

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### U.S. Congress

#### [1] **Supporters of Country-of-Origin Labeling Urge Congress to Oppose Attempts to Subvert the Program**

A coalition of agricultural, consumer and religious organizations has reportedly urged Senate and House appropriators working on finalizing the FY2005 omnibus appropriations bill to oppose any amendment “to weaken or repeal” mandatory country-of-origin labeling (COOL) currently set to take effect September 30, 2006. In a letter initiated by the National Farmers Union, the coalition claims “recent rumors have revealed that opponents of mandatory COOL believe an omnibus bill will provide them with the opportunity to repeal the law and replace it with a voluntary program.”

Meanwhile, Senator Conrad Burns (R-Mont.) is reportedly poised to introduce new legislation that would move up the implementation date for the mandatory COOL program to September 30, 2005, and remove the labeling exemption for processed meats. *See Congress Daily, News Release of Senator Conrad Burns and National Farmers Union News Release, November 16, 2004.*

### Food and Drug Administration (FDA)

#### [2] **Consumer Group Calls on FDA and FTC to Take Action Against Low-Carb Claims**

“Without guidelines, manufacturers appear to be free to say virtually anything about the carbohydrate content of their products,” charges the National Consumer League in a recent letter to Acting FDA Commissioner Lester Crawford. The advocacy organization believes incomplete information about healthy food choices on product labeling leads consumers to make “unwise purchasing decisions” and claims that pending agency completion of a final rulemaking defining such terms, FDA’s failure to establish an interim policy on low-carb and similar claims “is viewed by many consumers as tacit approval of ‘low-carb’ diets” and gives “credence to misleading ‘low-carb’ marketing messages.”

The group calls on FDA to immediately issue an interim policy regarding permissible carbohydrate claims and both FDA and the Federal Trade Commission to initiate enforcement actions against “misleading” labeling language like “net carbs.” Such statements, according to the National Consumers League, “typically omit sugar alcohols, glycerin, and soluble fiber, even though these ingredients contribute calories and raise blood sugar levels.” *See National Consumers League Press Release, October 26, 2004.*



## United Kingdom (UK)

### [3] **British Government Issues Long-Awaited White Paper on Public Health**

Health Secretary John Reid yesterday issued a [comprehensive plan](#) whose aims include reducing rates of obesity and encouraging “sensible” drinking to improve the overall health of Britons. “Having defeated many deadly infectious diseases,” Reid said, “we now face the challenge of avoidable ill-health caused by poor diet, lack of exercise and smoking. ... This government’s role is to help ensure society moves in the right direction by providing clear information for individuals, working with industry to deliver real progress and where necessary, taking decisive action to ensure healthy choices are available to all.”

With respect to diet and nutrition, the Department of Health intends to implement by mid-2005 a “signposting” system in which food labels alert consumers of products’ nutritional quality, e.g., product labels with green logos would signify healthy foods, product labels with red logos would signify unhealthy foods. The department intends to collaborate with industry in developing voluntary measures to (i) reduce levels of salt, added sugars and fat in processed foods; (ii) reduce portion sizes; and (iii) restrict the promotion of foods and beverages high in salt, added sugars or fat to children. If, by early 2007, the government deems industry’s voluntary advertising and marketing codes to be unsuccessful, the health department promises to “take action through existing powers or new legislation to implement a clearly defined framework for regulating the promotion of food to children.”

Alcohol-related initiatives the Department of Health plans to undertake include (i) launching an educational campaign about the dangers of binge drinking, (ii) working with industry to develop voluntary codes of practice that would place “responsible drinking” messages on labels and advertisements in hopes of discouraging alcohol consumption by underage consumers, and (iii) supporting the U.K. media regulator’s new rules for broadcast advertising of alcohol. See *DOH Press Release* and *The Daily Telegraph*, November 16, 2004.

## Litigation

### Norwalk Virus

#### [4] **Hotel Guests File Putative Class Action Against Caesars Entertainment over Norovirus Outbreak**

In a purported class action filed in Nevada state court on November 2, 2004, Caesars Entertainment is accused of failing to take reasonable measures to prevent the spread of Norovirus among guests and other patrons of its Las Vegas Flamingo Hotel. (*Schrembeck v. Caesars Entertainment Inc.*, No. 04-A-494586-C, District Court of Clark County, Nevada). (complaint not available online) Named plaintiff Joanne Schrembeck was apparently vacationing in Las Vegas when she became ill with a Norovirus infection and purports to represent all similarly situated persons. Plaintiffs’ attorney William Marler was quoted as saying that “Two-thirds of the people who became ill were hotel workers. That suggests to me that the Flamingo did not have a policy for keeping ill workers at home.” Noroviruses are



reportedly the leading cause of gastroenteritis in the United States and are either transmitted person-to-person or through contamination of food or water. See *Marler Clark News Release*, November 3, 2004.

## Other Developments

### [5] Britain's Largest Brewer Adds Health Warnings to Labels

Scottish & Newcastle has reportedly added safe drinking guidelines to the labels of its Newcastle Brown ale, with the intention of gradually adding the same information to its other brands in 2005. "The introduction of 'sensible drinking' messages on bottles and cans alongside alcohol unit information will help individuals to make informed decisions about their alcohol consumption," a company spokesperson was quoted as saying.

Newcastle Brown labels will now disclose the number of units in each can or bottle and state, "Responsible drinkers don't exceed 4 daily units (men) and 3 units (women)." Sixteen ounces of normal strength lager is reportedly the equivalent of 2 units. Other information on the labels will provide details of a [new Web site](#) funded by U.K. alcohol manufacturers that aims to discourage binge drinking. See *Scottish Courage Press Release* and *BBC News*, November 12, 2004.

### [6] NASCAR to Allow Distilled Spirits Sponsorships; Public Health Activists Object

Asserting that each company's marketing activities will convey responsible drinking messages, the National Association for Stock Car Auto Racing

(NASCAR) has announced that distilled spirits manufacturers will be eligible for various sponsorship opportunities in the sport beginning in 2005. "We felt the time was right to allow distilled spirits companies into NASCAR," a NASCAR spokesperson was quoted as saying. "Attitudes have changed, and spirits companies have a long record of responsible advertising," he said.

The Center for Science in the Public Interest (CSPI) quickly condemned NASCAR's decision, claiming the new policy serves only to reinforce an association between drinking and driving. "The point of this deal is to sneak rolling liquor ads onto network television where millions of NASCAR's underage and impressionable fans will see them," CSPI's George Hacker said. "Having the liquor industry promote responsible drinking is like having Ronald McDonald promote healthy eating or Joe Camel promote smoking cessation." See *NASCAR and CSPI Press Releases*, November 10, 2004.

### [7] Harvard Agribusiness Seminar to Examine Global Food Issues

Challenges and opportunities of the global food system will be the focus of a seminar offered by the Harvard Business School on January 9-12, 2005, in Boston. Specific topics at the 2005 Agribusiness Seminar will include (i) opportunities for food companies in China, (ii) food safety and traceability issues, (iii) junk food in schools, (iv) John Deere's business strategy, and (v) challenges confronting the Consultative Group on International Agricultural Research. More information about the event is available [here](#).



## Scientific/Technical Items

### Diabetes

#### [8] **Boston Researchers Allege Link Between Diabetes and Consumption of Red and Processed Meats**

Researchers from Simmons College and Harvard University contend in a recent study that “Western” diets rich in red meat and processed meat increase the risk of Type 2 diabetes in women. (T. Fung, et al., “Dietary Patterns, Meat Intake, and the Risk of Type 2 Diabetes in Women,” *Archives of Internal Medicine* 164(20): 2235-2240). The research team analyzed data on nearly 70,000 women who were followed for 14 years and found that individuals who ate mostly “Western” foods — sweets, fries, refined grains

like white bread, and red and processed meats were nearly 50 percent more likely to develop diabetes than women who ate minimal amounts of those foods. Risks for diabetes were significantly increased for regular consumption of red meat, bacon and hot dogs. Study co-author Teresa Fung, Sc.D., was quoted as saying the findings suggest that people should eat processed meats “as little as possible” and “very little” red meat. *See Reuters*, November 8, 2004.



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Mark Cowing and Mary Boyd in the Kansas City office of SHB.  
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