

Food & Beverage

LITIGATION UPDATE

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Legislation, Regulations and Standards

Federal Communications Commission (FCC)

[1] Possible Violations of Product Placement Policies Should Be Investigated, Says FCC Official

“Not only are celebrity chefs and celebrity fashion up for sale but, most ominously, news shows are increasingly up for bid,” charged Jonathan Adelstein, one of two Democratic members of the FCC, in a speech last week at the Media Institute, a nonprofit communications policy research organization in Washington, D.C. “The use of covert commercial pitches is penetrating deeper and deeper into our media,” Adelstein said in calling for increased FCC scrutiny into compliance with FCC product placement rules.

Among other things, the FCC commissioner encouraged the FCC to mandate “clear and prominent” product disclosures during television programming, comparing such disclosure to that required for sponsors of political advertisements. He also called for an “outright ban on interactive advertising to children through TV. ... Given that children do not always understand a division between advertising and programming, let alone product placement that seamlessly weaves the

two together, I believe that now is the time to stop the development of ‘t-commerce’ [television commerce] directed to children in its tracks. Digital TV and new interactive technologies can provide a wealth of opportunities to children and their parents, but should not provide wealth to advertisers at the expense of children and their parents. *See Ad Age*, May 25, 2005; *The Wall Street Journal*, May 26, 2005.

U.S. Congress

[2] Obesity Litigation Reform Now Headed for Vote in Full House

The House Judiciary Committee passed the Personal Responsibility in Food Consumption Act ([H.R. 554](#)) by a vote of 16-8 on May 25, 2005. “To fight obesity, we should use common sense in the food court instead of blaming others in legal court,” Representative Ric Keller (R-Fla.), sponsor of the proposal, was quoted as saying. The measure would prevent civil lawsuits against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations in federal or state courts for claims of injury related to an individual’s weight gain or weight-related health condition. Representative John Conyers (Mich.), the committee’s ranking Democrat, reportedly argued the legislation was “unnecessary” because truly frivolous suits would be thrown out of court.



Similar legislation (S. 908) is pending in the Senate Judiciary Committee. *See Press Release of Representative Ric Keller*, May 25, 2005; *CQ Weekly*, May 30, 2005.

[3] Ohio Lawmaker Introduces Bill Directing FDA to Withdraw Approval for Non-therapeutic Use of Antibiotics in Animals

Representative Sherrod Brown (D-Ohio) last week reintroduced legislation ([H.R. 2562](#)) that would require the Food and Drug Administration (FDA) to withdraw approvals for the non-therapeutic use of seven classes of antibiotics (or any others used in humans) in food-producing animals after two years, unless drug manufacturers can prove that such use poses no risk to public health. The Preservation of Antibiotics for Medical Treatment Act of 2005 would prohibit the use of seven classes of antibiotics in chicken, pork and beef production: (i) penicillins, (ii) tetracyclines, (iii) aminoglycosides, (iv) streptogramins, (v) macrolides, (vi) lincosamides, and (vii) sulfonamides. The proposal would also fund research and demonstration programs that reduce the use of antibiotics in livestock and poultry production. Senators Edward Kennedy (D-Mass.) and Olympia Snowe (R-Maine) reintroduced like-minded measures (S. 742) in May.

U.S. Department of Agriculture (USDA)

[4] USDA and FDA Issue Proposal for Evaluating Food Standards of Identity

USDA and the Food and Drug Administration (FDA) have issued a [joint proposed rule](#) to establish general principles for food standards to evaluate the need for revising, eliminating or creating new standards of identity for food. Standards of identity

define the general composition of a product, its name and the ingredients it contains, e.g., the amount of oil and the number of eggs necessary for a product to be deemed mayonnaise. According to the agencies, adherence to the principles will “better promote honesty and fair dealing in the interest of consumers and protect the public, allow for technological advances in food production, be consistent with international food standards to the extent feasible, and be clear, simple, and easy to use for both manufacturers and the agencies that enforce compliance with the standards.” Comments on the proposed general principles are due by August 18, 2005. *See Federal Register*, May 20, 2005.

[5] USDA’s Meat and Poultry Inspection Committee to Convene in June 2005

The National Advisory Committee on Meat and Poultry will hold a [public meeting](#) on June 16-17, 2005, in Washington, D.C. The group provides the agriculture secretary with advice and recommendations related to state and federal meat and poultry inspection programs. Issues to be discussed at the meeting include (i) ways the Food Safety and Inspection Service (FSIS) can most efficiently share information on technology with small and very small facilities, (ii) potential guidance for industry to ensure that plants hold product when FSIS tests product for adulteration and (iii) effective ways of conducting risk-based sampling in small and very small plants. *See Federal Register*, May 31, 2005.



Other Developments

[6] CSPI Organizes International Food Safety Summit in Switzerland

Food safety experts from around the world are expected to gather in Geneva, Switzerland, on June 8-10, 2005, for a conference titled "Crafting a Public Health Agenda for Modern Food Safety Systems." The event was organized by the Center for Science in the Public Interest (CSPI) in partnership with the World Health Organization, the Food and Agriculture Organization and the International Association of Consumer Food Organizations. "In a global economy, the food for a single meal may come from several continents and travel half way around the world," CSPI Food Safety Director Caroline Smith DeWaal was quoted as saying. "No country, not even the United States, can inspect every food shipment at every port of entry to monitor food safety. The effort to improve food safety must be both local and global," she said. Speakers at the two-day conference will include Stuart Slorach, chair of the Codex Alimentarius Commission; Geoffrey Podger, chair of the European Food Safety Authority; and Maria Neira, head of the Spanish Food Safety Organization. More information about the event is available [here](#). See *CSPI News Release*, May 24, 2005.

Media Coverage

[7] "Got Toxic Milk?" Lawrence Wein, *The New York Times*, May 30, 2005

In this commentary, a member of the Stanford Business School faculty speculates about the ease with which bioterrorists could poison the U.S. milk supply with botulinum toxin. "Why milk? In addi-

tion to its symbolic value as a target – a glass of milk as an icon of purity and healthfulness – Americans drink more than 6 billion gallons of it a year. And because it is stored in large quantities at centralized processing plants and then shipped across country for rapid consumption, it is a uniquely valuable medium for a bioterrorist," he opines. To avoid such an event, the author recommends (i) mandatory Food and Drug Administration security rules that ensure the milk supply is guarded "from cow to consumer," (ii) dairy industry efforts to improve pasteurization techniques and (iii) testing for the four types of toxins associated with human botulism before tanker trucks unload their contents into silos at dairy processing facilities.

Scientific/Technical Items

Dairy

[8] Dairy Consumption Linked to Decreased Risk of Type 2 Diabetes, Increased Risk of Parkinson's Disease in Middle-Age Men

A 12-year follow-up study of more than 40,000 middle-age American men has concluded that high consumption of dairy products, especially those low in fat, is related to a lower risk of type 2 diabetes. (H. Choi, "Dairy Consumption and Risk of Type 2 Diabetes Mellitus in Men," *Arch Intern Med* 165: 997-1003, May 9, 2005.) A 9 percent lower risk for type 2 diabetes was associated with each added serving of dairy per day, and the association was not affected by body mass.

Noting that a different study of the same group of subjects analyzed in the *Choi* study found a 60 percent greater risk of prostate cancer in men who drank more than two glasses of milk daily, the



Physicians Committee for Responsible Medicine disputed the association between dairy consumption and diabetes prevention, claiming the “alleged link ... is tenuous and not worth the risk of prostate cancer and other well-established dairy dangers.” See *PCRM News Release*, May 11, 2005.

Meanwhile, a highly publicized study in the April 2005 issue of *Neurology* journal reported that consumption of more than 16 ounces of milk daily was associated with a 2.3-fold excess risk of Parkinson’s disease among middle-age men (95% CI 1.3 to 4.1). (M. Park, “Consumption of Milk and Calcium in Mid-Life and the Future Risk of Parkinson Disease,” *Neurology* 64: 1047-1051, 2005). Calcium from dairy and nondairy sources had no apparent relation with Parkinson’s disease risk.



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