

Client Alert.

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Question of the Week: Does Prop 37 Prohibit Labeling of Processed Foods as “Natural?”

By Michael Steel and Alejandro Bras

The language of Prop 37 says:

“if a food meets any of the definitions in section 110808(c) or (d), . . . the food may not in California, on its label, accompanying signage in a retail establishment, or in any advertising or promotional materials, state or imply that the food is “natural” “naturally made”, “naturally grown”, “all natural” or any words of similar import that would have any tendency to mislead any consumer.”

Section 110808(c) defines “genetically engineered” foods making the labeling of such foods as “natural” unlawful. But section 110808(d) defines “processed foods” without any such limitation to genetic engineering. It says:

“‘Processed food’ means any food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that has been subject to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation or milling.”

Clearly, plaintiffs will argue the plain meaning of the statute (if adopted) is that any processed food, whether it contains or is made with genetic engineering, cannot be called “natural.” This would make dried fruit, canned vegetables, cooked carrots—and the list goes on—subject to litigation if they are labeled as natural, even though no genetic engineering has occurred.

Even the drafters of Prop 37 know that voters would reject this provision of the law if it were clear to them. This summer the drafters tried to get a court to order the California Attorney General and the State’s Legislative Analyst to hide this provision from the voters, but the court refused.

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Proposition 37 has the potential to be a game-changer for many of our clients, both large and small. If you are interested in learning more, we will be providing continuous coverage of Proposition 37 through our website over the next few months. On our [Proposition 37 homepage](#) you will be able to find our most up-to-date client alerts, recent news, links to important materials and websites, and contact information for our attorneys, who are monitoring the initiative on a daily basis.

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