

Food & Beverage

LITIGATION UPDATE

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Table of Contents

Legislation, Regulations and Standards

- [1] Public Health Group Petitions FTC to Enjoin Dairy Industry's Advertising Campaign1
- [2] USDA Requests Public Feedback on National Animal Identification System Proposals1
- [3] House Lawmaker Proposes Voluntary Program for Country-of-Origin Labeling2
- [4] California Legislative Committees Defeat Obesity Reform Bills2

Other Developments

- [5] FBI-Sponsored Agroterrorism Conference Targets Threats to Crops, Livestock and Food Processing Systems3
- [6] Bill Clinton and American Heart Association Tackle Childhood Obesity in New Initiative3
- [7] Economic Effects of Mad Cow Disease Focus of Kansas Report3

Scientific/Technical Items

- [8] Increased Girth in Middle Age Linked to Risk of Dementia4

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LITIGATION UPDATE

Legislation, Regulations and Standards

Federal Trade Commission (FTC)

[1] Public Health Group Petitions FTC to Enjoin Dairy Industry's Advertising Campaign

A recent [petition](#) from the health advocacy group Physicians Committee for Responsible Medicine (PCRM) to the FTC alleges that dairy advertisers' assertion that eating 24 ounces of dairy products daily will lead to greater weight loss than reducing overall caloric intake constitutes a false and misleading claim under the Federal Trade Commission Act. Parties named in the petition include the International Dairy Foods Association, Dairy Management, Inc., National Dairy Council, Draft Chicago, Lowe & Partners, Weber Shandwick, The Dannon Co., Inc., General Mills, Inc., Kraft Foods Global, Inc., McNeil Nutritionals, LLC, and Lifeway Foods, Inc.

According to PCRM, "Because the relevant body of research does not support dairy advertisers' health claims, dairy advertisers have resorted to distortions, exaggerations, and even omissions of integral portions of the relevant science in asserting these claims. Additionally, dairy advertisers have omitted information about the serious health problems caused or aggravated by dairy products,

including digestive problems, some cancers, and cardiovascular disease." Among other things, PCRM argues dairy industry claims that consumption of dairy products will cause *weight* loss and *fat* loss are in effect "health claims" that have not been approved by the Food and Drug Administration. The group also raises conflict-of-interest issues in asserting that "dairy advertisers rest their [weight loss] claim on the findings of a single industry-funded experimenter, whose studies are small, poorly controlled, and reportedly with only minimal detail, yielding inconsistent results. This researcher, Michael Zemel, Ph.D., of the University of Tennessee, Knoxville, consistently fails to report the calorie intake of research participants, making it impossible to assess whether differences in caloric intake alone are responsible for any changes in weight." PCRM urges the FTC to stop further dissemination of the dairy/weight loss ads and require corrective advertising. *See PCRM Press Release*, April 22, 2005.

U.S. Department of Agriculture (USDA)

[2] USDA Requests Public Feedback on National Animal Identification System Proposals

USDA has [issued](#) for public review and comment a Draft Strategic Plan and a Draft Program Standards document for the National Animal Identification System (NAIS). The draft plan describes the NAIS development process, while the draft program stan-



dards describe the agency's current thinking on how NAIS will work when fully implemented. Particular issues about which USDA seeks feedback include (i) the necessity of a mandatory identification program to achieve successful animal disease surveillance and monitoring, (ii) compliance mechanisms, (iii) timelines for NAIS implementation, (iv) producers' confidentiality concerns, and (v) record-keeping requirements. Comments are due by June 6, 2005. See *Federal Register*, May 6, 2005.

U.S. Congress

[3] House Lawmaker Proposes Voluntary Program for Country-of-Origin Labeling

House Agriculture Committee Chair Bob Goodlatte (R-Va.) last week introduced legislation ([H.R. 2068](#)) that would replace mandatory country-of-origin labeling (COOL) for beef, lamb and pork with a voluntary labeling program. "It has been three years since enactment of the 2002 Farm Bill and yet there is still a lack of consensus about how the COOL provisions can best be implemented," Goodlatte said. "This approach benefits consumers and producers and is preferable to a mandatory program that is more likely to hurt the people it was intended to help." The Meat Promotion Act of 2005 would (i) repeal COOL labeling requirements currently set to take effect by September 2006 and (ii) offer producers and retailers a voluntary program in which they could utilize USDA labels designating that covered commodities were born, raised and slaughtered in the United States. See *House Agriculture Committee News Release*, May 4, 2005.

State/Local Initiatives

[4] California Legislative Committees Defeat Obesity Reform Bills

The judiciary committees of both the California Senate and Assembly last week defeated legislative proposals (S. 937 and A.B. 173) that would have provided food sellers and manufacturers limited civil liability for claims arising out of weight gain or health conditions allegedly caused by long-term consumption of foods or beverages. Senator Sam Aanestad (R-Grass Valley), sponsor of the reform measure, was quoted as saying that Democrats on the Senate Judiciary Committee took less time to debate the proposal than "the time it takes to go through a drive-through. I'm appalled that some members of this committee didn't see the value in my bill and voted to create a new cottage industry of frivolous lawsuits in California." Those testifying against the Senate legislation reportedly included Stephen Joseph, the San Francisco lawyer who has brought *trans* fat lawsuits against McDonald's and Kraft Foods. See *Press Release of Senator Sam Aanestad*, May 3, 2005; *Associated Press* and *Inside Bay Area.com*, May 4, 2005.

Obesity litigation reform has been enacted in 18 states – Arizona, Colorado, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Missouri, North Dakota, Ohio, South Dakota, Utah, Tennessee, Washington, and Wyoming. At the national level, Senator Mitch McConnell (R-Ky.) recently reintroduced like-minded legislation (S. 908) in the Senate, while Representative Ric Keller (R-Fla.) reintroduced the Personal Responsibility in Food Consumption Act (H.R. 554) in the House of Representatives.



Other Developments

[5] FBI-Sponsored Agroterrorism Conference Targets Threats to Crops, Livestock and Food Processing Systems

“All you need is a handkerchief to run under an infected animal’s nose or mouth, a 10-cent Ziploc bag to put it in and a \$2,500 plane ticket to the United States. You drop that in a feedlot, and we’re off and running,” Senator Pat Roberts (R-Kan.) was quoted as saying last week when describing a scenario in which a foreign terrorist could ravage U.S. livestock with foot and mouth disease. The chair of the Senate Intelligence Committee addressed some 800 stakeholders who attended the [First Annual International Symposium on Agroterrorism](#) in Kansas City, Mo. To help animal disease outbreaks, Roberts reportedly advocated increased federal efforts to educate ranchers, farmers and local law enforcement officials about safeguards to help protect against agroterrorist activity as well as the development of new vaccines and treatments. According to a news source, as much as 90 percent of grain-fed U.S. beef production is concentrated in fewer than 5 percent of feedlots. Other speakers at the event discussed (i) developing intelligence to identify vulnerabilities to agriculture, (ii) the weaponization of pathogens, (iii) industry’s perspective on food security, (iv) livestock identification methods, and (v) the role of law enforcement in responding to agroterrorist threats. See *The Kansas City Star*, May 1 and 5, 2005; *Associated Press*, May 4, 2005.

[6] Bill Clinton and American Heart Association Tackle Childhood Obesity in New Initiative

Former President Bill Clinton (D) has joined forces with the American Heart Association (AHA) by establishing an alliance focused on lowering the nation’s rate of childhood obesity. “The truth is that children are consuming more sugar and fatty foods than ever before,” Clinton said. “We’re going to give this our best shot because we want children to be live to be 90 years old and to be healthy doing it.” Arkansas Governor Mike Huckabee (R), who recently lost more than 100 pounds after being diagnosed with Type 2 diabetes, will also participate in the joint alliance’s efforts to encourage healthier lifestyles among youth. The group’s priorities reportedly include (i) working with food companies to improve the nutritional quality of their products and to develop “marketing and promotion strategies to support environmental change within the industry”; (ii) increasing physical activity in schools; (iii) providing nutritional standards for foods offered in school cafeterias and in school vending machines; and (iv) creating public awareness campaigns that encourage youth to make healthy lifestyle choices. AHA last week also issued a [“statistical sourcebook”](#) titled *A Nation at Risk: Obesity in the United States*. See *Clinton Foundation Press Release*, May 3, 2005; *The New York Times*, May 4, 2005.

[7] Economic Effects of Mad Cow Disease Focus of Kansas Report

Economic losses to the U.S. beef industry resulting from the discovery of a dairy cow infected with bovine spongiform encephalopathy (BSE) in late 2003 accounted for industry losses of some \$3.2 to \$4.7 billion in 2004. Voluntary BSE testing of beef



exports would have provided significant economic gain despite the testing costs, according to a [report](#) that evaluates the economic impact of lost export markets and regulatory changes affecting cattle procurement and processing. “If voluntary testing of 25 percent of U.S. slaughter cattle allowed the industry to regain access to the Japanese and South Korean export markets, and the U.S. was able to ship just one-half the quantity shipped during 2003, the potential return to the beef industry would have been nearly \$750 million,” Kansas Secretary of Agriculture Adrian Polansky said. The report was commissioned by the Kansas Department of Agriculture and produced by Kansas State University. See *KDA News Release*, April 28, 2005.

Scientific/Technical Items

Obesity

[8] Increased Girth in Middle Age Linked to Risk of Dementia

Being overweight or obese in middle age increases the risk of Alzheimer’s disease and other forms of dementia, says a study recently published in the *British Medical Journal*. (R. Whitmer, et al., “Obesity in Middle-Age and Future Risk of Dementia: A 27 Year Longitudinal Population Based Study,” *BMJ*, doi:10.1136, April 29, 2005.) The research project followed 10,000 Californians, all in their mid-40s, for an average of 27 years. Obesity was assessed using two different measurements — body mass index and skin-fold thickness under the

shoulder blades and the arm. After adjusting for health conditions such as diabetes and heart disease, the researchers reported a higher risk of dementia for heavier people. Using the body-mass index, obese people were found to be 74 percent more likely to develop dementia than normal weight people; overweight people had a 35 percent increased risk. The effect was more noticeable in women. When the researchers used skin-fold thickness to measure obesity, no difference was observed for men and women, with both exhibiting a 70 percent increased risk associated with a thick skin-fold. The authors offer no specific explanation for obesity’s role in increasing dementia risk, but advocate further study of the roles of central obesity (waist circumference), inflammation (C-reactive protein) and adipocytokines (proteins and cytokines secreted from fat tissue) in neurodegenerative disease.



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