

FOOD FOR THOUGHT

FRESH NEWS FROM OUR FOOD, BEVERAGE, AND CONSUMER PRODUCTS TEAM

JUNE 2018, ISSUE 5

THE DOWN AND DIRTY ON CLEAN MEAT REGULATION

by **Lee Gray**

As more companies begin bringing “clean meat” products to market, a key question—other than “how does it taste?”—is who will regulate these products. “Broadly speaking, clean meat includes both lab-grown meat products that are derived from animal cells and plant-based products that look and taste like traditional beef (such as the Impossible Burger™). Although it may sound like a theoretical issue, the question of whether FDA or USDA, or some combination of both, regulate these products will greatly affect how these products are brought to market. While USDA has long regulated meat, poultry, and eggs, FDA has a broad reach of its own, covering all other food products and additives. In addition, FDA already regulates medical-related biologics that include products made from human tissue, blood, and cells.

Even though these clean meat products came onto the scene several years ago, Congress has not shown much interest—until now. Congresswoman Rosa DeLauro (D-Conn.) recently asked the Government Accountability Office (GAO) to investigate whether clean meat requires a totally new regulatory framework. If so, will FDA or USDA issue those regulations? The House Agriculture Subcommittee of

the Appropriations Committee has taken a position in its May 9, 2018 draft agriculture appropriations bill that directs the USDA to regulate lab-grown meat products, including frequency of inspection for manufacturing facilities as well as labeling requirements. Meanwhile, FDA has just announced a public meeting for July 12, 2018 to bring stakeholders together to discuss the issue. FDA’s statement accompanying this announcement certainly suggests that it will be the lead agency in regulating these innovative products:

The FDA has extensive experience applying its existing authority flexibly and effectively to rapidly evolving areas of technological innovation such as plant biotechnology. We look forward to sharing our experiences in evaluating and ensuring the safety of novel technologies in the food sector at this upcoming public meeting, while we also discuss these issues with, and gather relevant data and information from, stakeholders.

Given the differences between these two recent declarations, the regulatory status of clean meat remains in question, even as more of these products become available to consumers.

TOP TIPS REGARDING INTELLECTUAL PROPERTY, PART 3 (OF 3)

by **Matt Abell**

It is more important than ever for F&B 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 additional tips to consider with respect to IP in the F&B space:

Include Proper IP Notices and Include Website Terms of Use. Preserve your right to send nastygrams! Be sure to use proper notices in connection with your company’s IP - e.g., trademark and copyright notices (™, ®, or ©, as applicable), “patent pending” and issued patent notices, confidentiality legends, etc. Also, include proper Terms of Use and Privacy Policy terms governing the use of company websites and online buy-flows. By doing so, you may preserve legal rights and remedies (for which your attorney will thank you!).

Search and Clear Your Brand Before Launch. Your brand may be your most valuable asset. Invest in proper trademark clearances before you launch (and before you fall in love with your brand!). Don’t invite a nastygram demanding that your prize brand(s) be changed post-product launch - this can be expensive and disruptive (and not in a good way). Note that a US Patent and Trademark Office or state database search is not enough, as common law trademark rights arise upon use. A simple Google® search won’t cut it either. Pick up the phone and call your friendly IP attorney.

International IP Issues. Generally speaking, IP rights are territorial and are treated differently country to country. Before expanding across borders, be sure to conduct due diligence on how to properly protect your company’s IP in new countries / markets.

Check out our previous newsletters on our website for even more tips regarding IP.

UPCOMING EVENTS

BOULDER FOOD GROUP 929 PRL SUMMER SERIES

Holland & Hart is a proud sponsor of the 929 PRL Summer Series which are community-focused charitable celebrations. 100% of ticket sales will benefit the nonprofit organizations. For more information and to register for any of the upcoming events, please visit <http://929prl.com/>.

Please join us:

- July 19, 2018: **Thorne Nature Experience**
- August 23, 2018: **Chef Ann Foundation**
- September 20, 2018: **Colorado Water Trust**

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THE Chobani[®] INCUBATOR

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 four month 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 agjohnson@hollandhart.com.

Applications for the Fall 2018 class are now open and due Monday, July 2nd, 2018.

[APPLY HERE!](#)

AND... JUST ANNOUNCED!

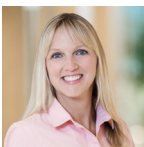
The Chobani Incubator is launching a residency for food tech startups in their ongoing mission to bring better food to more people.

In addition to helping emerging natural food and beverage product companies grow, Chobani wants to solve challenges all along the food and agriculture value chain: from waste reduction to food safety to supply chain traceability and more. They will bring tech entrepreneurs to the front lines of food manufacturing to enable them to tap into our operations, supply chain, logistics, and quality assurance expertise to build innovative solutions to the industry's biggest challenges.

Read about their decision to expand into food tech in the [blog post](#) from Chobani Chief Marketing and Commercial Officer, Peter McGuinness.

The Food Tech Residency will run in parallel with the standard Chobani Incubator program for packaged product brands this fall. [Visit the Chobani website](#) to learn more about the new program and apply.

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REASONS TO PAY ATTENTION: FIVE WAYS BLOCKCHAIN AND SMART CONTRACTS WILL DISRUPT FOOD & BEVERAGE PRODUCTION AND DISTRIBUTION

By **Alison Johnson**

Exciting things are happening at the intersection of blockchain technology and food and beverage. Here are five reasons we think blockchain will be improve and disrupt the food supply and distribution.

#1. Improves food safety. By pinpointing tainted food in a matter of moments, prolonged outbreaks can be mitigated.

#2. Fresher food. With each step being tracked in blockchain, consumers can see exactly when a food product was harvested and/or packaged and prioritize the purchase of fresher products.

#3. Less food wasted.

According to the Food and Agriculture Organization of the United Nations, up to one third of food produced is wasted each year. This is in part due to clean food being thrown away during outbreak scares. Being able to isolate tainted food down to a farm and a batch level can mitigate this food loss.



#4. Promotes responsible food practices. With each step in the process visible on blockchain, producers will be more likely to adhere to safe practices and breaches of contracts will be more easily discoverable.

#5. Builds consumer trust. Consumers are increasingly curious about food origin and make-up and their consumer choices are therefore increasingly data driven. Brands utilizing blockchain technology will be able to build consumer confidence by providing the consumer with the ability to scan individual food products and receive information about a food item from the farm it came from, to the packaging and production facilities, to the grocery store.

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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.