DOWNEYBRAND

Food & Agriculture Litigation

From bet-the-company patent defenses to complex regulatory battles, Downey Brand's litigators have protected clients in California's food and agriculture industry for decades, providing experienced counsel and advocacy when it matters most.

Downey Brand's food and agriculture litigation team has represented clients from every sector of California's agricultural industry, including farmers, dairies, wineries, processors, distributors, PCAs, aerial applicators, grocers, and industry trade associations. Clients include both plaintiffs and defendants, and range from individuals to large corporations. Our attorneys have represented clients in state and federal court, as well as in mediations, arbitrations, and administrative hearings. The attorneys in our food and agriculture litigation practice have extensive experience in California agribusiness and are deeply knowledgeable about the important issues facing the industry.

Commercial Disputes

Downey Brand litigators represent growers when buyers of their crops fail to pay on time (PACA and California Producers' Liens). They also provide representation and counseling in commercial disputes over contracts, leases, and land acquisitions.

Pesticide Drift Litigation

Our litigators have represented growers whose crops have been damaged by drift to recover damages, and have also defended farmers and pesticide applicators who are accused of responsibility for pesticide drift. Downey Brand attorneys offer counseling to farmers, PCAs, and applicators to help them develop safeguards to minimize their risk of facing litigation and liability for pesticide drift.

Food Labeling Litigation

Gaps in the Food and Drug Administration's regulatory frameworks have fostered a dramatic increase in food labeling litigation over the past decade. Experienced with this rapidly changing legal environment, Downey Brand attorneys counsel clients in the food and agriculture industry to minimize their risk of facing adverse legal action. And when necessary, our litigators defend food manufacturers and grocers in court from class action suits and regulatory scrutiny for alleged violations of food labeling standards.

Prop. 65 Violation Defense

Proposition 65 bars businesses from exposing customers to chemicals "known to the state to cause cancer or reproductive toxicity" without providing "clear and reasonable" warnings. Our attorneys help food manufacturers, processors, and grocers interpret their obligations under Prop. 65's ever-changing regulatory framework and respond appropriately to notices of violation. In addition to assisting with compliance and risk management before a violation is alleged, our attorneys have defended clients in the food and agriculture industry in high-stakes Prop. 65 litigation.

Intellectual Property / Patent Litigation

The patent litigation team at Downey Brand has protected the trade secrets, technology, trademarks, and other intellectual property of companies across the agribusiness industry, from farmers and wineries to food processors and grocers.

Grocery Store Credit Card Surcharge Litigation

A recent decision in the Ninth Circuit permitted a grocer to apply credit card surcharges to purchases as a percentage of their total price. This decision, though narrow in scope, may permit other grocers and food retailers to apply credit card surcharges to their customers' purchases. Our attorneys can guide businesses currently subject to California's prohibition of credit card surcharges through the process of seeking relief from this law under this new Ninth Circuit precedent.

Selected Experience

- Successfully represented a buyer of a walnut orchard in a fraud action against the seller who concealed the existence of disease in the orchard.
- Served as co-counsel representing the California Association of Egg Farmers involving legal and regulatory issues pertaining to statutes imposing size dimensions on egg-laying hen enclosures.
- Represented one of the nation's leading dried fruit processors in an action alleging infringement of various food processing patents. Obtained favorable claim constructions of key patent claim terms, which provided the foundation for the granting of summary judgment on all claims. Ultimately, after the case returned to the district court following appeal to the Court of Appeals for the Federal Circuit, the action settled on extremely favorable terms for client.
- Represented the owner and licensor of a patented method and apparatus (and associated trade secrets and know-how) used in California's tomato processing industry for the past fifteen years. Matters have included the handling of contested claims of patent infringement and various license disputes. Through our strategic efforts, we have successfully secured millions of dollars in royalties over the past decade. We helped steer our client through a challenge to its patent via a reexamination proceeding initiated by a licensee, and emerged with a patent stronger than it had been. We also represented our client in an Inter Partes Review (IPR) challenge to its patent at the U.S. Patent and Trademark office, obtaining a complete victory.
- Represented several agriculture industry trade associations in blocking implementation and enforcement of unfavorable laws and regulations.
- Obtained a judgment in excess of $450,000 against an almond growing company that failed to pay for its irrigation system and claimed damages for the death of its almond orchard.
- Represented dozens of winegrape growers in recovering payments from defaulting wineries.
- Successfully defended aerial applicators throughout the Central Valley against claims of negligence and strict liability relating to the application of agricultural chemicals.
- Represented numerous growers of winegrapes, blueberries, and other crops in settling and recovering after trial millions of dollars in damages arising from pesticide drift.
- Represented large dairy processor in a major wastewater discharge dispute with the Regional Water

Board.

- Represented a group of more than 20 farmers in a stream adjudication of more than 2,000 parties involving riparian, appropriative, and groundwater issues.
- Represented a vineyard in Sonoma County in connection with its application for rights to water in streams flowing through the property.
- Advised and represented regional grocery store chain in multiple Proposition 65 claims for alleged failure to warn in conjunction with sale of products.
- Served as co-counsel in successfully defending a national food company against Proposition 65 and unfair competition claims.

Trade Groups

- Bard Valley Date Growers Association
- California Agricultural Commissioners and Sealers Association
- California Association of Wine Grape Growers
- California Association of Pest Control Advisers
- California League of Food Producers
- California Grocers Association
- CGA Educational Foundation
- California Manufacturers & Technology Association
- California Grain & Feed Association
- California Olive Association
- California Wine Education Foundation
- Frozen & Refrigerated Food Council of Northern California
- Grocer's Research and Education Foundation
- The Illuminators (an association of grocery industry suppliers)
- Illuminators Educational Foundation
- Napa Valley Grapegrowers
- National Grocers Association
- Northern California Water Association
- Pest Control Operators of California
- Stanley W. Strew Foundation
- Western Growers Association