

# Food & Beverage

## LITIGATION UPDATE

Issue 177 • July 20, 2006

### Table of Contents

#### Legislation, Regulations and Standards

- [1] CSPI Calls for NASCAR Sponsorship Investigation . . . .1
- [2] Stockgrowers Seek Government Action on Cattle  
Import Initiatives . . . . .1
- [3] Chicago City Council Ponders *Trans* Fat Ban . . . . .2

#### Litigation

- [4] Kansas Meatpacker Seeks Summary Judgment in BSE  
Action Against USDA . . . . .2

#### Other Developments

- [5] Report Documents Efforts to Advertise Foods to Youth  
Online . . . . .3

Shook,  
Hardy &  
Bacon L.L.P.®

2005 & 2006  
Global Product Liability Law Firm of the Year  
WHO'S WHO LEGAL  
The International Who's Who of Business Lawyers

[www.shb.com](http://www.shb.com)

# Food & Beverage

## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### Federal Trade Commission (FTC)

##### [1] CSPI Calls for NASCAR Sponsorship Investigation

Claiming that NASCAR promotional and licensed items, such as Matchbox-type toy cars with beer and alcohol logos, “deserve the black flag,” the Center for Science in the Public Interest (CSPI) is calling on the FTC to “take a hard look at how alcohol marketers are using NASCAR to appeal to young people.” According to CSPI, the marketers are giving impressionable children “messages that indelibly link alcoholic beverages with the skill, courage, intensity, and excitement of high speed driving. Children under age 11 are likely to be influenced to believe that alcohol and high-risk driving are a legitimate, normal combination.”

In its July 13, 2006, [letter](#) to FTC Chair Deborah Platt Majoras, CSPI discusses NASCAR’s youth appeal and alleged intention to lure young people to its brand. CSPI claims that NASCAR’s own data show that 58 percent of 2- to 11-year-olds and 50 percent of 12- to 17-year-olds are NASCAR fans. Apparently, NASCAR currently has five alcohol-beverage sponsors, which makes “alcoholic beverages the largest NASCAR sponsor category among all other consumer goods sponsors,” says CSPI.

CSPI is asking FTC to “examine whether beer and liquor promoters that advertise or sponsor race teams and/or cars in NASCAR meet appropriate advertising standards,” and further requests that its inquiry be included “in the Commission’s proposed set of orders to alcohol producers expected to be issued soon.”

#### U.S. Department of Agriculture (USDA)

##### [2] Stockgrowers Seek Government Action on Cattle Import Initiatives

In a letter to the USDA secretary and five congressional leaders, the Ranchers-Cattlemen’s Action Legal Fund, United Stockgrowers of America (R-CALF USA) is requesting that the government not allow Canadian cattle older than 30 months and beef from cattle older than 30 months into the United States. The group reportedly contends that the recent discovery of BSE in a Canadian dairy cow which was born long after that country’s feed ban took effect is an indication that the ban is not working.

R-CALF USA is also calling on USDA to rescind the rule that allows cattle and beef from cattle under 30 months into the country or, in the alternative, to segregate Canadian cattle from native-born animals. The group would also like to see a ban on beef imports from countries that have imposed bans on beef from the United States. Information about R-CALF USA’s beef-import lawsuit against the USDA appears in issues 118, 119 and 134 of this Report,



March 16 and 23, and July 20, 2005. R-CALF is apparently appealing a Ninth Circuit Court of Appeals decision in that case. See *Meatingplace.com*, July 18, 2006.

## State and Local Governments

### [3] Chicago City Council Ponders *Trans* Fat Ban

According to a news source, a long-time Chicago City Council member has asked his colleagues to make restaurants' use of oils with *trans* fats illegal. Should the city do so, it will apparently be the first among major cities; the action would follow the city's move in April 2006 to prohibit the sale of foie gras. Further details about that initiative appear in issue 168 of this Report, April 27, 2006.

Under the proposal, restaurateurs who fail to remove "artificial *trans* fats" from their food preparations would be subject to daily fines of \$200 to \$1,000. Restaurateurs are reportedly critical of the proposal, claiming that smaller establishments would be hurt the most due to the higher expenses associated with other types of oils. See *The New York Times*, July 18, 2006.

## Litigation

### Bovine Spongiform Encephalopathy (BSE)

#### [4] Kansas Meatpacker Seeks Summary Judgment in BSE Action Against USDA

Creekstone Farms, a Kansas meat processor, has reportedly filed a motion for summary judgment in its action against the USDA seeking to overturn the agency's refusal to allow the company to test its cattle for BSE. Further information about the case appears in issue 165 of this Report, April 5, 2006.

Creekstone apparently contends that USDA erred in restricting the sale of BSE-test kits under the authority of the Virus Serum Toxin Act of 1913; the company claims that the rapid test is not a vaccine, serum, virus, or toxin. The USDA has until August 25 to file a reply, and additional pleadings related to the motion must be filed within the following month. The company apparently expects that testing would allow American beef products to regain market share in countries such as Japan and South Korea without imposing the significant costs of age verification or strict segregation of U.S. and Canadian cattle in slaughter plants. See *Meatingplace.com*, July 17, 2006.



## Other Developments

### [5] Report Documents Efforts to Advertise Foods to Youth Online

A new [study](#) of food company Web sites with content of interest to children contains a detailed content analysis of 77 sites across 12 product categories with more than 4,000 Web pages of material. Funded by the Kaiser Family Foundation, the study documents the types of strategies marketers use to reinforce brand names, logos and images in youth-targeted marketing on the Internet.

According to the study, eight of the 10 top food brands advertised on children's television programming also employ branded Web sites to market to children. Most sites can be located in five or six different ways, including looking at a product's packaging for a Web address, inserting the brand name into a Web browser, or searching from the company Web site for links to children's or gaming sections.

The Web sites discussed in the study contain (i) "advergames" that feature the company's product or brand characters, (ii) "viral" marketing, a technique that encourages viewers to share product information with their peers, (iii) promotions and membership opportunities, and/or (iv) movie and television tie-ins, among other techniques, to reinforce brand exposures and extend the time spent on the Web site. The report notes that major advertising agencies are launching videogame divisions to serve the needs of clients interested in "branded entertainment."

Study author Elizabeth Moore, an associate professor of marketing at the University of Notre Dame, asserts that children ages 2-11 visited the Web sites in question some 12.2 million times during the second quarter of 2005. Noting that

questions are being raised about food marketing in light of "the significant rise in levels of childhood obesity," she concludes that "[t]he technology of the Internet has enabled creative new forms of marketing communication" and "whether children are playing a game or engaging in other website activities, there is evidence of continuing brand exposure."



---

# Food & Beverage

## LITIGATION UPDATE

Food & Beverage Litigation Update is distributed by  
Leo Dreyer 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 [ldreyer@shb.com](mailto:ldreyer@shb.com) or [mboyd@shb.com](mailto: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<sup>LLP</sup>®

**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.**

---