

Food & Beverage

LITIGATION UPDATE

Issue 119 • March 23, 2005

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LITIGATION UPDATE

Legislation, Regulations and Standards U.S. Congress

[1] **Bipartisan Senate Legislation Targets Effects of Electronic Media on Children's Diets and Consumption Habits**

A bipartisan proposal ([S. 579](#)) reintroduced by Senators Joe Lieberman (D-Ct.), Sam Brownback (R-Kan.), Hillary Rodham Clinton (D-N.Y.), and Rick Santorum (R-Pa.) would (i) authorize funding for establishment of a program within the National Institute of Child Health and Human Development to study the role and impact of electronic media in the development of children and (ii) provide Congress with a report describing the results of such research. Among other things, the Children and Media Research Advancement (CAMRA) Act would require the director of the institute to collaborate with the National Academy of Science in convening an independent panel of experts to establish research priorities regarding the influence of TV, movies, video games, and the Internet on children's cognitive, physical and socio-behavioral development, including any effects on diet and consumption habits. A specific pilot project called for in the proposed bill would evaluate the role of media exposure on "the development of childhood obesity, particularly as a function

of media advertising and sedentary lifestyles that may co-occur with heavy media diets." The legislation has been referred to the Committee on Health, Education, Labor, and Pensions. *See Press Release of Senator Hillary Rodham Clinton*, March 9, 2005.

[2] **Hawaiian Lawmaker Introduces Legislation to Enhance Food and Agriculture Security**

Senator Daniel Akaka (D-Hawaii) recently introduced two bills aimed at improving federal, state and local governments' efforts to respond to agroterrorist attacks on the U.S. food supply. "The nation's agriculture industry is crucial to our prosperity, yet it does not receive the protection it needs," Akaka was quote as saying. "Our food supply could be accidentally or intentionally contaminated, damaging our economy, and most importantly, costing lives." The Homeland Security Food and Agriculture Act ([S. 572](#)) would assign additional biosecurity responsibilities to the Department of Homeland Security (DHS) by directing the agency to help state and local officials develop agricultural emergency response plans. It would also require DHS to establish a task force charged with identifying best practices for implementing biosecurity programs. The Agricultural Security Assistance Act ([S. 573](#)) would direct the agriculture department to evaluate the benefits of developing ready-to-use vaccines against animal diseases and to promulgate regulations requiring USDA-certified veterinarians to be able to recognize foreign animal diseases. The Act would also fund



grants to agricultural producers to implement various measures for ensuring biosecurity. Both bills have been referred to the Committee on Homeland Security and Governmental Affairs.

Food and Drug Administration (FDA)

[3] FDA Seeks Nominations for Nonvoting Industry Member of Food Advisory Committee

FDA is [soliciting nominations](#) for a nonvoting industry representative to serve on the Center for Food Safety and Applied Nutrition's Food Advisory Committee. Responsibilities of committee members include making recommendations related to such topics as (i) broad scientific and technical food issues, (ii) the safety of new foods, (iii) food labeling, (iv) nutrient needs and nutritional adequacy, and (v) safe exposure limits for food contaminants. Nomination materials must be submitted to FDA by April 21, 2005. *See Federal Register*, March 22, 2005.

U.S. Department of Agriculture (USDA)

[4] USDA Allocates Additional Funds for Domestic and International BSE Research

Agriculture Secretary Mike Johanns last Friday announced that nearly \$2 million in funding has been redirected to enhance bovine spongiform encephalopathy (BSE) research efforts. The additional funds will be used for construction of a biocontainment facility at the National Animal Disease Center in Ames, Iowa, and joint projects with (i) Great Britain's Veterinary Laboratory Agency to study the biology of the BSE agent, (ii) Italy's BSE Reference Laboratory to evaluate diagnostic tools for detecting atypical BSE cases and (iii) Spain's

University of Santiago de Compostela to compare North American and European strains of BSE. *See USDA Press Release*, March 18, 2005.

Litigation

Beef Imports

[5] USDA Asks Ninth Circuit to Overturn Federal Court's Injunction Delaying Resumption of Canadian Beef Imports

Acting on behalf of USDA, Department of Justice lawyers last week [petitioned](#) the Ninth Circuit Court of Appeals to overturn a March 2, 2005, federal court order that granted a preliminary injunction delaying USDA's plan to lift a ban on certain imports of Canadian cattle and beef products. *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Department of Agriculture, et al.*, No. CV-05-06-BLG-RFC preliminary injunction granted (D. Mont., Billings Div. 3/2/05). The Ninth Circuit is currently reviewing an emergency appeal from the National Meat Association, a trade group seeking intervenor status in the R-CALF case and the immediate reopening of the Canadian border to imports of live cattle younger than age 30 months and beef products derived from cattle of the same age. *See USDA News Release*, March 17, 2005.

Other Developments

[6] Obesity Litigation Advocate Warns Medical Students of Potential Liability for Not Addressing Weight Issues with Patients

George Washington University Law Professor John Banzhaf, a longtime tobacco-control proponent and untiring advocate of obesity-related litigation,



reportedly cautioned attendees of the American Medical Student Association's annual convention last weekend that physicians who fail to appropriately treat obese patients or warn them of risks associated with being overweight could likely face medical-malpractice lawsuits. Banzhaf apparently told the medical students that a U.S. Preventive Services Task Force [report](#) on screening for obesity in adults provides trial lawyers with a "stronger base" for such cases. "This report very much spells out the standards," Banzhaf said. "Obesity is a medical condition and proper interventions by doctors can be effective." See *The Washington Times*, March 18, 2005.

[7] Advocacy Group's Recent Conference Takes Aim at Marketing That Allegedly Undermines Children's Well-Being

The Campaign for a Commercial-Free Childhood (CCFC), a Boston-based coalition whose mission is countering "the harmful effects of advertising on children," recently sponsored a three-day conference in Washington, D.C., to discuss ways that marketing purportedly undermines children's health, values and behavior.

Describing buzz marketing as the "newest form of interactive advertising with the buzz agent [often a teenager] serving as a type of 'live' and in-person endorsement and advertisement," Roshan Ahuja, a Xavier University professor of marketing, charged that buzz marketing is deceitful because teens are not required to disclose that they are being paid to promote such products as milk, cosmetics and soft drinks.

The Center for Science in the Public Interest's Margo Wootan told conference participants that "virtually all of the foods marketed to children are

high in calories, salt, saturated fat, and refined sugars and low in nutrients." Parents, according to Wootan, "just can't compete with food companies." Among other things, she urged parents, health professionals, and elected officials to "call on food companies, restaurants, supermarkets, TV stations, and children's magazines to market food responsibly to children."

CCFC Program Manager Josh Golin criticized the Children's Advertising Review Unit of the Council of Better Business Bureaus for being understaffed, failing to monitor in-school marketing or product placement activities, and having no enforcement powers. He encouraged conference attendees to urge financial services provider TIAA-CREF to pressure Coca-Cola to stop marketing in schools and reduce or discontinue product placements. Summaries of many of the presentations are available on the [CCFC Web site](#).

Scientific/Technical Items

Obesity

[8] Rising Rates of Obesity Portend Declining Life Expectancies, Say Public Health Experts

"Looking out the window, we see a threatening storm – obesity – that will, if unchecked, have a negative effect on life expectancy. Despite widespread knowledge about how to reduce the severity of the problem, observed trends in obesity continue to worsen. These trends threaten to diminish the health and life expectancy of current and future generations," conclude 10 public health experts in a study published in last week's edition of *The New England Journal of Medicine*. (S.J. Olshansky, "A



Potential Decline in Life Expectancy in the United States in the 21st Century,” *New England Journal of Medicine* 352(11): 1138-1145, March 17, 2005).

Based on population-based data of obesity and obesity-associated diseases such as type 2 diabetes, heart disease and cancer, the authors opine that obesity-related diseases could have the net effect of shortening the average life expectancy of adults (78 years) by four to nine months. They assert, however, that obesity and attendant complications could ultimately shorten the lives of today’s children by some two to five years. “Obesity is such that this generation of children could be the first basically in the history of the United States to live less healthful and shorter lives than their parents,” study co-author David Ludwig, director of the obesity program at

Children’s Hospital in Boston, was reported as saying. “It’s like what happens if suddenly a massive number of children started chain smoking. At first you wouldn’t see much public health impact, but years later it would translate into emphysema, heart disease and cancer,” Ludwig said. A spokesperson for Center for Consumer Freedom, “a nonprofit coalition of restaurants, food companies, and consumers working together to promote personal responsibility and protect consumer choices,” characterized the study as “just half a step removed from science fiction. It uses discredited methodology, and it makes dire warnings that are not supported by its own data.” See *USA Today* and *The New York Times*, March 17, 2005.



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Food & Beverage Litigation Update is distributed by Mark Cowing and Mary Boyd in the Kansas City office of SHB. If you have questions about the Update or would like to receive back-up materials, please contact us by e-mail at mcowing@shb.com or mboyd@shb.com. You can also reach us at 816-474-6550. We welcome any leads on new developments in this emerging area of litigation.

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