

FOOD FOR THOUGHT

FROM OUR FOOD, BEVERAGE, & CONSUMER PRODUCTS TEAM

JANUARY 2018, ISSUE 3

TOP TIPS REGARDING INTELLECTUAL PROPERTY

By **Matt Abell**

Intellectual property (IP) is not just cool – it’s darn valuable! As the pace of technological innovation and competition in the food, beverage, and consumer products space accelerates, it is more important than ever for these companies to identify, clear, and protect IP rights (whether in the form of recipes or formulae, packaging improvements, branding, food processing methods, supply chain efficiencies, customer lists, research and development, or otherwise). Here are a few tips to consider with respect to IP in the Food, Beverage, and Consumer Products space:

Make Sure You Own What You Think You Own: Part 1 – Employees

Don’t let a rogue employee lay ownership claim to your IP (and don’t rely on common law conventions when it comes to IP ownership – get it in

writing)! Memorialize your company’s IP ownership rights in employee work product via an “Employee Invention Assignment Agreement.” Caveat: be sure the agreement abides by applicable law, including state laws guarding against “IP overreaching” and recently passed federal law immunizing whistle blowers from liability under federal and state trade secret laws.

Make Sure You Own What You Think You Own: Part 2 – Independent Contractors (Co-Packers!)

Absent the existence of proper written agreements between your company and its independent contractors (including co-packers and ad agencies), applicable law may dictate that such independent contractors, and not your company, will own IP rights in deliverables, product and equipment improvements, and other work product (notwithstanding

payment for services rendered) - not cool, especially when potential investors or buyers start the diligence process.

Conduct an IP Audit

Your company’s IP is valuable. Take time to conduct routine audits to identify your IP (e.g., brands, tag lines, trade dress, recipes and formulae, packaging improvements, processing methods, supply chain efficiencies, customer lists, research and development, etc.) and consult with your friendly IP attorney regarding how best to protect (and monetize) those assets.

Can we all agree your Intellectual Property is one of your most valuable assets?

Check out the next edition of our newsletter for more tips on protecting your IP.

Have IP, commercial contracts, or licensing questions? Contact [Matt Abell](#) for a free consultation.

AM I ORGANIC?

By **Jeni Lamb Rogers**

One of the most common questions I get from brands is when they can call their product organic or say it is made with organic ingredients.

First things first – to say anything about organic or organic ingredients on the front of your package, you must:

- Have 70% or more organic ingredients
- Your product has to be certified organic—meaning an organic certifier has looked at the facility, reviewed your ingredients, and given you an organic certificate.

Violating organic regulations can subject you to up to an \$11,000 fine per violation.

This chart may help you think about what you can and cannot say, although your packaging should be reviewed by an attorney.

Product Composition	What claims can be made?	Use USDA seal?	Use Certifier Seal?	Where permitted claim(s) or seals can be used?
100% organic ingredients	<ul style="list-style-type: none"> • 100% Organic (Product Name) 	Yes	Yes	On <u>any</u> labeling or marketing material
95% or more organic ingredients	<ul style="list-style-type: none"> • Organic (Product name) • ___% organic, no larger than half the size of the largest font on that panel & must use uniform font, size, and color without highlighting 	Yes	Yes	
70% or more organic ingredients	<ul style="list-style-type: none"> • ___% organic • Made with Organic (specified ingredient(s) or specified food group(s)) <ul style="list-style-type: none"> • may only identify up to three groups or ingredients • All claims must be no larger than half the size of the largest font on the panel & use uniform font, size, and color without highlighting 	No	Yes	
Less than 70% organic ingredients	<ul style="list-style-type: none"> • ___% organic ingredients 	No	No	On Information Panel <u>ONLY</u>

To learn more, view our full packaging guide [here](#).

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BAD RECALLS HAPPEN TO GOOD PEOPLE: HOW TO PROTECT YOUR BRAND AND YOUR CUSTOMERS

By [Lee Gray](#)

Did you know that you need to report a recall to the FDA within 24 hours after determining that your product could present a serious health risk?

That is not much time. The time to figure out how you're going to handle a recall is not the day it happens to you, but before a problem arises. Recall team members should regularly monitor reports of any foodborne illnesses or other issues so they can investigate and assess any hazards to make the recall decision within that 24-hour period. The recall team should also oversee the entire recall process, through closure by the FDA.

Companies should also develop a written process for making the recall decision and proactively address the process in all manufacturing and copacking agreements. This process involves:

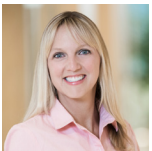
- determining the root cause of the issue
- identifying the risks posed
- assessing the severity of those risks, and
- figuring out what you need to do so it doesn't happen again.

If the identified risk includes serious injury or death, such as an allergic reaction from undisclosed allergens, then companies should commence a recall and notify the FDA as soon as possible. The recall team should also identify and document the scope of the affected product.

Nobody wants to be in a recall situation, but quickly and properly executing a recall not only helps keep you out of trouble with the FDA, it helps protect your brand and shows your commitment to keeping your customers safe!

Questions or concerns about your plan? Feel free to reach out to [Lee Gray](#) or [Jeni Lamb Rogers](#) for a free consultation.

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This newsletter is not a substitute for the advice of an attorney. The statements and advice provided are for educational purposes only. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

Chobani®

The **Chobani Incubator** helps small food and beverage startups bring better food to more people. It provides companies \$25,000 in equity-free capital and access to Chobani's network and expertise to scale their operations and achieve significant growth. The program includes workshops and mentorship from Chobani's leaders in operations, finance, sales, and marketing; in addition to visits to Chobani's manufacturing facilities, retailers, and trade shows. We think this program is one of the best around. If you have any questions about it please contact [Alison Johnson](#).

Applications for the Spring 2018 class are now open and due Tuesday, January 30th.

[Apply for the Chobani Incubator here!](#)

Check out the events below to meet Holland & Hart attorneys, the Chobani Incubator team and learn more about the program.

CHOBANI INCUBATOR FANCY FOODS HAPPY HOUR

Monday, January 22nd, Southern Pacific Brewing Co., San Francisco, CA, 6:00-8:00pm [RSVP](#)

CHOBANI INCUBATOR BOULDER HAPPY HOUR

Wednesday, January 24th, Rayback Collective, Boulder, CO, 6:00-8:00pm [RSVP](#)



4TH ANNUAL COLORADO FRUIT & VEGETABLE GROWERS ASSOCIATION CONFERENCE

Monday February 19-Tuesday, February 20, 2018
Renaissance Denver Stapleton [RSVP](#)

The Fourth Annual Colorado Fruit & Vegetable Growers Association Conference is a must-attend event for Colorado produce growers, companies/organizations serving the industry and individuals with an interest in produce and healthy eating. This is an unparalleled opportunity to network, make business connections, and learn about research, regulations, marketing trends, and much more.

Connect with more than 80 growers and more than 200 industry players! Colorado brands, ever thought about sourcing your fruits and vegetables locally? Consider the Grower/Buyer Networking Session. Contact Adrian Card for a reservation at acard@bouldercounty.org.

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