

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### Centers for Disease Control and Prevention (CDC)

##### [1] CDC Revises Mortality Rate Attributable to Bad Diet and Lack of Exercise

“Through an error in our computations, we overestimated the number of deaths caused by poor diet and physical inactivity. Our principal conclusions, however, remain unchanged: tobacco use and poor diet and physical inactivity contributed to the largest number of deaths, and the number of deaths related to poor diet and physical inactivity is increasing,” admit CDC researchers in today’s issue of *The Journal of the American Medical Association*. (A. Mokdad, et al., “Correction: Actual Causes of Death in the United States, 2000,” *JAMA* 293: 293-294.) In March 2004, the same researchers, who include CDC Director Julie Gerberding, published a highly publicized study in *JAMA* that claimed the number of obesity-related deaths in 2000 had risen to 400,000 annually, a 100,000 jump over 1990 levels; CDC has now revised the increase in deaths to some 65,000. The agency began an internal review of the original study after its methodology was

attacked in letters published in the journal *Science*. See *Reuters* and *Associated Press*, January 18, 2005.

#### U.S. Congress

##### [2] Senate Agriculture Committee Schedules Hearing; North Dakota Lawmaker and Cattle Producers’ Group Oppose Resumption of Canadian Beef and Cattle Imports

Canadian health officials’ confirmation of a second case of bovine spongiform encephalopathy (BSE) within a month has led Senate Agriculture Chair Saxby Chambliss (R-Ga.) to schedule a February 3, 2005, hearing on the agriculture department’s plan to permit resumption of live cattle imports on March 7. Chambliss was quoted as saying the two confirmed cases of BSE raise “serious questions regarding Canada’s compliance with its feed ban,” given that one of the diseased cows was born after Canada imposed a ban on feeding rendered protein products from ruminant animals – e.g., cattle, sheep, goats, bison, elk, or deer – to other ruminants.

The agriculture department reportedly intends to proceed with reopening the border to imports of live cattle younger than age 30 months on March 7, but has sent a technical team to Canada to investigate the recent cases of BSE. Meanwhile, Representative Earl Pomeroy (D-N.D.) has introduced legislation ([H.R. 187](#)) to block USDA’s



plan, and the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America, has challenged USDA's relaxation of import restrictions in federal court in Montana. In its 36-page complaint, the non-profit organization representing cattle producers contends that allowing the Canadian cattle imports "will expose U.S. consumers to increased risk of an invariably fatal disease associated with consumption of BSE-contaminated meat, will increase the risk of invariably fatal BSE infection in cattle in the United States, and will expose U.S. cattle producers to severe economic hardship." See *R-CALF Press Release*, January 10, 2005; *USDA Press Release*, January 11, 2005; *Congress Daily*, January 12, 2005; and *The New York Times*, January 19, 2005.

**[3] New York Lawmaker Introduces  
"Sewage Sludge in Food Production  
Consumer Notification Act"**

Representative José Serrano (D-N.Y.) has introduced legislation ([H.R. 207](#)) that would amend the Federal Food, Drug, and Cosmetic Act and egg, meat and poultry inspection laws to ensure that consumers are notified when foods were produced, or contain any ingredient that was produced, on land to which sewage sludge was applied. The proposed Act would deem such foods as adulterated unless (i) the application of sewage sludge ended more than one year before the production of the food commenced, (ii) the food was labeled to clearly indicate that it was produced on land to which sewage sludge was applied, or (iii) in the case of raw agricultural products generally offered for sale without labeling,

signs posted nearby notify consumers that the products were produced on land to which sewage sludge was applied.

Consumer protection groups like the Organic Consumers Association claim that sewage sludge poses a risk to food production because it contains potentially toxic chemicals such as PCBs and dioxins.

## Codex Alimentarius Commission

**[4] U.S. Delegates Schedule Public Meetings to Discuss Meat and Food Hygiene Proposals**

The U.S. Department of Agriculture has scheduled a January 21, 2005, [public meeting](#) in Washington, D.C., to discuss U.S. draft positions to be presented at the February 14-18 meeting of the Codex Committee on Meat Hygiene in Christchurch, New Zealand. Issues to be discussed at the January 21 meeting include draft codes of hygienic practices for meat and poultry.

USDA has scheduled a similar public meeting for February 2 in College Park, Maryland, to discuss U.S. positions to be presented at the March 14-19 meeting of the Codex Committee on Food Hygiene in Buenos Aires, Argentina. Agenda items at the February 2 meeting will reportedly include food hygiene practices designed to control *Listeria monocytogenes* and *salmonella*, and a draft code of hygienic practice for egg products. See *USDA News Release*, January 12, 2005; *Federal Register*, January 18, 2005.



## Litigation

### Deceptive Trade Practices

#### [5] Appeals Court Dismisses “Happy Cows” Lawsuit

The California advisory board responsible for the popular “Happy Cows” advertising campaign is exempt liability from the state’s unfair competition law, the California Court of Appeal has held. [\*People for the Ethical Treatment of Animals, Inc. v. California Milk Producers Advisory Board\*, No. A103481 \(Cal. Ct. App. 1/11/05\)](#).

The ads’ slogan is “Great cheese comes from happy cows. Happy cows come from California.” The campaign offended Virginia-based People for the Ethical Treatment of Animals, commonly known as PETA, which sued under California’s Unfair Business Practices Act, Business and Professions Code sections 17200 et seq., alleging that the ads’ depictions of a cow’s life are “explicitly and implicitly untrue, deceptive and misleading.”

The appellate court did not comment on the ads’ intent or perception but simply held that public entities, such as defendant California Milk Producers Advisory Board, are not among the persons and entities subject to suit under the statute. The appellate court’s decision affirmed a 2003 trial-court ruling.

## Other Developments

#### [6] Vending Machine Industry Launches Campaign to Fight Childhood Obesity

The National Automatic Merchandising Association (NAMA) last week unveiled a campaign that will provide a color-coded rating system for snack foods in school vending machines. Foods with green stickers are deemed the most nutritious, while those flagged with yellow stickers are considered less healthy and those with red stickers the least healthy. The campaign also includes funding for after-school soccer and literacy programs. The Center for Science in the Public Interest (CSPI) responded to the NAMA initiative by calling it a “public-relations ploy to forestall more school systems from banning junk food from vending machines on school grounds.” CSPI also criticized former Pittsburgh Steelers football player Lynn Swann’s paid participation in the NAMA press conference announcing the campaign because Swann serves as the chair of the President’s Council on Physical Fitness. See *The Washington Post* and *CSPI News Release*, January 13, 2005.

## Scientific/Technical Items

### Colorectal Cancer

#### [7] Long-Term Consumption of Red and Processed Meats Allegedly Linked to Increased Risk of Colon Cancer; Health Advocacy Group Calls for Industry Accountability

A study based on the nutrition cohort of the American Cancer Society’s *Cancer Prevention Study II* (CPSII) reports that high intake of red



and processed meat results in increased risks of colon and rectal cancer. (A. Chao, et al., "Meat Consumption and Risk of Colorectal Cancer," *JAMA* 293(2): 172-182, January 2, 2005.) The study examined 148,000 adults ages 50 to 74 who provided information on meat consumption in 1982 and again in 1992-1993. When long-term red and processed meat consumption was considered, individuals in the highest consumption category had a higher risk of colon cancer than people in the lowest consumption group. A 71 percent increased risk was reported for rectal cancer among individuals in the highest category of consumption of red meat. Long-term consumption of poultry and fish was inversely related to risk of both proximal and distal colon cancer.

The American Meat Institute has denounced the study, asserting that it "is just one more in a long line of epidemiological studies that have shown no

association, or a weak association, between meat consumption and cancer."

The Physician's Committee for Responsible Medicine, however, has used the results of the study to ask Congress to (i) direct USDA and HHS to remove meat products from the list of recommended foods in the new dietary guidelines and warn against their consumption, (ii) direct USDA to remove meat products from the National School Lunch Program, (iii) discontinue subsidies of the meat industry, and (iv) hold the meat industry "financially responsible for a measure of the colon cancer incidence in the meat-eating population, as the tobacco industry has been for its contribution to lung cancer." See *AMI* and *PCRM News Releases*, January 11, 2005.



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## LITIGATION UPDATE

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