution, which included an off-label marketing violation.
- Defended dozens of product liability suits in state and federal courts, including food service equipment matters.
- Represented food clients in false advertising and labeling litigation.
- Represented companies, including Fortune 500 before the USDA and FDA on statutory and regulatory compliance concerns, including warning letters and Form 483s.
- Represented a foreign investor in acquisition under FIRPTA and related USDA regulations, of active farmland, with livestock.
- Represented companies facing recalls, seizures and facility shut downs.
- Worked on political compliance issues regarding lobbying law compliance, political committees and federal tax matters several state beverage trade associations and a national beverage trade association, as well as a Fortune 500 food manufacturer.
- Represented various manufacturers on issues relating to adulterated food.
- Advised a container manufacturer regarding FDA requirements of containers for consumable liquids.
- Represented manufacturers of cookware and kitchenware regarding FDA requirements for use of approved colorants.
- Advised a prospective wine importer of FDA and other federal and state agency requirements with respect to importation and U.S. distribution of imported wines.
- Advised a filter manufacturer with respect to USDA requirements regarding bovine encephalitis.
- Assisted a national pizza chain in submission of comments in USDA Food and Nutrition Service Supplemental Nutrition Assistance Program (SNAP) rulemaking.
- Represented clients with respect to FDA food packaging and labeling requirements.
- Advised clients regarding Federal Trade Commission (FTC) requirements regarding health and nutritional claims.
- Represented a cereal producer with respect to U.S. Consumer Product Safety Commission (CPSC) requirements regarding distribution of toy premiums with food products.
- Advised a product manufacturer with respect to CPSC and FDA issues regarding children's "sippy" cups.
- Represented a manufacturer in California Proposition 65 proceeding regarding chemicals in food contact articles.
- Represented a mushroom canner with respect to U.S. Customs issues.
- Represented a coffee and coffee equipment producer with respect to U.S. Customs issues.
- Assisted a U.S.-based global manufacturer of water bottles with resolution of foreign country customs issues.
- Advised a dairy equipment manufacturer regarding Occupational Safety and Health Administration (OSHA) equipment and workplace requirements.
- Successfully lobbied in opposition to inclusion of Dairy Market Stabilization Program in 2014 Farm Bill.
- Organized Washington DC fly-in for franchisees of nationwide pizza chain to advocate on policies related to menu labeling, tax policies, minimum wage and Affordable Care Act provisions.

## Food & Beverage (Cont.)

- Handled transaction tax matters that are directly related to food safety and regulation requirements.
- Served as outside general council to a food processing business which specializes in custom dry and liquid blending.
- Represented clients with tax work related to dairy equipment.
- Counseled clients regarding immigration-related work, including the proper documenting of the employees of clients, USICE and USDOL audits and visas.
- Handled transaction tax matters that are directly related to food safety and regulation requirements.
- Represented an international confectionery manufacturer in negotiating settlement for more than \$400,000 in sales tax relating to items used in manufacturing.
- Represented a national grocery store chain and its private label dairy in litigating sales tax claim relating to items used in refrigeration and wrapping and packaging supplies, which was settled for \$1.3 million in savings.
- Represented a regional grocery store chain in litigation involving items used in refrigeration and wrapping and packaging supplies.
- Represented a national grocery store chain and its private label dairy, and reduced sales tax assessment by approximately \$900,000.
- Represented a regional grocery store chain in securing \$600,000 sales tax refund relating to manufacturing and other issues.
- Procured patents for an international food manufacturer.
- Worked on trademark litigation and branding issues for an international brewing company.
- Worked on trademark issues and represented a food researcher and producer in intellectual property litigation.
- Represented a juice company on a myriad of intellectual property matters.
- Represented one of the world's largest food processors in intellectual property matters.
- Represented a manufacturer of frozen ice cream product in licensing patents and related equipment and technology.
- Represented an energy drink company in IP branding and protection.
- Represented food manufacturers in nationwide recalls.
- Represented food manufacturer in food additive petition.
- Represented food manufacturers in litigation related to Proposition 65 claims.
- Representation of food manufacturer in food contamination litigation.
- Represented food safety testing company in Grand Jury subpoena and investigation of food manufacturer.
- Represented food manufacturers in litigation related to nationwide recalls.
- Experienced in handling antitrust, unfair competition, internet related and general business litigation matters for consumer food products.
- Counseled an international fast food chain on site selection work.
- Represented an international convenient foods company in environmental action.
- Represented industrial process facilities for pharmaceutical plants, food and other processing facilities.
- Experienced in the acquisition, development, leasing and disposition of a wide variety of real estate projects for grocery stores, anchored shopping centers, solar projects and wind farms.
- Represented investors and sellers in the disposition, acquisition and leasing of farm land.

## Publications

"Food & Drug Administration Regulated Institutions: Drug and Medical Device Companies," A. Baker, D. Graham and K. Zielke, Co-Authors, Section 77A, *Successful Partnering Between Inside and Outside Counsel* 2015 (Updated Annually)

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## **Speaking Engagements**

Recent Developments in the Food & Beverage Industry  
September 13, 2018

Recent Developments in the Food & Beverage Industry and Lessons from Blue Bell  
September 19, 2017

*What a Single Food Safety Regulatory Agency Would Mean to Your Company, and is the President's Proposal a Good or Bad Idea?* American Conference Institute: Food Safety and Regulatory Compliance  
September 28-30, 2015

*Food Class Actions Update: U.S. and Canadian Perspectives*, International Association of Defense Counsel Webinar  
September 24, 2014