Food & Beverage Practice Group Of The Year: Mayer Brown

By **Sophia Morris**

Law360, New York (January 23, 2018, 1:22 PM EST) -- Mayer Brown secured wins for big name clients such as Nestle Purina and Campbell Soup Co. in high profile false advertising and Lanham Act cases in the last year, ensuring the firm a place as one of Law360's Food & Beverage Practice Groups of the Year.

The firm earned its reputation in the food & beverage sector by developing a team of attorneys who have a deep understanding of the industry. Mayer Brown partner Carmine Zarlenga told Law360 that the firm tracks cases and settlements in the practice area, keeping on top of developments in the field.

"The litigation aspect really started kicking up in 2009," he said. "I thought it would be a short term trend, but it's not a fad and its still going strong. There's just as many cases now as they ever were, and maybe more."

Also key to the firm's success is the understanding of the impact that federal regulations can have on legal matters involving products that are subject to this regulation.

"The interplay of those regulations with litigation matters, especially those involving false advertising and labeling is very significant," Zarlenga said. "And we feel we have an advantage there because we really focus on trying to understand the regulatory framework and making our legal theories fit within that framework."

In its representation of Campbell Soup Co., the firm utilized this regulatory knowledge to ensure the March dismissal of a proposed consumer class action accusing the company of mislabeling its Healthy Request gumbo as healthy since the product contains artificial trans fats. A California federal court found that the claims were preempted by the Poultry Products Inspection Act and the Federal Meat Inspection Act, which regulate poultry and meat products.

Another win for the soup maker was notched in August, when a California federal judge dismissed a proposed class action from a consumer who alleged that she believed a soup was healthy when it was labeled as containing 25 percent less sodium. She claimed that because the soup contained more than the recommended intake of sodium, it was not in fact healthy and the labeling was deceptive. Such claims of alleged deception are challenging to deal with, according to practice group partner Keri

Borders, since companies thoroughly check their labels to ensure they are accurate and compliant with regulations

"There's been a trend to move towards more implied theories of deception and liability, and I think that's something the food companies are going to be dealing with going forward," Borders said.

In addition to representing well-known food manufacturers, the firm has also been focused of the growing litigation against pet food makers.

"The food & beverage industry has been under attack by plaintiffs in consumer class actions for many years now," Borders said. The pet food industry has become a target more recently, and Borders said Mayer Brown has been "at the forefront of defending these lawsuits."

Some of the biggest cases the firm took on involved protecting the reputation of pet food manufacturer Nestle Purina PetCare Co. When defending the company against a consumer class action that claimed Purina's Beneful brand dog food was toxic to the animals, the firm had the added challenge of dealing with a slew of attention on social media and in the news.

"The allegation was very serious and ... it exploded on social media, and it hit local and national news," Borders said. "It was being reported all over the country that Beneful dog food was killing dogs. So not only did we have to deal with the merits of the lawsuit, but we also had to manage this social media hysteria around the food that was really harming the business."

Seeking a decisive end to the suit, the firm took what Borders said was an "aggressive approach" that involved setting the case up for summary judgment as soon as possible. The firm got the consumers' experts disqualified, and the court granted summary judgment in November 2016, finding that the claims relied too heavily on the opinions that were deemed inadmissible.

"It really was a complete victory," Borders said. "We were able to vindicate the client and do it in a way that was a little different from how these consumer class actions normally proceed."

In October 2016, Mayer Brown secured a confidential settlement for Nestle Purina in a suit initiated by the company against rival Blue Buffalo. Nestle Purina accused the company of violating the Lanham Act by falsely advertising that its pet food products did not contain poultry by-products, and of creating a stigma against the commonly used by-products.

Blue Buffalo vehemently denied that its pet food contained the by-products, and launched Lanham Act counterclaims against Nestle. Zarlenga said the case turned in Nestle Purina's favor when Blue Buffalo's lawyer admitted in open court that the pet food did in fact contain the by-products.

Zarlenga called the Blue Buffalo case "the mother of all false advertising cases in the pet food industry."

"The Blue Buffalo case was, from my career perspective, a phenomenal case," he said, describing the day that the Blue Buffalo attorney made the admission one of his best days as a lawyer.

--Editing by Emily Kokoll.