

Food & Beverage Group Of The Year: Mayer Brown

By **Dave Simpson**

Law360 (January 28, 2019, 3:54 PM EST) -- With two industry-impacting wins for Foster Poultry Farms Inc. and Nestle Purina PetCare Co. on the litigation side, and major divestitures and deals for Nestle on the corporate side, Mayer Brown LLP's success across the board last year landed it a spot among Law360's Food & Beverage Groups of the Year.

Partner David A. Carpenter — who has expertise in cross-border transactions, focusing on mergers and acquisitions, divestitures and sales of businesses, joint ventures and strategic alliances — said that pressure from activist investors has played a role in creating a large volume of deals, at the firm's food and beverage practice, and across the industry.

"A good economy and a lot of money out there helps too," he said. "But the activist pressure in the sector's been pretty heavy. There are a lot of food companies that have been operating their businesses for many years under business models that are tired. And so they're getting pushed to refocus their business in ways that will be more profitable."

Dan Loeb and the asset management firm he founded, Third Point LLC, are putting Nestle under tremendous activist pressure, Carpenter said, and Mayer Brown has done about half a dozen deals for the company recently, restructuring Nestle in response to or in anticipation of activist pressure.

Last January, with Mayer Brown in Nestle's corner, Ferrero, the Italian company behind Nutella, Tic Tacs and its branded pralines, inked a \$2.8 billion cash deal to swallow Nestle SA's domestic confectionery business — including its Butterfinger, Baby Ruth and Wonka brands — to become the third-largest confectionery company in the United States.

"It was good to see those assets going to somebody who cares about candy," Carpenter said. "Ferrero is a company that is unabashedly going to do stuff that has sugar in it. And for Nestle, it's hard for them with a straight face to say: I'm a health and wellness company. And by the way, here's some SweeTarts."

In May, Nestle was the buyer, saying it would pay Starbucks Corp. \$7.15 billion to take over the company's marketing, sale and distribution rights for most of its retail and grocery store items.



The deal is huge for Nestle, Carpenter said, because it gives Nespresso and NesCafe a consumer packaged goods brand to associate with and it gives them distribution channels in grocery stores. In order to get it done, Mayer Brown had to draft a perpetual trademark license agreement.

"Perpetual is a long time," Carpenter said. "In 200 years, people are going to be pulling out this old license. So it really required both sides to do some creative thinking about how they can work with each other without impeding each other at doing what they're both good at."

The litigation side of things was strong, too, with Mayer Brown pulling in big wins not only for the firm, but for the industry at large, said partner Carmine R. Zarlenga.

When Foster Poultry Farms was hit with a putative class action in California state court over allegations that the labeling of its chicken products as "American Humane Certified" was misleading, the firm went straight for a summary judgment win, arguing that "humane" is a subjective terminology. The company is audited by a certification company, Zarlenga said, and they follow dozens of pages of objective standards. In May, the judge agreed.

"You might not like the standards or you might think they're too stringent, but they are the standards," Zarlenga said. "And all we're saying is we're following those ... So that was a big win, and it's great for our client. But it's great for the whole industry, as well, because everyone in the industry is utilizing these certification organizations."

In May, Mayer Brown's litigation side helped Nestlé Purina PetCare and a slew of other pet food makers, affirm its district court win at the Sixth Circuit in a case in which plaintiffs claimed that labels, which included pictures of meat and vegetables, misled consumers into believing that the pet food contained "human-grade" ingredients.

Zarlenga called it a "ridiculous notion" but jested that "when you're getting sued for a couple of billion dollars, it has a way of bringing your focus to it."

"We were able to convince the court that it is not a plausible theory on which to base massive liability," he said. "And here again, the whole industry benefits from that ruling."

--Editing by Nicole Bleier.