

**Presented by  
The Food & Beverage  
Industry Alliance**

# **Driving Profitable Growth**

Despite All the Landmines in the  
Food & Beverage Marketplace

October 30, 2012

# Speakers



**George Salmas**

**Salmas Law Group**  
The Food Lawyers®  
20+ years experience  
advising and protecting  
food industry clients



**Larry Johnson**

**Stanton Associates LLC**  
Management Consultants  
with a focus on the food &  
beverage industry;  
Founder/President of a  
specialty foods company



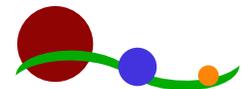
**Lynda Roth**

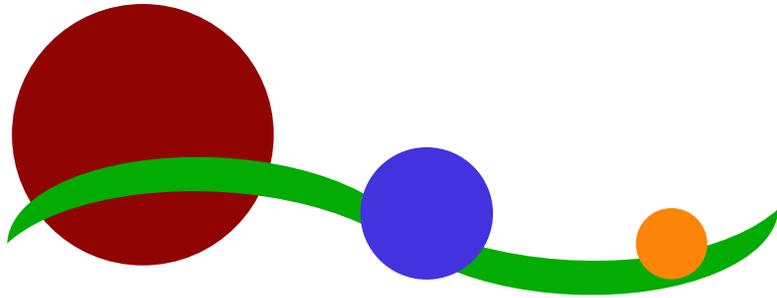
**LJR Consulting Services**  
Business and IT Consultant;  
specializes in using  
technology to increase  
profitability and productivity

**Moderator**

**Lewis Stanton**

**Stanton Associates LLC**  
Management Consultants  
with a focus on the food &  
beverage industry





## Today we will discuss

George Salmas  
Salmas Law Group  
The Food Lawyers®



How to navigate the complex regulatory environment

Larry Johnson  
Stanton Associates LLC

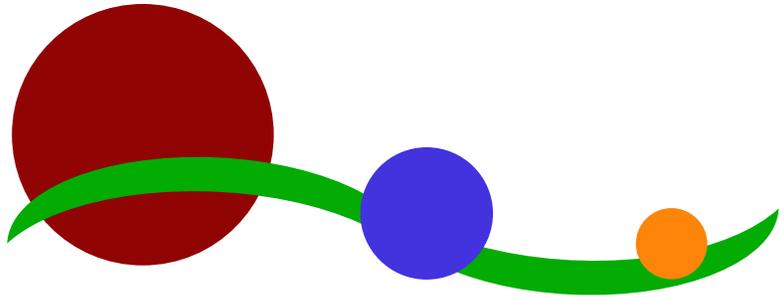


How to stand out in today's crowded marketplace

Lynda Roth  
LJR Consulting Services

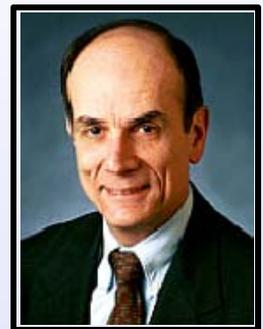


How to use Business Intelligence Systems to make superior decisions to drive growth and profitability



# How to navigate the complex regulatory environment

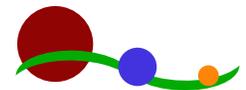
George Salmas  
Salmas Law Group  
The Food Lawyers®



# Avoiding legal landmines

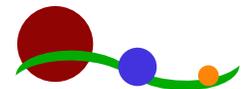


- ❖ “Natural” labeling
- ❖ Organic Labeling
- ❖ Made in USA
- ❖ Prop 65 —Primarily lead levels in food and beverages
- ❖ Prop 37 —Non-GMO
- ❖ Food Safety Modernization Act



# Natural Labeling

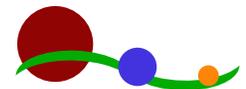
- ❖ FDA has refused to define “Natural” for labeling purposes
- ❖ “Natural” is being defined by litigation, mostly in California, on a case-by-case basis
- ❖ Results in conflicting judgments from different judges and juries
- ❖ Cases being brought by “bounty hunter” law firms with plaintiffs who are family members or friends
- ❖ Ingredient suppliers cannot be relied on to accurately say whether they are supplying you with “Natural Ingredients”
- ❖ Look at source of all ingredients, all labor and all packaging and proceed accordingly
- ❖ Potential that “Natural” may be defined as part of California Prop 37 Non-GMO ballot initiative



# Organic Labeling



- ❖ Regulated by USDA under “NOP” (National Organic Program)
- ❖ NOP regulations define all aspects of organic food production, processing, delivery and retail sale
- ❖ NOP covers *food* and *beverages* only. Does not cover things like clothing made from “organic cotton”
- ❖ To use the word “organic” on labeling, the company’s business *and* products, must be “certified organic”
- ❖ Agencies authorized by USDA can certify “organic” labeling
  - ◆ 56 domestic organic certification agencies
  - ◆ 41 foreign organic certification agencies
- ❖ A USDA Organic seal identifies products with at least 95% organic ingredients



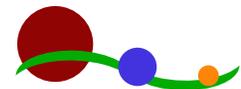
# Made in USA

- ❖ Enforced at federal level by Federal Trade Commission (“FTC”) and Food & Drug Administration (“FDA”)
- ❖ FDA policies applicable to truthful product labeling includes marking something “Made in USA” when it is not
- ❖ California Business and Professions Code §17533.7 prohibits false advertising
- ❖ California law applies to manufacturer of goods purchased by consumer in California even if manufacturer is located elsewhere and has never sold goods in California
- ❖ “Made in USA,” on label *plus* packaging from Japan or Mexico = trouble
- ❖ Potential penalties
  - ◆ Order to change labels
  - ◆ Corrective advertising
  - ◆ Offering refunds (this is unusual)
  - ◆ Paying plaintiff’s attorneys fees (can reach hundreds of thousands of dollars)
  - ◆ \$2,500 fine
- ❖ Suppliers cannot be relied on to give accurate information
- ❖ Good faith mistake is no defense
- ❖ Solution:
  - ◆ Confirm 100% of the origin of ingredients and packaging
  - ◆ Have documentation in your file and ready to use if needed



## California Business and Professions Code §17533.7

*It is unlawful for any person, firm, corporation or association to sell or offer for sale in this State any merchandise on which merchandise or on its container there appears the words “Made in U.S.A.,” “Made in America,” “U.S.A.,” or similar words when the merchandise or any article, unit, or part thereof, has been entirely or substantially made, manufactured, or produced outside of the United States.*

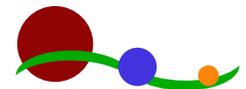


# Prop 65

- ❖ Prop 65 was a 1986 California ballot initiative
- ❖ As applied to food, deals primarily lead levels in food and beverages
- ❖ Product can be legal in 49 states and require warning in California
- ❖ Enforced by bounty hunter law firms with plaintiffs that are family or friends
- ❖ Very often, class actions
- ❖ Potential penalties
  - ◆ Penalty paid to State of California
  - ◆ Payment of plaintiff's attorneys fees (usually the biggest cost; can reach hundreds of thousands of dollars)
  - ◆ Placement of warning on products
- ❖ Do not conduct testing—anything you learn can be used against you
- ❖ Testing conducted by your attorney can be kept confidential under attorney-client privilege

*Typical warning*

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.



# Prop 37 – Non-GMO

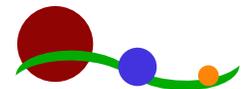


Prop 37 is a ballot initiative that will be voted on November 7, 2012. Law would be effective July 2014.

## Summary

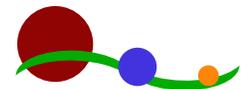
“California Right to Know Genetically Engineered Food Act” requires a warning on food sold in California that is “**or may have been**” partially produced from genetically engineered food (also called GMOs —genetically modified organisms)

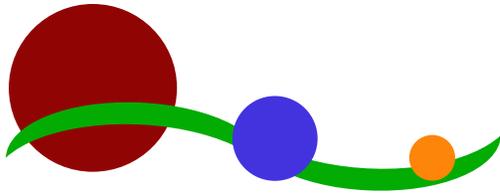
- ❖ Required warnings
  - ◆ *Genetically Engineered* (agricultural commodities)
  - ◆ *Partially Produced with Genetic Engineering* (processed foods)
  - ◆ *May be Partially Produced with Genetic Engineering* (processed foods)
- ❖ Penalty for violation
  - ◆ Refund of retail price to consumer
  - ◆ Payment of plaintiffs’ attorneys fees
- ❖ Written by same attorney who wrote Prop 65 and has made over eight million dollars in attorneys fees from Prop 65
- ❖ Measure will likely pass. We will know more about how it will work after State develops regulations to put law in effect



# Food Safety Modernization Act

- ❖ The U.S. Food and Drug Administration (FDA) Food Safety Modernization Act (FSMA) was signed into law by President Barack Obama on January 4, 2011
- ❖ Intent- To ensure the safety of the U.S. food supply by shifting the focus from responding to contamination to preventing it
- ❖ What will this act do?
  - ❖ Grant broader powers to FDA to require food recalls
  - ❖ Shift responsibility for compliance from government inspections to private sector reporting
  - ❖ Greatly increase traceability of food in supply chain through “one step up – one step back” rules
- ❖ Full extent of law is not yet known
  - ❖ Because all of implementing regulations have not been promulgated.
  - ❖ Congress has postponed doing this twice and it is not yet known exactly when regulations will go into effect

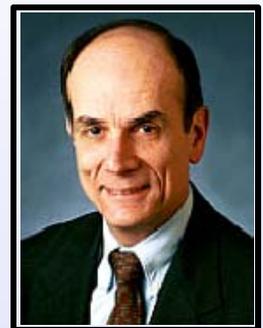


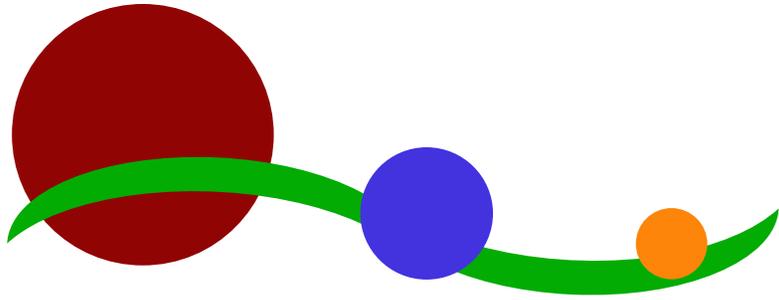


## CONCLUSION

How to navigate the complex  
regulatory environment

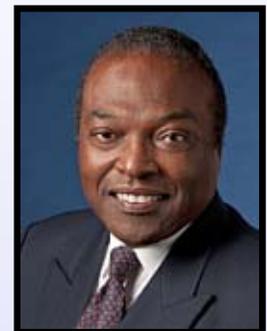
George Salmas  
Salmas Law Group  
The Food Lawyers®





# How to stand out in today's crowded marketplace

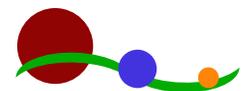
Larry Johnson  
Stanton Associates LLC



# Stand out in today's crowded marketplace



- ❖ Maximizing the Value of your Brand
- ❖ Optimizing Packaging
- ❖ Managing and Optimizing the Channel
- ❖ Communicating Effectively to Your Consumer
- ❖ Pricing

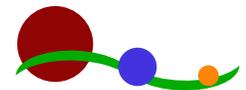




# Optimizing packaging

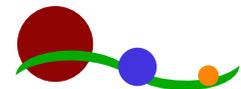


- ❖ Is your packaging serve you well?
- ❖ Does your packaging communicate the differentiating factors of the brand?
- ❖ Does your packaging support the needs of your retailers?
- ❖ Does it stand out on the shelves?



# Managing and optimizing the channel

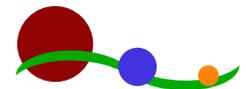
- ❖ How do you equip your distributors/retailers to maximize your sales?
- ❖ Do they have the key information on the differentiating qualities of your brand/product?
- ❖ How do you cultivate channel relationships to drive more sales?
- ❖ What training should you provide?
- ❖ What are the right financial incentives?



# Communicating effectively to your consumer



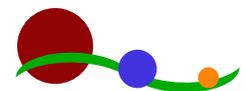
- ❖ Are you effectively communicating the value of your brand to the consumer?
- ❖ Are you effectively leveraging social media to build awareness and generate trial?
- ❖ How do you get products into the hands of those that could spread the word for you?
- ❖ What guerrilla marketing tactics could you be using?

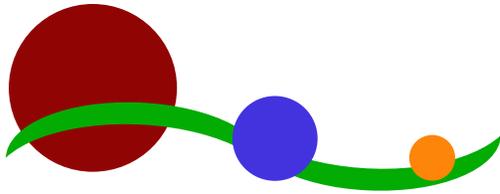


# Pricing



- ❖ Are there qualities of your product that allow you to compete on factors other than price?
- ❖ Can you articulate the value-benefit to your retailers/distributors?
- ❖ Do you regularly assess the competitors' pricing?

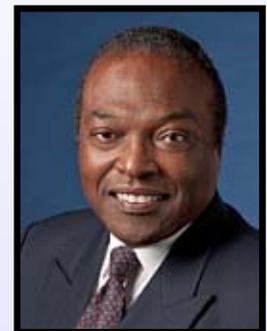


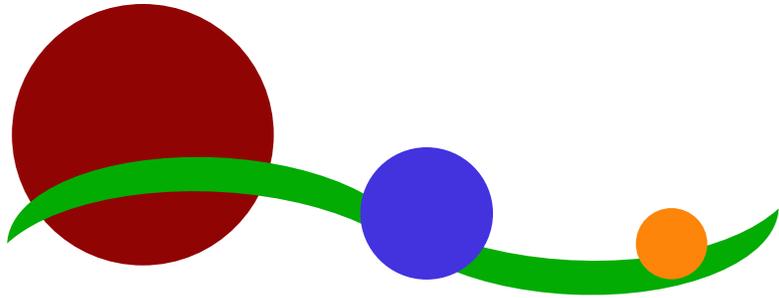


## CONCLUSION

How to stand out in today's  
crowded marketplace

Larry Johnson  
Stanton Associates LLC





# How to use Business Intelligence systems to make superior decisions to drive growth and profitability

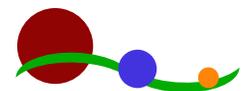
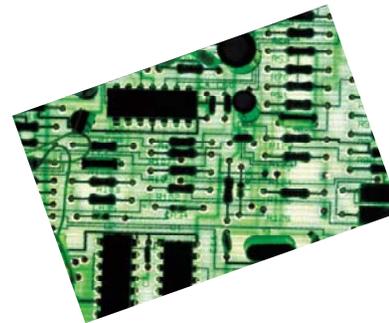
Lynda Roth  
LJR Consulting Services



# Use Business Intelligence systems to drive growth and profitability



- ❖ Business Intelligence benefits
- ❖ Business Intelligence environment
- ❖ Business Intelligence systems and you



# Business Intelligence benefits

## ❖ The Campbell Soup story

- Project Harmony resulted in shareholder returns of 16.2% compared to industry average of 7.7%
- Key KPI – Total Delivered Cost



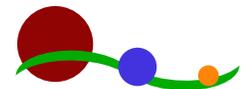
## ❖ Other Business Intelligence examples

- 7-11 Japan created a total information system to connect stores, headquarters and supplier sites to manage inventory and reduce out of stock conditions
- 7-11 Japan Total Information System uses external weather data to predict food products preferred by customers



## ❖ Goal of Business Intelligence

- Manage & process transactions more efficiently
- Make better informed decisions
- Identify driving customer trends faster which ultimately increases revenue, profits and shareholder value



# Business Intelligence environment

## ❖ The current common practice for Business Intelligence

- Excel and Access databases
- Data manually loaded from systems
- Data generally out of date

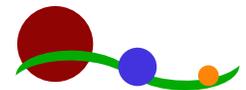


## ❖ The role of core ERP & other operational systems

- Used as source for BI system
- Provide continuity & accuracy of data

## ❖ The role of business process

- Provide timely entry of data
- Ensure accuracy of data



# Business Intelligence systems and you

## ❖ How to be successful with Business Intelligence systems

- Integrated business applications
- Business processes that load data to systems at source
- Engage a professional in BI systems



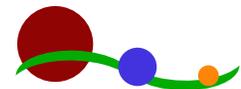
## ❖ What are the different options with Business Intelligence systems

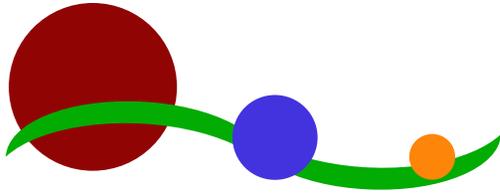
- Tier 1 systems that are designed for large companies with larger technical teams
- BI modules included with ERP systems
- Mid-market systems such as Microstrategy
- Tools such as Microsoft applications

## ❖ How to get started

- Identify critical KPI (key performance indicators)
- Define business requirements – delivery platform, delivery format, calculations for KPI
- Identify & evaluate systems options to meet requirements
- Prototype solution

- 25 ➤ Engage a professional in BI systems



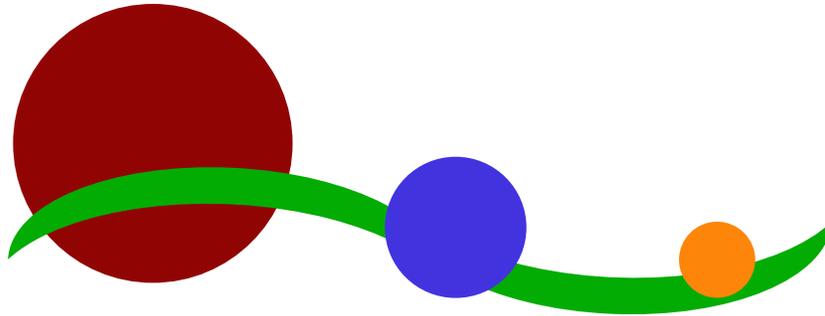


## CONCLUSION

How to use Business Intelligence systems to make superior decisions to drive growth and profitability

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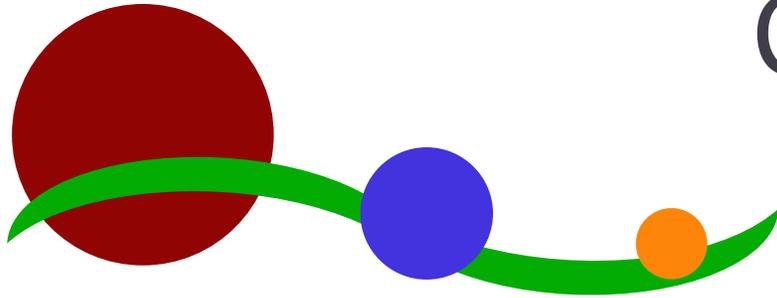


## **The Food & Beverage Industry Alliance**

**Offer to webinar participants:**

Each Alliance member would be pleased to offer a complimentary one-hour consultation.

# Contact Information



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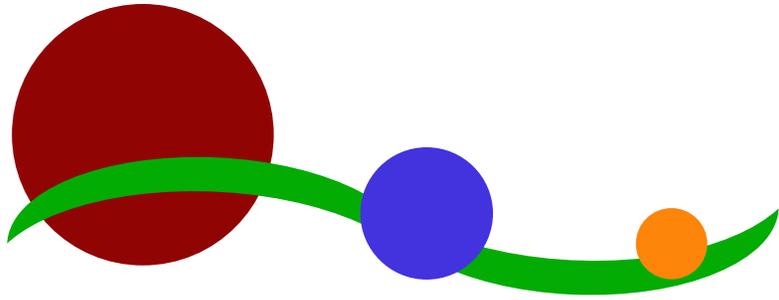
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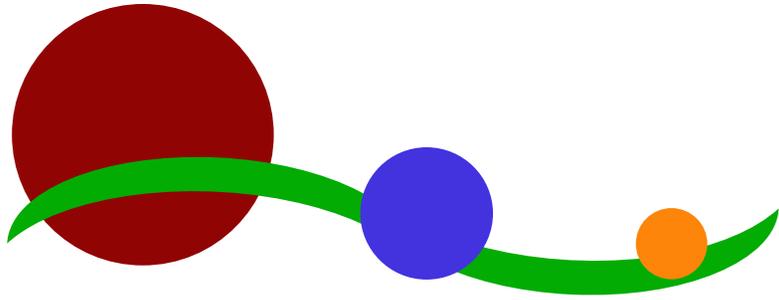
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# Q & A



Thank you  
for joining us!