

Food & Beverage

LITIGATION UPDATE

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Table of Contents

Legislation, Regulations and Standards

- [1] Wisconsin Senator Introduces Cheese-Labeling Legislation1
- [2] New Directive Narrows Definition of "Meat"1
- [3] Health Concerns Cited in Action Against Vending Machines1

Litigation

- [4] British Woman Contemplates Litigation Against Weight Watchers2
- [5] *Block v. McDonald's Corp.*, No. 01 CH 9137 (Circuit Court of Cook County, Illinois, Chancery Division) (settlement approved October 30, 2002)2

Other Developments

- [6] Unpublished Report Documents Covert Food Industry Influence at WHO2
- [7] Genetically Modified Foods Remain Contentious Worldwide3

Media Coverage

- [8] Michiko Kakutani, "Land of the Free, Home of the Fat"; Michael Pollen, "Fat Land: Supersizing America," *The New York Times*, January 7 and 12, 20034

Scientific/Technical Items

- [9] Studies Target Obesity's Effect on Life Span; Obesity Nearly Doubles in Last Decade4

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LITIGATION UPDATE

Legislation, Regulations and Standards

U.S. Congress

[1] Wisconsin Senator Introduces Cheese-Labeling Legislation

Citing the specter of lower revenues for dairy farmers and confusion among consumers, Senator Russell Feingold (D-Wis.) has introduced legislation (S. 40) which would prohibit products that contain dry ultra-filtered milk products or casein from being labeled as domestic natural cheese. The Quality Cheese Act of 2003 has been referred to the Committee on Agriculture, Nutrition and Forestry.

European Union (EU)

[2] New Directive Narrows Definition of "Meat"

As of January 1, 2003, a new EU directive redefines "meat" on the labels of pre-packed meat-based products such as sausage, pâté and canned meat. Products made before that date and labeled under the old regulations can evidently be sold until June 30. The new labeling restricts the definition of meat to skeletal-attached muscles; offal (heart, intestine or liver) and fat will have to be labeled as such. A certain amount of fat content can be treated as meat, subject to maximum limits. The species from which meat derives will also have to be clearly indicated. See *EU Press Release*, January 6, 2003.

State/Local Initiatives

[3] Health Concerns Cited in Action Against Vending Machines

California Senator Tom Torlakson (D-Antioch) is reportedly poised to introduce two bills affecting vending machines. According to a news source, the proposals will require (i) California public schools to discuss acquisition of new vending machines at open school board meetings and (ii) offerings in state-owned vending machines to include "healthier" snacks and beverages.

Meanwhile, Detroit City Councilwoman Kay Everett has reportedly introduced a resolution encouraging the Detroit Public Schools to prohibit vending machines in schools because "kids are eating too much junk food throughout the day." In November 2002, two New York City Council members introduced a bill that would require public schools to remove "minimally nutritious" junk foods, soda and candy from school vending machines. And in August 2002, the Los Angeles Unified School District extended an existing ban on soft drink sales in elementary schools to the district's middle and high schools. See *just-drinks.com*, January 8, 2003; *Detroit Free Press*, January 9, 2003.



Litigation

Weight-Loss Industry

[4] **British Woman Contemplates Litigation Against Weight Watchers**

A U.K.-based psychotherapist is reportedly planning to sue Weight Watchers on behalf of thousands of British residents who paid the company to lose weight but, after returning to their normal diets, gained even more weight than they lost on the program. Susie Orbach, who apparently authored *Fat is a Feminist Issue*, was quoted as saying, "I believe that it is the very 'problem' of recidivism that has made Weight Watchers its fortune."

According to Orbach, nine out of 10 who complete the Weight Watchers' program fail to keep off the weight they have lost. While Orbach expressed uncertainty about the appropriate venue and timing for bringing the action, she reportedly claims such litigation will bring weight loss, obesity and dieting issues into the open. A company spokesperson has apparently denied claims that it profits from its clients' failures and, pursuant to a settlement with the Federal Trade Commission, now adds a disclosure to its materials indicating that "for many dieters, weight loss is temporary." See *abcnews.com*, January 9, 2003.

Fast Food

[5] ***Block v. McDonald's Corp.*, No. 01 CH 9137 (Circuit Court of Cook County, Illinois, Chancery Division) (settlement approved October 30, 2002)**

Controversy has apparently arisen in regard to the vegetarian organizations that McDonald's Corp. has proposed funding pursuant to a settlement reached

with class-action plaintiffs who had alleged the fast-food company misled the public by claiming its fries and hash browns were vegetarian, when, in fact, they were cooked in beef-flavored oils. According to a news source, the judge who approved the settlement conducted a January 13, 2003, hearing to address the dispute over who should receive the \$6 million earmarked for vegetarian groups. Among those challenging the proposed recipients are counsel for the plaintiffs and the operator of a Web site for vegetarians, www.VegSource.com, from which a number of the relevant pleadings and declarations can be downloaded. They claim that some of the organizations have actually been doing research inimical to the interests of vegetarians who tout the health benefits of their diet. Although he continued the case until January 27 for further development of the record, the judge reportedly said to class counsel, "You may not be satisfied, but that tells me we might have a reasonable settlement." See *Chicago Sun-Times*, January 14, 2003.

Other Developments

[6] **Unpublished Report Documents Covert Food Industry Influence at WHO**

According to articles appearing in *The Guardian*, a retired U.S. public-health academic has compiled a confidential report finding that the food industry has covertly influenced food and nutrition policies at the World Health Organization (WHO). Specifically, the report apparently finds that food companies exerted "undue influence" on "food policies dealing with dietary guidelines, pesticide use, additives, trans-fatty acids and sugar" by (i) trying to place sympathetic scientists on WHO and Food and Agricultural Organization (FAO) committees; (ii) financially supporting nongovernmental organizations that discussed key issues with United Nations (UN) agencies; and



(iii) financing research and policy groups supporting their views and individuals who promoted an “anti-regulation ideology” to the public.

The report’s author, Norbert Hirschhorn, apparently provided the evidence, culled from tobacco document archives, for a July 2000 report to WHO about purported tobacco infiltration and “undue influence” over the organization’s policies on cigarettes. His unpublished June 19, 2002, report about the food industry reportedly focuses on the International Life Sciences Institute (ILSI), a non-governmental organization which had “official relations” with WHO and was supposedly founded by Coca-Cola, Pepsi Cola, General Foods, Kraft, and Procter & Gamble. A news source states that after FAO/WHO issued guidelines on nutrition in 1992, “ILSI members congratulated themselves on steering the UN organizations away from any curbs on sugar consumption, in line with the position of the food industry.”

WHO has apparently responded to news about the report by stating that current diet and nutrition policies have not been influenced by the food industry and were formulated in an open debate with all stakeholders. WHO spokespersons have reportedly indicated that stronger ethical guidelines for WHO staff and outside experts, along with an open, transparent and public debate of the issues, have rendered the Hirschhorn report of only historical interest. According to WHO, a global strategy on diet, physical activity and health, developed in consultation with all interested groups, will be put to WHO members during their annual meeting in May 2004. See *The Guardian*, January 9, 2003; *Financial Times*, January 10, 2003.

[7] Genetically Modified Foods Remain Contentious Worldwide

U.S. trade representative Robert Zoellick has reportedly announced that he is considering whether to challenge the European Union’s (EU) ban on genetically modified (GM) foods before the World Trade Organization. While Zoellick apparently announced widespread support in the Bush administration for filing a formal complaint, other officials have expressed concern that a trade dispute could strengthen anti-U.S. sentiment in advance of possible military action against Iraq. An EU trade official reportedly responded by indicating he would prefer to negotiate a settlement of the dispute, but that if litigation occurs, “of course we would fight it, and I believe we would win.” See *just-food.com*, *The Washington Times*, *EurActiv.com*, and *The New York Times*, January 10, 2003.

In other developments, France’s National Academies of Medicine and Pharmacology have concluded a lengthy analysis of GM foods and determined that the advantages of biotech crops outweigh any risks to human health, said a news source. The academies apparently point to positive economic, environmental and human health impacts, while noting that “hundreds of millions of our planet’s inhabitants, in North and South America, in India, and in China have for years been consuming GM foodstuffs on a daily level, and no negative impacts on health have been reported to date.” The joint statement, which has received the support of France’s National Academy of Sciences, reportedly demands that the French government and EU officials “reconsider” regulatory constraints on GM foods that are limiting research and the use of biotech crops. See *BNA Daily Environment Report*, December 13 and 16, 2002.



Media Coverage

- [8] **Michiko Kakutani, "Land of the Free, Home of the Fat"; Michael Pollen, "'Fat Land': Supersizing America,"** *The New York Times*, January 7 and 12, 2003

Both of these articles review journalist Greg Critser's newly published history of the "fattening of America" titled *Fatland*. Among developments in recent decades that Critser reportedly blames for America's expanding waistline are 1970s corn surpluses that led to the production of the inexpensive sweetener high fructose corn syrup, a substance quickly embraced by soft drink companies to replace sugar and metabolized differently than sucrose, and the cheap imports of palm oil, a saturated fat found in many snack foods. Other factors Critser cites as contributing to the fattening of America apparently include supersized portions, soft drinks in schools and sedentary lifestyles generally. Both reviewers fault Critser for not suggesting any public policy solutions to the obesity epidemic and "dubious" observations, including "his citation of a survey associating obesity with higher levels of religiosity, or his worry that 'assortative mating' ('fat attracting fat') will lead to fat parents producing more fat children."

Scientific/Technical Items

Obesity

- [9] **Studies Target Obesity's Effect on Life Span; Obesity Nearly Doubles in Last Decade**

Obesity can take years off one's life, and the younger the person, the more years he or she has to lose, according to two scientific studies published in early January 2003. The first, published in the *Annals*

of *Internal Medicine* (138(1): 24-32, 2003), found that on average nonsmokers who are overweight at age 40 are likely to die at least three years early, and those who are obese may lose six to seven years. Peeters and colleagues describe these decreases as similar to those seen in smokers. In the second study ("Years of Life Lost Due to Obesity," K.R. Fontaine, et al., *Journal of the American Medical Association* 289(2): 187-193, 2003), Johns Hopkins University School of Medicine researchers determined that severe obesity between ages 20 to 30 can markedly lessen life expectancy, finding that severely obese white men in their 20s lost up to 13 years of life while black men lost up to 20 years. Women were found to suffer similar but significantly less severe effects.

Meanwhile, Centers for Disease Control and Prevention researcher Ali Mokdad and colleagues have reported that the prevalence of obesity among adults in the United States has nearly doubled in the past decade. Published in the *Journal of the American Medical Association* (289: 76-79, 2003), their research demonstrates that from 2000 to 2001, alone, the rate of obesity among U.S. adults increased by 5.6 percent. In addition, they report that as obesity increases other health problems increase as well, including diabetes, high blood pressure, high cholesterol, asthma, arthritis, and poor health generally. The researchers highlight an 8 percent increase in the prevalence of diabetes from 2000 to 2001. They recommend the development and implementation of national programs to promote a balanced diet, increase physical activity and maintain weight control.



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Food & Beverage Litigation Update is distributed by Dale Walker 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 dwalker@shb.com or 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.

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