

## Food & Beverage Group Of The Year: Greenberg Traurig

By **Sindhu Sundar**

*Law360, New York (January 16, 2016, 12:01 AM ET)* -- Greenberg Traurig LLP has been behind some big wins for novel alcoholic beverage makers in labeling suits, besting consumers in several proposed class actions over the "all-natural" claims on the "Skinnygirl Margarita" drink developed by reality television star Bethenny Frankel, and landing its Food and Beverage group among Law360's Food & Beverage Groups of the Year.



The firm, which has represented Skinnygirl Cocktails LLC in lawsuits in five different states over labels on the premixed alcoholic drink, scored its latest win for the manufacturer in June when a federal court in New Jersey shot down a renewed motion for class certification. In that case, *Stewart v. Beam Global Spirits & Wine Inc. et al.*, the New Jersey federal court had previously ruled that the class couldn't be certified because the plaintiffs hadn't offered any clear methodology to ascertain who would belong in the proposed class. That case has now been dismissed, the firm said.

Before that, the firm helped the company get two suits dismissed in Florida and California, and thwart class certification in New York, New Jersey and Illinois. The Skinnygirl suits followed Whole Foods Market Inc.'s decision in 2011 to pull the 100-calorie ready-made drink amid reports that it contained the preservative sodium benzoate. The consumer suits have generally claimed that the "all-natural" label is misleading because it contains that preservative, according to court documents.

In May, plaintiff Plaintiff Amy Langendorf and defendants including Skinnygirl Cocktails, or SCG Global LLC, reached an agreement in which she dropped her lawsuit in Illinois federal court over the drink's labeling.

She had lost a class certification bid in the suit only six months before then in October 2014, when U.S. District Judge Manish S. Shah had similarly found that the class was not "ascertainable," according to court documents.

"That was an interesting matter that went over for quite a while," said Rick Shackelford, co-chair of the firm's Los Angeles litigation practice. "And this was a relatively small company with not a lot of experience in litigation."

Shackelford said the firm's successful work on the Skinnygirl cases highlights one of its biggest strengths: its presence of food and beverage litigators in offices all over the country, particularly in states that see some of the most consumer labeling lawsuits.

The firm has a core group of at least 25 to 30 lawyers doing a "substantial" amount of work in the food and beverage area, although attorneys from other practices regularly advise on food and beverage issues as well, Shackelford said. The Skinnygirl cases are also a good example of how the firm's different practice groups often work together, as it was one of its regulatory partners who helped nab the client in the first place, he said.

"In 2011, I was working with one of the two principals of this company on a separate product that was unrelated to this," said Greenberg Traurig regulatory partner Justin Prochnow. "But when the lawsuits on Skinnygirl margarita and cocktails were filed, he contacted me knowing I had expertise in that area."

He also said that the manufacturer had enlisted Greenberg Traurig for the cases because it had class action litigation attorneys in all the states in which it was being sued.

"We've offices in Chicago, Florida, California, all those states where they were having lawsuits, so it made sense for him to hire us, instead of him having to hire different local counsel in each state to handle that," Prochnow added. "It's a great example of how our cross services and multiple offices combine together to provide a full package for the client."

The firm is also the national lead counsel for Fifth Generation Inc., the manufacturer of Tito's Handmade Vodka, in a number of class actions around the country over its "handmade" claims.

Those suits claim that the distiller's use of the words "handmade" and "Crafted in an Old Fashioned Pot Still by America's Original Microdistillery" mislead consumers into thinking the vodka was crafted by human hands when in fact it was made from grain alcohol "trucked and pumped" into Fifth Generation plants in huge quantities.

In June, Greenberg's team helped the manufacturer defeat fraud claims by a consumer in Ohio, persuading the federal court there to find that Ohio federal judges have mostly held that the state's deceptive trade practices law does not allow for such consumer fraud claims because it resembles the Lanham Act, which is meant for businesses to challenge one other's marketing.

"These cases have underscored a lot of what I think the challenges have been in the state of food litigation as a whole," said Prochnow.

"These are different cases with similar themes, flung all over the country, with differing judges, with each at the district court level sometimes having different points of view on arguments we've made from case to case," he added. "These are instances where courts are somewhat writing on a blank slate, or taking a new look at things without much jurisprudence at the court of appeals level."

--Additional reporting by Lance Daroni, Jody Godoyand Vin Gurrieri. Editing by Philip Shea.

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