

Blockchain Will Likely Have to Meaningful Impact on “Big Food” Litigation



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Eager to curb foodborne-illness outbreaks, retail giants like [Walmart and Albertsons](#) are turning to blockchain technology [1] to track exactly where their foods are coming from. Blockchain, as compared to the eye-straining, paper-heavy tracking systems before it, allows retailers to trace the supply-chain history for a single food item within seconds.

For example, in a test case using IBM’s blockchain technology, Walmart traced the supply chain for two off-the-shelf mangoes randomly taken from one of its stores. Using conventional source-checking methods, it took them 7 days to do so. Through blockchain, however, they were able to track the entire supply chain *in 2.2 seconds!* [As a former Walmart executive put it](#), blockchain “allows us to see the whole chain in seconds! We [could] take a jar of baby food and see where it was manufactured and trace back all the ingredients to the farms!” Before blockchain, that simply would not have been feasible.

Given those efficiencies, several [food giants](#) are integrating blockchain technologies into their sourcing operations. Once scaled, blockchain-enabled traceability systems (like [Hyperledger](#), for example) will help food retailers consolidate and better track food-related data from suppliers, inspectors, and others along what once was a

convoluted, fractured tracking process. And that level of transparency should, in turn, assist food companies in identifying potentially contaminated food products and lead to quicker, more accurate food recall responses.

But aside from improving food safety, blockchain's entry into the food manufacturing and processing arena should also have significant implications for food-related litigation, particularly in deceptive-labelling and antitrust price-fixing cases.

As we have covered in [prior posts](#), deceptive advertising litigation has increased exponentially in recent years. Developments in case law, such as the Supreme Court's decision in [Pom Wonderful](#), and consumer-protection statutes have sparked an increased focus on litigation relating to the sourcing, manufacturing, and labeling of food and beverage products. Blockchain's ability to make food tracing seamless and transparent should make it much easier to verify whether products that are marketed as originating from particular areas, are, in fact, sourced from those areas.

Blockchain also has the potential to deter—if not expose—supply-side price-fixing schemes that, [as we covered in a previous post](#), have plagued the food industry as of late. For instance, tuna suppliers Starkist and Bumble Bee [have pleaded guilty](#) to DOJ price-fixing charges. Not surprisingly, a flood of civil antitrust lawsuits were filed in the wake of those pleas. And still others, including major chicken and beef suppliers, are embroiled in similar supply-fixing antitrust cases as well.

At their core, many of these recently unveiled conspiracies took advantage of the difficulties associated with tracking the production and supply of food products. [But as retailers begin requiring their suppliers to use blockchain-based systems](#), suppliers will have fewer opportunities to artificially restrict supply to achieve cartel-level prices. Indeed, given blockchain technology can now track a calf from birth to slaughter (and every step in [between](#)), one must wonder whether, for example, [broiler-chicken](#) manufacturers would have been deterred from engaging in the full-fledged supply-fixing conspiracy that has now come to light. At the very least, blockchain should make it easier for the DOJ and victims to prosecute these and similar price-fixing violations as it could reveal intentional and coordinated supply restrictions.

In short, these are just two examples of how blockchain may impact the food-and-beverage industry as a whole, and food-related litigation in particular.

[1] Blockchain refers to more than just cryptocurrency. [Blockchain](#), rather, “is a shared, immutable ledger that facilitates the process of recording transactions and tracking assets in a business network.”

Special credit to summer associate Sophia Guzzo for her work on this blog post.

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