

Food & Beverage

LITIGATION UPDATE

Issue 135 • July 27, 2005

Table of Contents

Legislation, Regulations and Standards

- [1] **USDA Announces Collaborative Effort to Protect U.S. Food Supply from Agroterrorism**1
- [2] **Federal Government Should Better Coordinate Efforts to Confront Animal-Borne Diseases and Increase Resources for Veterinary Research, Say Two NRC Reports**1
- [3] **Children's Advocates Urge Congress to Scrutinize Cellular Phone Marketing to Children**2
- [4] **California Governor Urges Passage of School Nutrition Legislation**2

Other Developments

- [5] **PHAI to Host Third Annual Conference on Legal Approaches to the Obesity Epidemic**3
- [6] **Alcohol Product Ads Outnumber Those Promoting Responsible Drinking, Says New CAMY Study**3

Scientific/Technical Items

- [7] **Saturated Fat and Fruit Intake Linked to Incidence of Fatal Heart Disease in Poland**4

Shook,
Hardy &
Bacon^{LLP}®

www.shb.com

Food & Beverage

LITIGATION UPDATE

Legislation, Regulations and Standards

U.S. Department of Agriculture (USDA)

[1] USDA Announces Collaborative Effort to Protect U.S. Food Supply from Agroterrorism

Agriculture Secretary Mike Johanns yesterday announced a new program aimed at coordinating federal, state and industry efforts to safeguard the nation's food supply from the threat of agroterrorism. Under the Strategic Partnership Program Agroterrorism Initiative, teams of officials from the USDA, Food and Drug Administration, Department of Homeland Security, and FBI will visit all 50 states to meet with state and industry representatives to identify particular vulnerabilities in each state's agricultural sector. *See USDA Press Release*, July 26, 2005.

National Research Council

[2] Federal Government Should Better Coordinate Efforts to Confront Animal-Borne Diseases and Increase Resources for Veterinary Research, Say Two NRC Reports

The federal government should establish a "high-level, accountable" mechanism to coordinate federal, state and local agencies' efforts to deal with

the increasing number of emerging animal-borne diseases, says a [report](#) issued last week by the National Academies' National Research Council (NRC). "In 2003, we woke up one morning and found out we had monkey-pox, West Nile virus and SARS (severe acute respiratory syndrome) in the United States, three diseases which had never existed here before," said Michigan State University's Lonnie King, chair of the committee that authored the report titled *Animal Health at the Crossroads: Preventing, Detecting and Diagnosing Animal Diseases*. "Three-quarters of the new human emerging diseases in the past two to three decades have been animal-borne," King said. Other recommendations in the report include (i) agriculture department and homeland security support for new technologies to quickly prevent and detect animal diseases and zoonoses; (ii) federal funding to upgrade animal disease research facilities; and (iii) agreements with other countries and international organizations to create global systems to prevent, detect and diagnose known and emerging disease threats.

A second NRC [report](#) issued last week concentrates on ways to increase the number of veterinary researchers and improve their training and facilities. Claiming that support for veterinary research has failed to keep up with the growing need for knowledge in biomedicine and animal health, the report calls for a federal debt-repayment initiative, combined DVM/PhD programs to attract veterinary students interested in research, and integrated



veterinary and human health studies funded by the National Institutes of Health. See *NAS Press Release* and *USA Today*, July 18, 2005.

U.S. Congress

[3] Children's Advocates Urge Congress to Scrutinize Cellular Phone Marketing to Children

A coalition of privacy, consumer and children's health advocates yesterday asked Congress to investigate the marketing of mobile phones to children. "Does anyone really believe that kids today lack sufficient distractions from their school work, that there are insufficient disruptions in the home, and that child predators and advertisers lack sufficient means of access to kids?" some 30 signatories charged in a letter to members of the Senate and House commerce committees. Impetus for the letter-writing campaign reportedly came from recent announcements by Enfora, Wherify, the Walt Disney Internet Group, and Sprint of the companies' plans to offer wireless service to children as young as age 6.

According to the coalition's letter, children "don't need more advertising through their mobile phones, whether it is telemarketing, text message marketing, adver-games, or any other type of commercial message," citing a July 11, 2005, article in *Advertising Age* that reported companies such as McDonald's, Masterfoods, Coca-Cola, and Kraft Foods "are fashioning promotions that encompass everything from mobile games to ring-tone give-aways and text-in trivia contests and sweepstakes." The coalition's other concerns include the possibility that cell phones could (i) make children vulnerable to sexual predators, (ii) cause "disrup-

tions and distractions in church and school," and (iii) cause benign tumors of the ear and brain. See *Commercial Alert News Release*, July 26, 2005.

State/Local Initiatives

[4] California Governor Urges Passage of School Nutrition Legislation

California Governor Arnold Schwarzenegger (R) this week called on state legislators to support legislative proposals aimed at making healthier foods and beverages available in public schools. "California's children are facing an obesity epidemic," Schwarzenegger said during a Monday press conference in Sacramento. "We need to get parents, teachers, children, schools, and our state on the same page to meet this challenge head on."

The governor announced that he is partnering with Senator Martha Escutia (D-Montebello) to promote passage of two bills that would establish nutritional standards for all K-12 public schools (S.B. 12) and restrict the sale of soft drinks in high schools to 30 minutes before and after the school day (S.B. 965). Additional legislation that Schwarzenegger backs would add more fruits and vegetables to state-funded school meal programs and establish more rigorous physical education requirements for students. The governor and First Lady Maria Shriver are reportedly inviting various stakeholders to a September 2005 summit for discussions of other ways to combat the state's purported obesity crisis. See *Press Release of Governor Arnold Schwarzenegger*, July 25, 2005; *Associated Press*, July 26, 2005.



Other Developments

[5] PHAI to Host Third Annual Conference on Legal Approaches to the Obesity Epidemic

The Public Health Advocacy Institute (PHAI) will host its [third annual conference](#) on legal approaches to the obesity epidemic on September 23-25, 2005, at Northeastern University School of Law in Boston. Preliminary information about the event indicates that its overall theme will target obesity and children, with specific sessions addressing potential litigation, marketing to kids, school vending contracts, legislative approaches, and “the tension between public health and industry goals.”

Confirmed speakers include Howard Rubenstein, legal counsel for a San Diego woman who sued three cereal manufacturers in March 2005 alleging the companies’ reduced-sugar cereals mislead consumers into believing the products are healthier than their full-sugar counterparts; Steve Gardner, director of litigation for the Center for Science in the Public Interest; and representatives of the Federal Trade Commission and Food and Drug Administration.

PHAI was established in 2003 with a core grant from the Washington, D.C.-based Bauman Foundation, which has provided significant grants since 1994 to such entities as the Institute for Agriculture and Trade Policy, Center for Science in the Public Interest and the National Resources Defense Council. PHAI’s board of directors includes long-time antitobacco attorney Richard Daynard, who created and chaired the Tobacco Products Liability Project and claims to be responsible for “successful antismoking litigation and legislation.” Other PHAI projects (i) promote population-based

legal analysis, (ii) involve development of a motor vehicle hazard archive, (iii) encourage openness and transparency in the practice of law, and (iv) monitor challenges to federal regulations in which industry utilizes procedures provided under the Data Quality Act.

[6] Alcohol Product Ads Outnumber Those Promoting Responsible Drinking, Says New CAMY Study

Television ads for alcohol products outnumbered “responsibility” advertising – those ads unambiguously warning against drunk driving, encouraging use of designated drivers and promoting responsible consumption by those of legal drinking age – by nearly 32 to 1 between 2001 and 2003, according to a [study](#) from Georgetown University’s Center on Alcohol Marketing and Youth (CAMY). “The alcohol industry’s warnings to our kids not to drink until they are 21 are buried under an avalanche of alcohol ads that glamorize drinking,” CAMY’s executive director was quoted as saying. CAMY asserts that only four alcohol manufacturers placed responsibility ads on television during 2001-2003, while 31 companies placed alcohol product ads in all three years. The organization says the report’s findings emphasize the need for an independently funded media campaign to reduce and prevent drinking by youth. *See CAMY News Release*, July 20, 2005.



Scientific/Technical Items

Cardiovascular Disease

[7] Saturated Fat and Fruit Intake Linked to Incidence of Fatal Heart Disease in Poland

Mortality due to coronary heart disease fell by nearly 40 percent during 1990-2002 in middle-aged Polish men and women. (Witold Zatonski and Walter Willett, "Changes in Dietary Fat and Declining Coronary Heart Disease in Poland: Population Based Study," *British Medical Journal* 331: 187-188, July 23, 2005). The authors attribute the decline in mortality in part to changes in economic and agricultural policies that allowed greater access to imported fruits and foods low in saturated fats.

Authors of an accompanying commentary, however, suggest that Poland's health gains could be threatened by its pending implementation of the European Union's Common Agricultural Policy. The commentators claim the policy "places large-scale agricultural production and economics above health" by providing "subsidies for production and consumption of animal fats, tobacco and alcohol, and insufficient supply of fruits and vegetables." (Karen Lock and Martin McKee, "Commentary: Will Europe's Agricultural Policy Damage Progress on Cardiovascular Disease?" *British Medical Journal*, July 23, 2005: 188-189).



Food & Beverage

LITIGATION UPDATE

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.

Shook,
Hardy &
Bacon^{LLP}

Geneva, Switzerland

Houston, Texas

Kansas City, Missouri

London, United Kingdom

Miami, Florida

Orange County, California

Overland Park, Kansas

San Francisco, California

Tampa, Florida

Washington, D.C.

