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Class Action 'Avalanche' Coming For CBD Industry

By Steve Minkov

Law360 (October 30, 2019, 7:05 PM EDT) — The first few class actions against CBD companies have

been filed in various state courts, including in the District of Columbia, Oct. 23, 2019, 11:24 AM EDT)

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With the dramatic expansion of the cannabis industry, many felt it was only a matter of time before the consumer class actions began. That's especially true given the lack of federal standards for these products.

The FDA has yet to issue regulations on cannabis products, including CBD, which is a non-psychoactive chemical that is widely marketed for its purported anti-anxiety or calming properties. It is the active ingredient in Epidiolex, a pharmaceutical drug used to prevent seizures.

Under the Federal Food, Drug and Cosmetic Act, the fact that CBD is an active ingredient in an approved pharmaceutical drug means it can't be considered a dietary supplement or food. So the FDA's stance is likely that it doesn't need to issue regulations on CBD products, according to Havers of Saul Ewing.

Regardless, there are tons of CBD-infused vapes, edibles, tinctures and more on the market. The FDA has sent warning letters to companies selling CBD products about making unsupported health claims, but that's the extent of the agency's enforcement so far.

https://www.law360.com/articles/1118862/class-action-cbd-industry/



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Litigation In The Marijuana Industry Lights Up

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Companies Face Increasing Consumer Scrutiny

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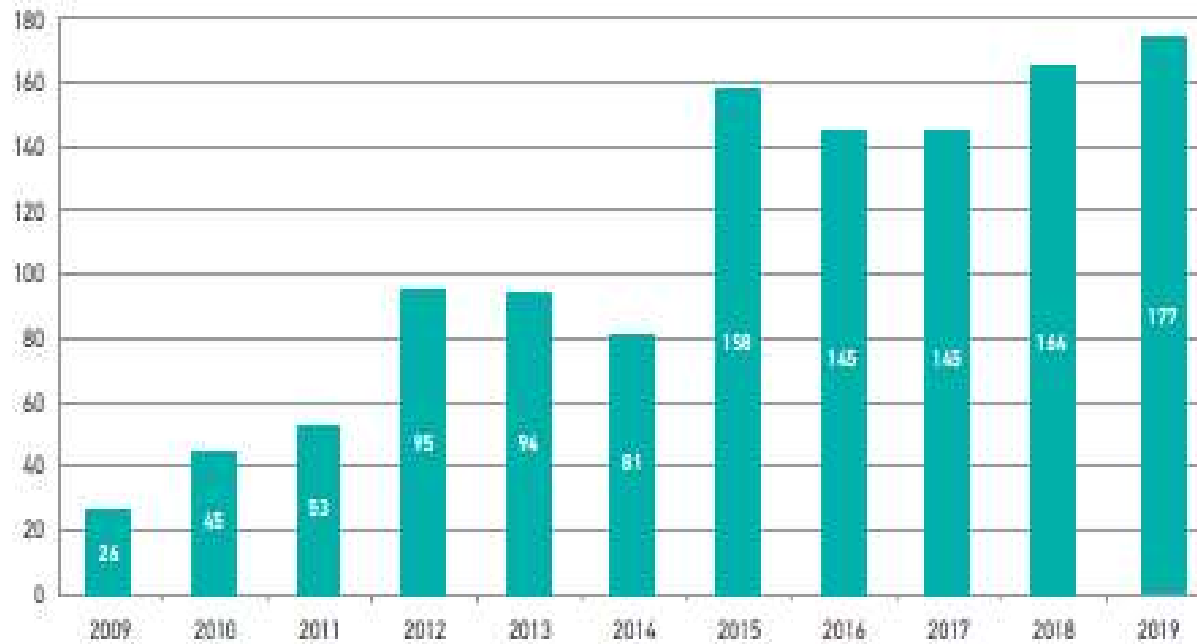
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Food and Beverage Class Action Filings By Year



Data compiled by Perkins Coie based on a review of dockets from courts nationwide.

Source: *Food Litigation 2019 Year in Review* (Perkins Coie)

Food, Beverage and Supplement Class Actions

- **“Impure” products:** labeled as “organic,” “natural,” or “free” of “preservatives” or “synthetic” ingredients, but which allegedly are not so “pure”
- **“Contaminated” products:** foods with trace amounts of allegedly harmful chemicals stemming from the growth or production process
- **“False origin” cases:** products marketed as being grown or made in a particular place, but which allegedly are not
- **“Slack fill”:** packaging allegedly suggests more product than the package actually contains
- **Over- or Under-Stated ingredients:** labeled as “sugar free,” “low carb,” or containing “x grams of carbs/protein,” but actually containing more -- or less -- than advertised

Class Action *Prevention*

Responses to Regulators

- You're creating your own (class action) record
- Information is shared
- Words matter

Individual Arbitration Agreements

- Membership programs
- Online Terms of Use

Pre-Suit Demand Letters: Do Not Ignore

Class Action “Cure”

Dispositive Motions

- Primary Jurisdiction
- “Reasonable Consumer” Test

Class Certification

- Individualized Materiality/Reliance Issues
- No Injury/Damages

Class Action “Cure” (cont’d)

Trial

Settlement

- Individual (nuisance)
- Class (preclusion)

Alternative Fee Arrangements (AFAs)