

KING & SPALDING



Food & Beverage Practice

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Food & Beverage Practice

At your side through complex food & beverage industry legal challenges. For nearly a century, King & Spalding has been on the front lines of nearly every major issue affecting the food & beverage industry, helping clients understand how these issues can affect their businesses, assess and minimize risk, and identify the best path to their objectives.

Practice integration to build your strongest team. Our firm represents some of the world’s largest and most sophisticated food and beverage manufacturers, food industry trade associations, restaurant chains, and other businesses in the food supply chain. They turn to us for our leading U.S. and EU regulatory practices, our strong grasp of the scientific and technical issues, and our ability to call on our highly respected complementary practices, such as international trade, dispute resolution, environmental health & safety, transactions, and intellectual property.

The leading organizations that rank law firms based on client and peer feedback consistently recognize our leadership in this field:

- Our food & beverage practice has been regularly ranked by *Chambers USA* as one of the leading Food & Beverage regulatory and litigation practices in the nation.
- *U.S. News & World Report* has named our Food & Drug Administration team a “Law Firm of the Year.”
- Our European food law practice is ranked by *JUVE* as one of the leading practices in Germany, and we are one of only four firms named as a source of high-level lawyers for food law for the German Federal Ministry of Food & Agriculture.



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Food & Beverage Regulatory Practice

King & Spalding’s Food & Beverage Regulatory Practice helps clients doing business in the U.S. and Europe successfully navigate the complex and evolving laws and regulations applicable to the development, manufacturing, safety, labeling, advertising, distribution, and sale of foods, beverages, and dietary supplements.

Top-ranked U.S. regulatory team

Our U.S. regulatory team consistently earns top rankings from *Chambers USA* in the Nationwide Food & Beverage: Regulatory & Litigation category. The 2016 edition notes our practice is sought after for “in-depth expertise in FDA regulatory matters at state, federal and international level...[and] notable proficiency in a variety of specialized technical matters including biotechnology issues, food contaminants and ingredient safety.”

Our team has also been named “Law Firm of the Year” for FDA Law by *U.S. News & World Report* and *Best Lawyers*.

Our team comprises several former attorneys in the U.S. Food & Drug Administration’s Chief Counsel’s Office, who bring FDA experience dating back nearly three decades and a deep understanding of how to work effectively with the administration.

The group provides counseling on regulatory matters including:

- advice on product claims in labeling and advertising;
- responses to FDA Warning Letters and FDA Form 483 observations;
- conducting product recalls;
- preparation for meetings with FDA personnel;
- representation of clients before the agency on enforcement issues; and
- conducting FDA due diligence on corporate transactions and private equity investments.

In particular, we are sought after for our sophisticated, high-level counsel on matters involving:

- ingredient safety;
- biotechnology, transgenic plants and animals;



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- food contaminants, pathogens and foreign substances;
- food labeling and packaging; and
- implementation of the Food Safety Modernization Act.

Trusted guidance through complex European regulations

In the highly regulated European food & beverage industry, our team guides clients through the complex web of regulations governing the manufacturing, marketing and advertising of food & beverage products at both the European Union level and the national level of the Member States. We also assist international companies in navigating the often substantial differences between regulations in the U.S. and the EU.

Our European food law practice is ranked by *JUVE* as one of the leading practices in Germany, and we are one of only four firms named as a source of high-level lawyers for food law for the German Federal Ministry of Food & Agriculture.

This team provides support and counseling at all stages of the life cycle of food products, including:

- choosing the best product category for new products;
- developing food product formulae;
- branding, filing associated trademarks, and defending and enforcing rights;
- labeling compliance;
- advertising and promotion;
- product launches;
- distribution;
- licensing;
- protection against falsified products;
- recalls;
- end of life; and
- related litigation.

Food & Beverage regulatory matters

U.S. REGULATORY

- Provided sustained FDA representation and assisted **AquaBounty Technologies** in securing the first ever FDA approval for marketing a transgenic food producing animal.
- Established **an interdisciplinary crisis management team** that successfully resolved food safety issues concerning the presence of harmful bacteria in food, and developed a legally sound, science-based quality assurance testing program to allay regulatory and product liability concerns.
- Assisted **major food company** in avoiding potential detention and import refusal of hundreds of millions of dollars of imported juice.

- In response to a major product recall, helped **global food producer** implement significant corrective actions and coordinated recall response and dealings with FDA.
- Worked with **a large dietary supplement manufacturer's management team** to develop and implement cGMP procedures and policies to assist with FDA compliance and avoid potential enforcement action.
- Drafted influential comments to FDA on behalf of **major food industry trade associations** in response to various FDA proposed rules, including those related to preventive controls for human and animal food, foreign supplier verification programs, updates to the Nutrition Facts Panel and serving size regulations, and menu and vending labeling.
- Counseled **global food manufacturers** on FDA's requirements for health claims, nutrient content claims, and structure-function claims, as well as FTC's substantiation standards and expectations for claims made in food advertising.
- Routinely assist **foreign and domestic food manufacturers and ingredient suppliers** with new food safety compliance requirements under the FDA Food Safety Modernization Act (FSMA); also authored a leading book chapter and numerous articles on this groundbreaking legislation.
- Routinely advise **medical food manufacturers** about the substantive and empirical steps that need to be taken to ensure the lawful marketing of such products.
- Published, presented, and advised clients on an array of issues involving FDA's application of the new dietary ingredient, food additive and GRAS substance safety rubric.

EU REGULATORY

- Counseling a world-wide market leading manufacturer of food supplements in **regulatory, advertising law** and representing the client before German courts.
- Counseling a European leading manufacturer of beverages in all aspects of **Food regulatory and unfair competition laws** in the EU and representing the client before German and European courts.
- Routinely advise internationally acting pharmaceutical companies in the area of **distinction between food and pharmaceutical products.**
- Represented **Chemische Fabrik Kreussler** in a case before the Court of Justice of the European Union concerning the distinction between medicinal products and cosmetic products (C- 308/11).
- Representing the Dutch company **VSM Geneesmiddelen** in a case versus the European Commission related to **Health claims on botanicals** before the Court of Justice of the European Union.
- Counseling a manufacturer of food products in the area of **recalls.**
- Counseling a Germany-based manufacturer of beverages in **developing and implementing a world-wide compliance-system.**
- Counseling a US-based company in distribution law and food regulatory laws and, in particular, in developing and implementing a selective **distribution system.**
- Advising a US-based manufacturer of food supplement regarding **direct marketing.**
- Advising a Germany-based company on development of a **new diet food product and advertising law.**

- Routinely advise US-based companies concerning **ingredients, recipes, labeling and advertising of food supplements** and representing the client before German and European courts.
- Advising a Germany-based internationally acting manufacturer of food supplements on “**Novel Food Laws.**”
- Counseling an **association of fruit juice manufacturers** in the area of Food regulatory law and representing the client before courts.

Food & Beverage International Trade Practice

King & Spalding's international trade group is the practice of choice for leading food, agriculture, and beverage industry clients needing assistance with the movement of goods across borders, the provision of services, and the protection of investments around the world.

Our team – ranked by *Chambers* among the best international trade practices globally, in Europe and in the U.S. – combines in-depth substantive knowledge of regulations in the food and beverage industries with expertise in the mandate and operations of the World Trade Organization, the U.N. Food and Agricultural Organization, the World Customs Organization, the World Health Organization, the International Monetary Fund, the World Bank, and related international organizations, including NGO stakeholders.

We work closely with our colleagues who have expertise in regulatory, taxation, government investigations, public policy, and other areas of concern to our food and beverage clients. We regularly provide advice and help resolve trade issues relating to:

- domestic regulatory requirements and trade-related restrictions;
- sanitary and phytosanitary border measures;
- import licensing;
- customs classification;
- customs valuation;
- the application of existing and pending free-trade agreements (e.g., NAFTA, TPP, T-TIP), including rules of origin; and
- labeling, including country-of-origin determination.

In addition, we assist our food and beverage industry clients by:

- ensuring fair market access through the leveraging of international trade and investment rules to challenge tax discrimination, improperly assessed import duties, distribution restrictions, and state trading distortions;
- addressing the effects of international standards and regulations involving advertising, labeling, nutrition, contaminants, additives, veterinary drugs, and pesticides;
- using the international trade rules of the WTO and stand-alone free



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trade agreements to engage with governments on unduly restrictive product, labeling, and packaging requirements; and

- advising on key international regulatory developments/trends and shaping policy, including by working directly with government agencies across six continents (e.g., the United States Trade Representative, U.S. Department of Commerce, the U.S. State Department and its Embassies, the European Commission and other EU agencies and EU Member governments).

We currently are involved in a number of disputes pending before the World Trade Organization involving regulatory barriers to trade, which are likely to set a precedent for food and beverage regulation worldwide.

Food & Beverage Dispute Resolution Practice

Food & beverage industry clients turn to King & Spalding's dispute resolution team for our extensive trial, arbitration and appellate experience and our zealous representation on their mission-critical disputes around the world. From consumer fraud class actions to international investment treaty and commercial arbitrations, our lawyers provide food & beverage industry clients the counsel they need to favorably resolve these disputes and advance their commercial interests.



Our food & beverage industry dispute resolution experience includes:

- investment treaty arbitrations;
- international commercial arbitrations;
- defense of consumer fraud class and other actions filed by plaintiffs or advocacy groups regarding product labeling, advertising, and marketing;
- management of crisis response, including acting as national counsel and coordinating outbreak response, recalls, and mass tort litigation;
- pursuit of and, if necessary, litigation of insurance recovery;
- prosecution and defense of high-stakes commercial and intellectual property litigation against competitors; and
- representation of clients in Europe in all manner of litigation against competitors and governmental authorities (such as the European Commission), before national and European authorities, and before national and European Courts.

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One of the world's top-ranked international arbitration teams

Our International Arbitration group has been consistently ranked in the top bands of *Chambers Global*, *Chambers Latin America*, *Chambers Asia-Pacific*, *Chambers Europe* and *Chambers USA*, and is also ranked by *Global Arbitration Review* as among the top five international arbitration practices in the world. This team advises food & beverage industry clients on international arbitrations brought under investment treaties and free trade agreements in disputes involving a wide spectrum of facts and legal issues.

We recently earned a \$250 million award on behalf of food & beverage producers in Eastern Europe in a treaty arbitration involving regulations imposed as a result of membership in the European Union, in which the European Commission intervened on behalf of the respondent State and against our clients. The case involved controversial matters of EU “State aid” legislation, as well as the termination of customs duties exemptions on imports of sugar and other raw materials.

Leaders in high-stakes food industry class action and commercial litigation

Our litigation team is deeply familiar with the strategy and tactics that aggressive plaintiffs’ lawyers employ in targeting “Big Food,” and has successfully advised and defended many industries through complex class actions. *Law360* has named our practice a “Class Action Practice Group of the Year” two out of the last four years, and *U.S. News & World Report* named King & Spalding “Law Firm of the Year” in Mass Tort Litigation/Class Action in its 2015 Best Law Firms survey. Our litigators have particular skill in matters involving regulated products (and routinely team with our “best in class” FDA regulatory practice), and in defending complex scientific, medical, or public health allegations. Because of our cross-practice approach to such litigation, we are comfortable defending clients on several fronts with a coordinated strategy across different practices or jurisdictions.

We also have considerable experience representing clients in their most sensitive corporate disputes, including litigation with chief competitors. We have a deep bench of trial lawyers, including ten active members of the prestigious American College of Trial lawyers, one of which is a recent former president. Our European food & beverage litigation practice has extensive experience litigating similar issues, including product liability disputes, disputes with authorities and investigators, commercial disputes, and IP and unfair competition litigation.

Food & Beverage Environmental, Health & Safety Practice

King & Spalding assists food & beverage industry clients in understanding and assessing the risks and opportunities associated with supply chain and environmental, health and safety (EHS) regulation across jurisdictions, helping them identify the best strategies for compliance management as regulatory oversight increases in this highly competitive industry sector.

Our food & beverage clients come to us for counsel on a wide range of EHS matters, including:

- transportation of hazardous materials/dangerous goods, including the rules of the U.S. Department of Transportation and EU regulations for carriage of dangerous goods;
- product recycling, disposal, and other end-of-life management strategies;
- compliance with the suite of EHS laws and regulations that apply to food and beverage production, including air emissions, water and stormwater discharges, waste materials, and land use;
- regulation and litigation associated with hazards presented by food and beverage products, packaging and equipment, including those involving Consumer Product Safety Commission enforcement actions, California's Proposition 65, hazard evaluation programs, and the Globally Harmonized System of Classification and Labeling of Chemicals (GHS);
- implications of EHS regulation of suppliers to the food and beverage industry, including regulation under the Toxic Substances Control Act, as recently amended, and Clean Air Act regulation of refrigerants;
- development and refinement of product stewardship programs; and
- due diligence on the implications of product and supply chain issues in valuation and successful execution of food and beverage company transactions.



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Food & Beverage Transactions Practice

King & Spalding helps manufacturers, distributors and retailers of food & beverage products and those that invest in their businesses execute their key transactions in jurisdictions around the world. Our team has earned acclaim in multiple regions globally for its transactional expertise and has guided clients to the successful execution of many of the largest and most complex food & beverage sector transactions.

Our recent experience includes representation of:

- **The Coca-Cola Company** in a series of transactions involving the restructuring of The Coca-Cola Company’s U.S. bottling system, including transfers of territories, distribution agreements, manufacturing arrangements, and shared IT platforms;
- **Delivery Hero** on its market entry into the Middle East and its US\$589 million purchase of Turkish food delivery giant Yemeksepeti – one of the largest acquisitions ever made in the online food ordering sector;
- **Investcorp** on its acquisition of an interest in Bindawood Holding, which owns one of the largest food & beverage retailers in the Middle East;
- **Alyasra Food Company** in the US\$160 million sale of 75% of its retail frozen foods distribution business to BRF; and
- Affiliates of **Roark Capital Group** in multiple industry transactions, including the purchase of all of the issued and outstanding capital stock of Arby’s Restaurant Group, Inc. from Wendy’s/Arby’s Group, as well as acquisitions of Atkins Nutritionals, Miller’s Ale House and Wingstop, among others.

A more extensive list of our food & beverage transactional experience can be found on the following pages.

Our strong reputation for transactional work in the regions in which we operate has earned us top rankings from the leading publications that rank firms based on client and peer feedback:

- *Chambers USA* has consistently ranked us among the top practices in the U.S. in its Nationwide Corporate/M&A: Highly Regarded category. According to one client, “They are outstanding. We use a number of firms, but King & Spalding is one that we can go to regardless of what the issue is.”
- *Chambers Global* ranks our Middle East team among the top practices region-wide for Corporate/M&A, Islamic Finance, Capital Markets, and Investment Funds, and notes the team’s “unquestionable expertise in the food and beverage industry.”



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Food & Beverage Transactions Matters

- **The Coca-Cola Company** in a series of transactions involving the restructuring of its U.S. bottling system, including transfers of territories, distribution agreements, manufacturing arrangements, and shared IT platforms.
- Online and mobile food ordering company **Delivery Hero** on its market entry into the Middle East via the takeover of Talabat.com, the regional partner for global restaurants brands including Burger King, KFC and Pizza Hut, and its subsequent the US\$589 million purchase of Turkish food delivery giant Yemeksepeti -- one of the largest acquisitions ever made in the online food ordering sector.
- **Investcorp** on its acquisition of an interest in Bindawood Holding one of the largest food & beverage retailers in the region.
- **The Coca-Cola Company** in connection with its investment in ZICO Beverages LLC.
- **The Coca-Cola Company** in connection with its acquisition of Sacramento Coca-Cola Bottling Co., Inc. and its affiliates.
- **Marka PJSC** on the acquisition of a chain of Morelli's Gelato cafes in the UAE and the wider GCC.
- **Roark Capital Group** in multiple industry transactions, including its US\$430 million purchase of all of the issued and outstanding capital stock of Arby's Restaurant Group, Inc. from Wendy's/Arby's Group, as well as its acquisitions of Atkins Nutritionals, Miller's Ale House, Auntie Anne's, and Wingstop, among others.
- **Gulf Capital** on the acquisition of 100% or the share capital of Mutibrands a leading Saudi Arabian food & beverage distribution business. This was Gulf Capital's largest acquisition ever in Saudi Arabia and one of the largest food & beverage deals ever in the Middle East.
- **Al Faris Food Industries**, a regional salsa and ketchup manufacturer and food distributor, on the sale of 100% of its share capital via auction process (ongoing).
- **Krystal Holdings, Inc.**, the direct parent company of The Krystal Company, a leading quick service restaurant chain famous for its small hamburgers sold at owned and franchised restaurants throughout the southeastern United States, in connection with its sale to an affiliate of Argonne Capital Group, LLC.
- The creation of a food & beverage fund managed by **Jadwa** and successful acquisition by such fund of a stake in Gulf Union Food & Beverage Company, a leading juice manufacturer in Saudi Arabia.
- **Alyasra Food Company WLL** in Kuwait of the sale to BRF S.A. of 75% of its retail frozen foods distribution business for US\$160 million.
- **L Capital Asia** (a private equity fund sponsored by Louis Vuitton Moet Hennessy known as "LVMH") on the acquisition of an interest in Bateel Holding Ltd., a Middle East premium food retailer and café operator.
- **NBK Capital** on the acquisition of a significant interest in Sanabel Al Salam, a leading Saudi producer and retailer of Arabic confectionary and sweets.
- **Cravia** in relation to various agency agreements in the food sector including for Five Guys.

- **NBK Capital** on its acquisition of a minority stake in Sanabel Al Salam, a leading Arabic sweets and confectionary producer and retailer in Saudi Arabia.
- **Jadwa Investment** in connection with the acquisition of significant stake in Gulf Union Foods Company, a Saudi based manufacturer of juices and other beverages (awarded “Deal of the Year” by Private Equity World MENA in November 2010).
- **Fonterra** on the acquisition of SADAFCO’s entire stake in Saudi New Zealand Milk LLC, a Saudi manufacturer of dairy products.
- **Tim Hortons** on establishing franchises in Saudi Arabia and on its franchises throughout the GCC.
- **Kellogg’s** in relation to restructuring its agency agreements in Saudi Arabia.
- **Patchi** in relation to a potential restructuring in the UAE and Saudi Arabia.
- **Pita Pit** on its franchise arrangements in Saudi Arabia.

Food & Beverage Franchising Practice

Franchise issues often are not narrowly defined and the firm has found that clients are best served by a group of both transactional and litigation lawyers versed in franchise and hospitality issues, as well as other substantive practice areas. King & Spalding's Franchise & Hospitality Practice is a diverse team that is well versed in and accustomed to working together to provide innovative solutions to complex questions. We have guided clients through the complexity of legal challenges facing franchisors, franchisees, investors, distributors, multi-unit retailers, intellectual property licensors, and other related companies.

Our team has substantial experience in representing lenders in a wide range of transactions involving franchisee and franchisor borrowers. These transactions typically involve financings for the acquisition, development, construction and working capital needs of the franchisee. Our team handles franchise company merger and acquisition transactions and related public and private financing. With experience in the banking, finance and real estate areas, King & Spalding represents clients in the structuring, negotiation and closing of loan transactions involving franchisee borrowers. Our team also works closely with clients and in-house legal staff to navigate the landscape of privacy and data protection. This often entails assisting clients in responding to data security breaches, complying with security breach notice laws, avoiding potential litigation arising out of internal and external data security breaches, and, as necessary, defending litigation – usually in the form of proposed class actions brought on behalf of those affected by the data compromise. We appreciate our clients' commercial imperatives as well as their legal challenges. Because we have a thorough understanding of the drivers, developments and shifts within the franchise and hospitality industries, we partner well with our clients and their other advisors to find solutions to complex problems that others cannot.

Our recent experience includes:

- Representing Ignite Restaurant Group in their Chapter 11 cases pending in the Southern District of Texas. Ignite and its subsidiaries own and operate 137 restaurants under the Joe's Crab Shack and Brick House Tavern + Tap brands.
- Represented a major restaurant group in the trademark enforcement of one of its brands, securing a default judgment in the Northern District of Texas and affirmance before the 5th Circuit.
- Advised leading restaurant chain Popeyes Louisiana Kitchen, Inc. on its \$1.8 billion sale to Restaurant Brands International (RBI), the



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- company that owns brands including Burger King and Tim Horton's.
- Represented sponsor and borrower in connection with acquisition of Dairy Queen restaurants.
- Represented lender in connection with credit facility for largest operator of Burger King restaurants.
- Represented sponsor and borrower in connection with a credit facility for the acquisition of IHOP restaurants.
- Represented a major restaurant franchise with respect to obtaining cyber and D&O insurance.
- Represented a major restaurant franchise with insurance claims following hurricane damage to a number of facilities.
- Represented the sponsor in its acquisition of a major chicken wing concept chain.
- Represented a national coffee company with insurance recovery following a major fire loss.
- Represented a multi-national fast food restaurant on establishing franchises in Saudi Arabia and throughout the Middle East.
- Represented a quick-service restaurant franchise on its franchise arrangements in Saudi Arabia.
- Represented a food and beverage restaurant operator in the recapitalization and sale of majority stake to Morgan Stanley Capital Partners VI LP and related funds.

Food & Beverage Intellectual Property Practice

King & Spalding's intellectual property team advises leading companies in the beverage, packaged foods, restaurant, and pet food industries on critical global IP issues including:

- brand name selection, clearance, registration, development, enforcement, and international portfolio management;
- protecting trade dress and packaging;
- securing patents for inventions;
- guarding trade secrets;
- advertising clearance, including online advertising and defending and enforcing against false advertising;
- Internet, domain name, and social media policies and enforcement;
- disputes, including litigation and adversarial proceedings; and
- addressing the use of music, film and other media content.

In coordination with other teams across the firm, including our regulatory group, our class action litigators and our technology transfer corporate group, we provide a holistic approach for food & beverage clients, handling issues relating to labeling, media, advertising, and IP transaction matters.

Our team is consistently recognized as one of the best IP practices in *Managing Intellectual Property's* "Managing IP Handbook." In addition to receiving five U.S. national and four state-level practice rankings, the handbook recognizes eight of our lawyers as "IP Stars."



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Food & Beverage Advertising Practice

ADVERTISING IN THE U.S.

Members of our core team have specialized experience working with clients on advertising and related intellectual property issues, including clearing marketing materials; developing defensive and offensive strategies for possible Lanham Act action brought by or against competitors relating to the marketing of new and existing products; evaluating direct and comparative claims; and assessing when press releases and other materials cross the line into actionable commercial advertising and promotion. Our Lanham Act Team has extensive experience litigating all types of Lanham Act cases in a variety of forums for leading companies such as The Coca-Cola Company, UPS, Halyard Health, Shire and AT&T.

ADVERTISING IN THE EU

Advertising food products in the EU is highly regulated by both EU and national laws. We counsel our clients to navigate through the legal challenges and to find the appropriate pathways. In some European jurisdictions, e.g. in Germany, not only competent authorities may assess the advertising activities, but also competitors and industry associations may take legal civil action versus a food manufacturer. We are representing our clients before authorities and in litigation cases before national and European courts.

ADVERTISING IN THE MIDDLE EAST

Our experts in the Middle East provide guidance regarding advertising and labeling of food products to clients doing business in the region. Advertisements are regulated by a number of bodies and laws in the Middle East, which can be challenging. King & Spalding helps its clients in the food & beverage sector to identify the best strategies and to cope with critical issues.



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