

THE LAW

• Aaron Krauss



The Shadow Knows No Bounds

When the salmonella outbreak started in April, the Centers for Disease Control and Prevention quickly focused on tomatoes as the probable culprit. While tomato growers cried foul (or just cried), the rest of the produce industry breathed a sigh of relief. That relief was short-lived.

Two months later, the CDC announced that it might never find the source of the outbreak. Although one has to respect the agency's honesty, its admission did not help tomato farmers across entire states to sell their crops. Many of the farmers who were so commercially afflicted almost certainly had nothing to do with the outbreak.

The situation got even worse a month after that when the CDC announced that, in addition to tomatoes, it was investigating jalapeño peppers and cilantro. While misery might love company, no one

wants to be in that kind of company.

So what options are left to you when the government casts a shadow over your product, but doesn't actually reach a conclusion? To whom do you turn when bureaucrats leave you twisting on the vine (so to speak)? Even if you did put all your eggs in one basket (hey, you have to serve up the food puns when you can), and were, as in this case, an exclusive grower of tomatoes, there are two ways you can try to minimize your losses.

First, convince the government to clear you. This isn't as far-fetched as you might think, especially if you have a powerful trade association or lobbying group to back you up. Although the CDC and the Food and Drug Administration did not clear individual farms, they did create a list of "safe" tomato-producing states.

That's not a bad beginning.

More importantly, the FDA also cleared certain types of tomatoes. While there was nothing farmers could do if they hadn't planted the particular types of tomatoes the government cleared (after all, you can't make a Roma tomato magically become a grape tomato), the FDA cleared tomatoes with the vine still attached. Farmers could (and did) change their harvesting methods to leave the vine on. Even if doing so increased their costs, they considered that a small price to pay to get back into the market.

The lesson is that a savvy company can often find a way to alter its product, or its process, to remove it from the government's shadow.

The second lesson is on the importance of working with your customers. The salmonella outbreak is an extreme case, because the ultimate consumers probably wouldn't pay attention to a claim that your particular tomatoes had been rigorously tested.

Even so, many companies differentiate themselves by holding themselves to higher standards and backing them up with inspections. If the potential harm (or media exposure) is not as great, proof of individual inspections might convince customers to continue to buy your product, especially if there are no readily available substitutes.

In addition to persuading customers that your product is safe, you can work with your customers to alter the way in which they use your products. Even a product as perishable as tomatoes can be made into sauce, rather than sold fresh.

At the end of the day, no one likes living under a shadow. There are, however, ways to get out from under a shadow, and all shadows fade over time.

Indictments, on the other hand, are permanent, and are much more difficult to escape.

Perhaps the nation's tomato farmers should count their blessings.

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