

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### Federal Trade Commission (FTC)

##### [1] **FTC and HHS Issue Report on Food Marketing and Childhood Obesity**

Food companies should develop more nutritious products and “review and revise” their marketing practices to children, according to a [joint report](#) issued last week by the Federal Trade Commission (FTC) and the Department of Health and Human Services (HHS). The report summarizes findings of a summer 2005 workshop on the food industry’s and the media’s alleged role in escalating rates of childhood obesity and contains specific recommendations for action by food manufacturers, the media and entertainment industry, and the Children’s Advertising Review Unit (CARU) of the Council of Better Business Bureaus. “Responsible, industry-generated action and effective self-regulation are critical to addressing the national problem of childhood obesity,” FTC Chair Deborah Platt Majorus said. “The FTC plans to monitor industry efforts closely, and we expect to see real improvements.”

Recommendations for the food industry include: (i) helping consumers cut back on portion sizes by creating more single-serving packages; (ii) identifying lower-calorie products by use of special labeling with icons and seals; (iii) adopting minimal nutrition

standards for products marketed to children; and (iv) promoting better nutrition and fitness to particular ethnic populations at higher risk for childhood obesity.

The federal agencies recommend that media and entertainment companies “review and revise” licensing agreements for TV and movie characters to encourage consumption of healthier foods and that CARU expand its advisory board by including individuals with expertise in areas such as developmental psychology and children’s health. *See FTC News Release, May 2, 2006.*

#### U.S. Congress

##### [2] **Ohio Lawmaker Introduces Genetically Engineered Food Legislation**

Representative Dennis Kucinich (D-Ohio) last week introduced six bills related to the regulation of genetically engineered (GE) plants, animals, bacteria, and other organisms. “This is a basic consumer rights and consumer safety issue,” Kucinich said. “It is well past time that Congress change current food safety and environmental laws. These bills will provide consumers with the protections they need, enhance enforcement and provide assistance to developing nations.”

The GE Crop and Animal Farmer Protection Act (H.R. 5266) would provide rights and protections for farmers and ranchers in their dealings with agribusiness and biotechnology companies. Among



other things, the legislation would (i) allow farmers to seek compensation for failed GE crops, (ii) require GE seed manufacturers to provide clear instructions to prevent cross-pollination, and (iii) direct the U.S. Environmental Protection Agency to evaluate the issue of Bt-resistant pests. Biotech companies are similarly disparaged in the findings of the Genetically Engineered Organism Liability Act ([H.R. 5271](#)), which would assign all liability for negative impacts of GE organisms to the companies.

Citing such risks as liability for contamination, food recalls and economic losses in export markets, the Genetically Engineered Pharmaceutical and Industrial Crop Safety Act ([H.R. 5267](#)) would impose a permanent moratorium on pharmaceutical and industrial crops grown in open-air environments. The proposal would also require the agriculture department to track the growing, handling, transportation, and disposal of all such crops and their byproducts to avoid contamination.

The Genetically Engineered Food Safety Act ([H.R. 5268](#)) asserts that the Food and Drug Administration (FDA) has failed to ensure the safety of GE foods and would therefore mandate agency screening of GE food ingredients through the current food additive process. Mandatory labeling of foods that contain or are produced with GE material is the focus of the Genetically Engineered Food Right to Know Act ([H.R. 5269](#)), while the Real Solutions to World Hunger Act ([H.R. 5267](#)) would limit GE exports to those already approved in the United States and the importing nation and create a research fund subsidized by a “small tax on biotechnology company profits.” See *Press Release of Congressman Dennis Kucinich*, May 1, 2006.

## European Food Safety Authority (EFSA)

### [3] EFSA Refutes Italian Study’s Conclusion Linking Aspartame to Increased Risk of Certain Cancers

A panel of European Food Safety Authority scientists has reconfirmed the safety of aspartame by refuting the results of a 2005 Italian study that claimed consumption of the artificial sweetener was associated with an increased incidence of lymphoma and leukemia in female rats. M. Soffriti, et al., “Aspartame Induces Lymphomas and Leukemias in Rats,” *European Journal of Oncology* 10(2): 2005.

The EFSA panel concluded that the “slight increase” in cancer incidence among the aspartame-treated rats was most likely due to many of the animals’ pre-existing chronic respiratory disease and was unrelated to the doses of aspartame they were fed. The group also decided there was no reason to revise the current Acceptable Daily Intake for aspartame of 40 mg/kg body weight. “If you pick up little packets of it [e.g., NutraSweet], you would have to take 80 of those packets into your coffee in one day in order to exceed this level,” an EFSA toxicologist was quoted as saying.

EFSA’s conclusion about aspartame’s safety supports the results of a recent American study that found no link between aspartame consumption and an increased incidence of various cancers among 567,000 men and women ages 50 to 69. U. Lim, et al., “Prospective Study of Aspartame-Containing Beverages and Risk of Hematopoietic and Brain Cancers,” Presentation at the 97th AACR Annual Meeting, April 1-5, 2006, Washington, D.C.



Morando Soffritti, lead author of the disputed study conducted on behalf of the European Ramazzini Foundation, has attacked the U.S. findings by maintaining that animal studies are more accurate in evaluating aspartame because of the difficulty in finding a control group of people with no exposure to the sweetener. "How do you do a study on humans when aspartame is used in 6,000 products? How do you find a population that has never used it?" he asked. The Food and Drug Administration reportedly expects to finish its review of Soffritti's data "as soon as possible." See *EFSA Press Release*, May 5, 2006; *Associated Press*, May 5 and 8, 2006.

## Other Developments

### [4] Soft Drink Manufacturers Agree to Remove High-Calorie Beverages from Schools

The Coca-Cola Co., PepsiCo, Inc. and Cadbury Schweppes joined with the Alliance for a Healthier Generation last week in announcing an agreement under which the companies will stop selling non-diet beverages in schools and limit the size and caloric content of others by the beginning of the 2009-2010 school year. Schools will have to renegotiate pouring rights contracts with bottlers to implement the voluntary policy.

Under the new guidelines, vended beverages in elementary schools will be limited to bottled water, 8-ounce servings of low-fat and nonfat milk, and 100 percent fruit juice; middle schools will offer those same beverages in 10-ounce servings; and high schools will offer 12-ounce servings of those beverages in addition to diet soft drinks and sports drinks.

According to *The Wall Street Journal*, the new agreement has resulted in public health advocates

dropping their threatened class action lawsuit over the presence of soft drinks in Massachusetts' schools. Other industry critics are reportedly "concerned" over the continued sale of sports drinks in high schools. The Boston-based Public Health Advocacy Institute, for example, contends that while sports drinks "have a role for marathon runners and others engaged in sustained strenuous sports, for most students they are just another form of sugar water." Commercial Alert has criticized the agreement for failing to address in-school advertising. See *Clinton Foundation, Commercial Alert and Public Health Advocacy Institute Press Releases*, May 3, 2006; *The New York Times* and *The Wall Street Journal*, May 4, 2006.

## Scientific/Technical Items

### Cardiovascular Disease

#### [5] Regular Consumption of Alcohol Linked to Reduced Risk of Heart Disease

Danish researchers reported last week that individuals who regularly consume alcohol are at lower risk of coronary heart disease than nondrinkers. (J. Tolstrup, et al., "Prospective Study of Alcohol Drinking Patterns and Coronary Heart Disease in Woman and Men," *British Medical Journal* (on-line publication): 1-5, May 3, 2006).

The researchers followed more than 50,000 middle-aged Danish women and men over a period of six years and compared alcohol drinking patterns with risks of coronary heart disease. They found that women who consumed alcohol at least once a week had a lower risk of coronary heart disease than women who drank less frequently. Little difference in risk was found for drinking frequency and coronary



heart disease in women. For men, the lowest risk of coronary heart disease was observed among those who drank daily compared with men who drank less frequently. The researchers warned, however, that the reduced risk of coronary heart disease among drinkers “must be considered along with potential adverse effects of a high intake, such as high blood pressure and increased triglyceride levels.”

## Childhood Obesity

### [6] “Puppy” Fat in Children Has Lifelong Consequences, Says British Study

Children who are overweight or obese by age 11 tend to remain that way through their teenage years, according to a study conducted in the United Kingdom. J. Wardle, et al., “Development of Adiposity in Adolescence: Five Year Longitudinal Study of an Ethnically and Socioeconomically Diverse Sample of Young People in Britain,” *British Medical Journal* (on-line publication): 1-6, May 5, 2006.

The study followed 5,000 children from age 11 through age 16, and found that 25 percent were overweight or obese by age 11; the percentage stayed the same when the children were followed-up at age 16. Few children became overweight or obese between ages 11 and 16, and few of the children who were obese or overweight at 11

reduced to a healthy weight by 16. “We have to abandon the idea that so-called puppy fat doesn’t matter and that it will just disappear when a child grows up,” said lead author Jane Wardle. “The evidence shows that children who are overweight or obese when they start secondary school at 11 are likely to leave education in the same condition. This means it is vital we work a preventing obesity in early childhood,” she added. See *BBC News*, May 5, 2006.



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