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Serving the Food and Beverage Industries Worldwide
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Presentation to Joint Meeting Of **Food Industry Business Roundtable**

and

Food Consultants Group

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Prop 65

“Natural” labeling

Prop 37

presented by

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Prop 65 Notes

Prop 65 Summary: A law requiring a warning on products containing certain substances at levels that are legal in 49 states and under Federal Law, but not in California.

Label Warning

(Ref: 27 Cal Admin Code § 25603.2)

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Should You Test Your Own Products To See If You Are Violating Prop 65?

If you test your own products (including testing before you even know you are a Prop 65 target), the Prop 65 plaintiff's attorney can force you to turn over your results and use them against you to show that you **knew** your products violated Prop 65 when you were selling them.

Solution: An attorney experienced in Prop 65 knows how to supervise testing so that the results can be kept private.

Additional Notes

Prop 65 Sixty-Day Warning Letter (Example On Following Pages)

What It Means If You Get One

1. It means a Public Interest Lawyer has tested your product and has proof you are violating Prop 65.
2. It means the Public Interest Lawyer will have the right to file a Prop 65 suit at the end of 60 days.

What Not To Do

Don't ignore the situation. It's not going to "go away." The "public interest" lawyer spent money to test your products and find they violate Prop 65. He will now want to cash in on his investment. This is how he runs his business.

What You Should Do

Get an attorney experienced in Prop 65 cases and start negotiating with the other side to buy time while you build your defense. This is the best way to hold down costs.

Using “NATURAL” On Labeling

Tips, Do's and Don'ts

1. California Civil Code § 1770.

The following undertaken to result in the sale of goods to any consumer are unlawful: Representing that goods are of a particular standard, quality, or grade if they are of another.

The above includes claiming something is “Natural” when it isn't 100% natural.

2. There is no 100% reliable legal definition of what is “Natural.” The FDA has refused to produce a comprehensive definition. It is being decided on a case-by-case basis in the courts by juries.
3. The stakes are high: If you are sued and lose (or forced to settle your case), you'll be paying damages, you pay to change your labels, you pay for your own lawyers **and** you pay for the plaintiff's lawyers.
4. It's best to be conservative. Have your labels reviewed by a professional and don't claim “natural” if you can't back it up.
5. It's no defense for you that your competitors' labels are all claiming “natural” when they aren't.
6. If you want to put “natural” on your label because your competitors are doing it, get some solid legal advice *that is specific to your case* so you know the risks *as they apply to you*.

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Prop 37

Summary: “California Right to Know Genetically Engineered Food Act” requires a warning on food sold in California that is “**or may have been**” partially produced from genetically engineered food (also called GMOs – – genetically modified organisms).

1. There is no evidence that GMOs are harmful in any way and FDA has stated there is no such evidence.
2. Law is a ballot initiative funded by sellers of non-GMO foods.
3. Required warnings on packages:
 - a. *Genetically Engineered* (agricultural commodities)
 - b. *Partially Produced with Genetic Engineering* (processed foods)
 - b. *May be Partially Produced with Genetic Engineering* (processed foods)
4. Penalty for violation:
 - a. Refund of retail price to consumer plus payment of plaintiffs’ attorneys fees.
5. Measure will likely pass. We will know more about how it will work after State develops regulations to put law in effect. Law would be effective July 2014.

CONCLUSION

The materials in this package are not intended as a “do it yourself law kit.” Their purpose is to give the food industry business persons a general understanding of the “big picture” issues so when confronted with a problem from Prop 65, “Natural” labeling, or Prop 37 – – they have the context to work effectively with their legal advisors to get the best possible result.

Sincerely,

George C. Salmas