CLIENT ALERTS & INSIGHTS

Beyond Allulose: What Comes Next in Sugar-Related False Advertising Litigation?

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Featured Practices: Litigation, False Advertising & Unfair Competition, Consumer Protection & Class Actions

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Key Takeaways

- The *Franco* decision has given plaintiffs a potential roadmap for challenging "Sugar Free," "Zero Sugar" and similar claims when FDA guidance and existing regulations do not fully align.
- The risk may extend beyond allulose. Companies using sugar alcohols or other emerging and novel ingredients should evaluate whether their labeling claims rest on agency guidance rather than the text of applicable regulations.
- Food and supplement companies should review low- and no-sugar claims now, with particular attention to the regulatory basis for those claims and potential exposure under state consumer-protection laws.

Food and supplement manufacturers may be witnessing the emergence of the next significant trend in food labeling litigation. Over the past year, plaintiffs have filed a growing number of putative class actions challenging products marketed as "Sugar Free," "Zero Sugar," "No Added Sugar," "0g Sugar," and similar sugar-related claims when those products contain allulose.

At first glance, the trend appears to be a story about a single ingredient. But a closer look suggests something potentially more significant. The recent wave of allulose-related litigation may ultimately be less about allulose itself and more about a regulatory dynamic that extends far beyond any one sweetener or sugar substitute:

What happens when FDA guidance evolves faster than the regulations themselves?

Recent lawsuits have focused on allulose. The question now for retailers, manufacturers and the legal industry, however, is what comes next.

What Happened:The *Franco* Landscape

The allulose litigation trend was supercharged following the Seventh Circuit's July 2026 decision in *Franco v. Chobani*.

In *Franco*, consumers challenged "Zero Sugar" claims appearing on yogurt products containing allulose. The Seventh Circuit concluded that plaintiffs plausibly alleged that allulose qualifies as a sugar under the existing regulatory definition because allulose is a monosaccharide. The court further emphasized that the FDA's 2020 guidance-stating that allulose could be excluded from the amount of "Total Sugars" and "Added Sugars" on nutrition panels-reflected an exercise of enforcement discretion, which does not override the governing regulations.[1]

Equally important, the court rejected the notion that the FDA's guidance necessarily foreclosed state-law consumer-protection claims. It concluded that, though it may be reasonable to believe a manufacturer is safe from federal enforcement action based on labels the FDA approved, "the agency's marketing permit said nothing about state law consumer protection suits." Therefore, the FDA's decisions regarding enforcement discretion do not immunize companies from state-law-based litigation.

In the months following the *Franco* ruling, plaintiffs have challenged sugar-related claims appearing on a wide variety of products, such as cereals, nutrition bars, dietary supplements, gummies, protein candy and nutrition shakes. The challenged representations continue to expand to include allegations targeting "Sugar Free," "Zero Added Sugar," "0g Sugar," and numerical sugar-content representations such as "1g Total Sugars."

Guidance Isn't Rulemaking

The allulose litigation highlights an issue that extends well beyond sugar replacements or sweeteners.

The FDA's 2020 allulose guidance acknowledged the ingredient's unique metabolic characteristics and announced that the FDA intended to exercise enforcement discretion by allowing manufacturers to exclude allulose from the "Total Sugars" and "Added Sugars" declarations appearing in Nutrition Facts panels under certain circumstances. At the same time, the FDA repeatedly emphasized that allulose remains a monosaccharide-and has not amended the regulations that define sugars or govern sugar-related nutrient-content claims.

That distinction is critical.

From a broad industry perspective, agency guidance often signals regulatory acceptance. A manufacturer may conclude that if the FDA permits a particular labeling approach, the legal risk associated with following that approach is limited. That may be true when it comes to the federal government. But private plaintiffs are not the FDA, and guidance does not alter the text of an existing unambiguous regulation. If the regulation remains unchanged, products remain subject to the original regulatory framework regardless of the FDA's enforcement priorities. In that sense, the recent allulose litigation may be less a dispute about sugar than a dispute about the legal significance of agency guidance.

Franco

appears to have provided plaintiffs with a roadmap: identify an ingredient receiving favorable treatment under agency guidance, compare that treatment to the text of existing regulations and allege that the resulting discrepancy renders labeling claims misleading.

Beyond Allulose? FDA Has Seen This Issue Before

Although allulose currently sits at the center of advertising litigation trends, the FDA's own statements suggest that it is not the only sugar presenting novel labeling questions.

When announcing its allulose guidance, the FDA specifically identified allulose, D-tagatose and isomaltulose as sugars that are metabolized differently and may not have the same physiological effects in the body as traditional sugars. The FDA simultaneously sought additional information regarding how such sugars should be treated for nutrition labeling purposes.

Notably, the FDA's experience with D-tagatose predates the recent allulose controversies by decades.

The FDA previously considered health claim petitions relating to D-tagatose, recognizing findings that D-tagatose, like allulose and isomaltulose, is less likely to have the same effects in the body (e.g., increase in blood glucose, promoting tooth decay) as traditional sugars. The FDA also separately addressed public questions concerning the ingredient's treatment on Nutrition Facts labels. Those actions reflect its recognition that certain "sugars" do not fit neatly within assumptions underlying older food-labeling regulations.

And while D-tagatose and isomaltulose do not currently face the same litigation exposure as allulose, that could change if tagatose becomes more widely used, as it may be poised to do.[2]

If the central lesson of *Franco* is that guidance cannot substitute for unambiguous regulations, plaintiffs may eventually look beyond allulose and ask whether similar tensions exist for other emerging sweeteners whose physiological characteristics differ from conventional sugars.

What About Sugar Alcohols? Other Sugars?

The same question naturally extends to sugar alcohols and other sugars.

The FDA separately identifies sweeteners such as erythritol, xylitol, sorbitol, mannitol and maltitol as sugar alcohols rather than sugars. These ingredients often provide sweetness with fewer calories and a reduced glycemic effect than traditional sugar and have become increasingly common in products marketed to consumers seeking low-sugar alternatives. The FDA describes sugar alcohols as a distinct category of carbohydrates, rather than as sugars themselves.

For that reason, sugar alcohols do not fit within the monosaccharide-based reasoning that drove the decision in *Franco*. Still, there are signs that plaintiffs' firms are already investigating products marketed as "sugar free" that rely heavily on sugar alcohol ingredients. Public investigation, campaign pages and new complaints have appeared targeting products marketed as sugar-free despite containing sweetening ingredients derived from sugar alcohols.

Any product making low- or no-sugar claims can become a target. Recent lawsuits, including against major-name brands, have already begun testing similar theories outside the allulose context. For example, plaintiffs have challenged "Sugar-Free" beverage representations based on the

presence of naturally occurring sugars such as lactose, citing FDA sugar-content regulations and relying on the same analysis that formed the basis of *Franco*. Those complaints emphasize that lactose is defined as a sugar and argue that consumers reasonably understand "Sugar Free" to mean the absence of all sugars, regardless of the source.

Whether these efforts mature into meaningful litigation trends remains uncertain. Nonetheless, they demonstrate that plaintiffs' attention is already expanding beyond allulose.

A Broader Question for the Industry

The surest implication of the recent litigation may not concern sweeteners at all. The real lesson from *Franco* is that regulatory guidance cannot overrule regulations themselves, and when a regulation is clear, guidance offers no protection.

Food and supplement manufacturers frequently operate in areas where FDA guidance, constituent updates, enforcement discretion announcements and policy statements provide practical direction long before formal regulations are amended. The allulose cases demonstrate that the gap between guidance and regulation may become fertile ground for litigation. The FDA repeatedly stated that allulose is a monosaccharide and simultaneously exercised enforcement discretion permitting allulose to be omitted from certain sugar declarations pending potential future rulemaking. Plaintiffs built an entire litigation theory around that gap. The broader question becomes whether similar gaps exist elsewhere.

As food technology continues to evolve, regulators will inevitably confront ingredients that do not fit comfortably within regulatory classifications developed decades earlier. Whenever the FDA addresses those issues through guidance rather than rulemaking, the possibility exists that plaintiffs will attempt to exploit the difference.

What Comes Next? Where Companies Should Focus

Courts outside the Seventh Circuit have yet to weigh in on many of the issues raised by *Franco*. Defendants are likely to advance a variety of legal defenses, and the FDA could ultimately revisit the treatment of allulose through future rulemaking.

Nevertheless, recent filings suggest that plaintiffs have identified a repeatable theory capable of expanding across products, claims and potentially other ingredients. Companies utilizing sweeteners making low and no-sugar claims should continue to monitor developments closely. More broadly, companies making label claims based upon FDA guidance may wish to evaluate whether that guidance is in tension with existing regulations.

The most significant question may no longer be whether allulose litigation will continue. Rather, it is whether *Franco* represents a successful effort to leverage the gap between regulatory guidance and actual FDA regulations. If so, future litigation may extend beyond allulose and test how courts evaluate other emerging alternative sugars and novel ingredients that the FDA has attempted to accommodate through guidance rather than rulemaking.

Benesch's Retail & E-Commerce and False Advertising & Unfair Competition teams are closely monitoring emerging litigation and regulatory developments affecting product labeling

and advertising. We help food, supplement and consumer-product companies assess claims, identify potential exposure and defend against class actions when challenges arise.

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[1] *See Franco v. Chobani*, LLC, No. 25-2087 (Tharp, Jr., J.)

[2] https://now.tufts.edu/2025/12/11/researchers-develop-way-make-healthier-sugar-substitute