

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### Federal Trade Commission (FTC)

##### [1] Attorneys General Urge FTC to Impose Stricter Limits on Alcohol Advertising

*Advertising Age* reported this week that 20 state attorneys general have petitioned the FTC to impose a mandatory standard requiring alcohol manufacturers to limit advertising to media in which only 15 percent of the audience includes individuals ages 12 to 20. "We believe the current standard overexposes youth to alcohol advertising," Maine Attorney General G. Steven Rowe said. "Why do kids drink? Part of the reason is marketing practices of the alcohol industry," he added. "We know there is a causal connection between marketing and young people drinking." Under a voluntary code, industry currently limits ads to media in which no more than 30 percent of the audience includes those younger than age 21. A representative of the Association of National Advertisers was quoted as saying the proposed standard is likely unconstitutional. See *Advertising Age*, May 16, 2006.

### National Nanotechnology Coordination Office (NNCO)

##### [2] NNCO Workshop to Explore Public's Engagement in Nanotechnology

Determining methods for public engagement in nanotechnology-related issues and decisions will be the focus of a May 30-31, 2006, [meeting](#) in Arlington, Virginia. Organized by a subcommittee of the Committee on Technology, National Science and Technology Council, the two-day event will feature presentations by risk communications experts and science educators. See *Federal Register*, May 3, 2006.

### Litigation

#### Warnings

##### [3] California State Court Rules Against Prop. 65 Warnings for Tuna

After a two-month trial, San Francisco Superior Court Judge Robert Dondero late last week ruled that California cannot require the manufacturers of Chicken of the Sea, Star Kist and Bumble Bee tuna to warn consumers that their products contain mercury and mercury compounds. California Attorney General Bill Lockyer filed the lawsuit in June 2004 under the state antitoxics law,



Proposition 65, which requires businesses to warn the public about exposure to chemicals “known to the state to cause cancer or reproductive toxicity.” The law does not apply to chemicals that occur naturally in food.

Press reports indicate the court ruled that (i) Prop. 65 is preempted by a March 2004 Food and Drug Administration joint consumer advisory on methylmercury in fish and shellfish; (ii) low levels of mercury contained in tuna products do not merit warnings; and (iii) tuna is exempt from Prop. 65 requirements because mercury in fish is naturally occurring.

“We, with respect to the court, believe the ruling is wrong on the law, wrong on the science and bad for the women and children of California,” a spokesperson for the attorney general was quoted as saying. “The scientific community considers the argument put forth by the defendants pure speculation and without foundation.” The state is currently evaluating whether to appeal the ruling. *See Associated Press*, May 12, 2006; *The Los Angeles Times*, May 13, 2006.

## Deceptive Trade Practices

### [4] CSPI Threatens Cadbury Schweppes with Lawsuit over 7UP Labeling

The Center for Science in the Public Interest (CSPI) has accused soft drink manufacturer Cadbury Schweppes of engaging “in acts and practices that are both unfair and deceptive with respect to the

marketing and sale of 7UP as a ‘natural’ product” because the beverage contains high-fructose corn syrup. Unless Cadbury-Schweppes drops the “natural” claim within 30 days of CSPI’s [legal notice](#), the public health watchdog intends to seek an injunction that the company be prevented from describing any products sweetened with high-fructose corn syrup as “natural,” restitution, corrective advertising, and attorney’s fees.

## Other Developments

### [5] Upcoming CDC Conference to Address Food-Related Topics

Public health policy makers, lawyers and practitioners will convene in Atlanta, Georgia, on June 12-14, 2006, for “The Public’s Health and the Law in the 21st Century.” Co-sponsored by the Centers for Disease Control and Prevention (CDC) and the American Society of Law, Medicine & Ethics, the [conference](#) will include sessions titled (i) “Land Use and Access to Tobacco, Alcohol and Fast Food,” (ii) “Public Health Legal Preparedness for Pandemic Influenza,” (iii) “Law and Policy as Tools for Healthy Schools,” and (iv) “Preventing Obesity and Chronic Disease: Education vs. Regulation vs. Litigation.” Speakers will include CDC Director Julie Gerberding, New York City Mayor Michael Bloomberg, attorneys general, and various public health officials.



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Food & Beverage Litigation Update is distributed by  
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