

TYPES NOT MAPPED YET November 05, 2018 | TTR not mapped yet | Kimberly (Kim) Bousquet

Labeling of meat at ‘steak’ in constitutional challenge to Missouri law

On the day Missouri’s former governor Eric Greitens resigned from office, he signed legislation making it a misdemeanor to sell a product represented as “meat that is not derived from harvested production livestock or poultry.” Mo. Rev. Stat. § 265.494(7), 265.496.

“Meat” and “Poultry” were already defined in Missouri law: “Meat” is “any edible portion of livestock or poultry carcass or part thereof,” and “Poultry” is “any domesticated bird intended for human consumption.” Mo. Rev. Stat. § 265.300(7), (11). Similarly, “Livestock” is defined as “cattle, calves, sheep, swine . . . raised in confinement for human consumption.” Mo. Rev. Stat. § 265.300(6). But until 2018, it was not a crime in Missouri to sell meat-substitutes as “meat.”

That Missouri adopted this law is not particularly surprising given the rapid development of animal cell culture food technology. If you’re asking “what the heck is that?”, you’re not alone. The FDA defines “animal cell culture food technology” as “the controlled growth of animal cells from livestock, poultry, fish, or other animals, their subsequent differentiation into various cell types, and their collection and processing into food.” The San Francisco-based start-up leading the efforts to make and market these products, Memphis Meats, describes its work as the making of “food by sourcing high-quality cells from animals and cultivating them into meat – think of a farm at a tiny scale. We cut some steps from the current process (like raising and processing animals) and bring nutritious, tasty meat to your table.”

In short, companies are using cell culture technology to create animal-based food products they contend taste, feel, and look like meat derived from the slaughter of live animals. Despite these definitions, consumers and regulators alike are unsure of what the technology is and how it should be regulated. This uncertainty exists in part because the technology is proprietary and hasn’t yet undergone regulatory scrutiny. There may also be uncertainty as to whether Memphis Meat’s cell cultured animal-based foods may be labeled and sold as “meat” under Missouri law.

So what’s Missouri’s beef with labeling these products as meat? According to one state representative, [“Missouri is just trying to protect our product.”](#) Livestock, poultry and related products alone [contributed just under \\$5 billion](#) to Missouri’s economy in 2012. But Tofurky Co. (a maker of plant-based meat substitutes) is asking a Missouri federal court to chew Missouri’s law up and spit it out, asserting that it violates a number of constitutional provisions.

Tofurky along with a proponent of cell-based meat products, the Good Food Institute (GFI), sued the Cole County, Missouri, prosecutor and a class of all prosecutors in the state of Missouri in August 2018, seeking an order preventing enforcement of the new labeling law, under 28 U.S.C. § 1983. The plaintiffs also seek a declaration that the law is unconstitutional and request attorneys’ fees.

The plaintiffs contend that the “meat” labeling law violates three provisions of the U.S. Constitution: the First Amendment, the dormant commerce clause, and the due process clause. The plaintiffs seem to be primarily focused on the First Amendment right to free speech, as their motion for a preliminary injunction (filed October 30) only seeks relief based on free speech grounds. They contend that the law violates their First Amendment right to free speech because the statements on Tofurky’s products (and similar products) are true. That is, Tofurky asserts that it is “not trying to deceive consumers into believing its plant-based meats are animal products; to the contrary, it wants to make clear that its products are *not* made from animals.”

The U.S. Cattlemen’s Association disagrees, stating in a recent petition to the USDA that “meat” is “understood to be derived from animal tissue or flesh for use as food;” therefore, products labeled as “meat,” even if they are also “marketed as vegan,” are “misbranded.”



Meanwhile, in the Missouri lawsuit, the defendant prosecutor has taken a hands-off approach to the issue, answering that: (1) he takes no position with respect to the constitutionality of the law; (2) he has not initiated nor has had cause to consider initiating any prosecution under the statute; (3) he is not the proper party to defend the statute; and (4) he does not oppose any relief sought by the plaintiffs except for an award of costs or attorney's fees against him. The State of Missouri, however, seeks to intervene and defend its law, but has yet to be granted that right.

As it currently stands, the issues facing the court in the preliminary injunction battle are straightforward: (1) are the plaintiffs likely to prevail on the merits of the First Amendment claim; (2) do the plaintiffs face a threat of irreparable harm from the law; (3) does the potential harm to the plaintiffs weigh in favor of an injunction; and (4) does the public interest favor granting an injunction. Answering these questions, however, may not be an easy task for the court, especially given the national attention "meat" regulation and labeling has recently received.

Depending on the outcome, the ramifications in the food and livestock industries could be significant. As usual, Thompson Coburn attorneys are watching this case and are ready to consult on how this case and current federal regulatory initiatives may impact your business.

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