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Food & Beverage Group Of The Year: Mayer Brown

By **Jeannie O'Sullivan**

Law360, New York (January 18, 2017, 4:41 PM EST) -- When it comes to Mayer Brown’s reputation as the go-to firm for companies looking to navigate the vast legal territory that comes with producing an edible product, from labeling challenges to tricky financing, its partners attribute its renown to the firm’s diverse smorgasbord of clientele.

A diverse portfolio of companies ranging from classic cuisine appealing to the meat-and-potatoes crowd to organic snacks geared toward millennials have called on the global firm for representation, giving rise to a big menu of courtroom and transactional victories, carving the global firm a top spot on Law360’s 2016 Practice Groups of the Year.

Nestle USA and Chobani are just a few of the major food companies that have prevailed over adversaries this past year thanks to the firm’s appetite for success, fueled by unique arguments and approaches coming from various commercial practice groups in 24 offices spanning the Americas, Asia, Europe and the Middle East.

“We’re talking about a very wide variety of clientele, and one of the key things we do here is we spend time to invest in getting to know the clients, their business, their challenges and their competitors,” said Carmine R. Zarlenga, a partner in Mayer Brown’s Washington, D.C., office

The past year has brought false advertising class actions that the firm’s lawyers say are “all the rage” right now when it comes to legal fights targeting big companies. Alongside those challenges came opportunities for creative transactions, like a food franchise operator’s complex divestiture of operations that boosted returns for shareholders.

Among the firm’s recent courtroom victories involved a consumer challenge to the “0 trans fat” label on Coffee-Mate, manufactured by Mayer Brown client Nestle USA, that was dismissed in March by a

California federal judge who sided with the firm's federal preemption argument.

Plaintiff Troy Backus, who sought in excess of $5 million, argued that the label was barred by California state law because the product contains partially hydrogenated vegetable oil.

Mayer Brown successfully countered the allegation with a conflict preemption defense, arguing that the U.S. Food and Drug Administration, in issuing final guidance on partially hydrogenated vegetable oil last year, has given companies a two-year period to come up with a substitute ingredient, explained Mayer Brown Partner Dale J. Giali, a litigator the firm's Los Angeles office.

"The interesting thing is that [while] many food companies were targeted in these lawsuits, we were the first make this argument. From that moment forward, the food industry started gravitating toward our decision," Giali said.

In another false-advertising suit, the firm helped its client Chobani, a leader in the fast-growing Greek yogurt market, defend the "natural" ingredients and "evaporated cane juice" language on its labeling. In Kane v. Chobani, a California federal judge ruled that the plaintiff had failed to allege deception or reliance on the challenged labeling statements.

When the plaintiff appealed to the Ninth Circuit, Mayer Brown again argued that the agency has primary jurisdiction over these cases, and the federal appeals court in March stayed the challenge pending the FDA's completion of the rulemaking process to help establish solid definitions for advertising terms.

The ruling led to a domino effect for another Mayer Brown client, snack bar maker Kind. In September, a court in the Southern District of New York presiding over In re: Kind Healthy and All Natural Multidistrict Litigation dismissed challenges to the "healthy" labeling on its bars based on the Kane v. Chobani ruling and stayed the "all natural" allegations pending the FDA's rulemaking process.

"Up until that point and with very limited exceptions, the food industry was unable to get rid of these cases. They proceeded to class certification, summary judgment and trial, which was not a pleasant future," Giali said.

Fast food is another sector of the industry that counts Mayer Brown as a valuable resource. When Yum! Brands, the company behind the KFC, Taco Bell and Pizza Hut brands, wanted to take advantage of the securitization market to reduce its financing costs, it looked no further than Mayer Brown's Barbara Goodstein, partner in the global finance practice at the New York office.

Mayer Brown determined that the traditional method of applying a securitization structure to a whole company would be unwieldy given the three lines of business that compose Yum! Brands, so Goodstein limited the focus to Taco Bell in the United States, Goodstein said.

The $2.4 billion securitization, along with the refinancing of a $1 billion credit facility and the issuance of $4.6 billion in new debt, is expected to bring $6.2 billion in capital returns to the shareholder. The securitization and the other two financings closed respectively in May and June.

To call it a “complex transaction” is an understatement, according to Goodstein.

“There was a lot that hadn’t been done before, but at the end of the day, we brought it to the market,” she said.

--Editing by Christine Chun.

CORRECTION: An earlier version of this article misstated the Taco Bell locations that were the focus of the firm's securitization work. The error has been corrected.