

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards Institute of Medicine (IOM)

[1] Marketing Affects Children's Dietary Preferences, Says IOM Committee

"There is strong evidence that television advertising influences the food and beverage preferences of children ages 2-11 years," concluded a committee of the National Academies' Institute of Medicine in a [report](#) that implicates industry marketing practices in the nation's escalating rate of childhood obesity. The 16-member Committee on Food Marketing and the Diets of Children and Youth based its findings on a review of 123 studies primarily focused on the alleged effects of TV advertising. "We can't argue any more whether food advertising is related to children's diets. It is," Ellen Wartella, executive vice chancellor and provost at the University of California-Riverside, and a member of the committee, said.

Among the report's most disputed findings may be the recommendation that industry use licensed characters to market healthy products only. "We would like to think that SpongeBob SquarePants, Shrek and the Disney princesses are likable, kid-friendly characters, but they are being used to manipulate vulnerable children to make unhealthy choices," Senator Tom Harkin, requester of the IOM

report, was quoted as saying. "The food industry doesn't spend \$10 billion a year on ads to kids because they like to waste money. Their ads not only work, they work brilliantly," the Iowa Democrat said. *Advertising Age* deemed the recommendation "eerily similar to one used in the battle against Joe Camel."

Other recommendations in the report include (i) industry collaboration with government and other stakeholders to expand self-regulatory efforts through the Children's Advertising Review Unit; (ii) reformulated youth-oriented products that are lower in fats, sodium and added sugars; (iii) school nutrition policies that support healthy diets; and (iv) government-funded educational campaigns and nutrition research. If public policymakers find fault with industry's voluntary efforts to limit "junk food" advertising during children's TV programming, the IOM committee advocates congressional action on the issue. See *Press Release of Senator Tom Harkin and Advertising Age*, December 6, 2005; *The New York Times*, *The Wall Street Journal* and *Associated Press*, December 7, 2005.

Food and Drug Administration (FDA)

[2] FDA Issues Guidance on *Trans* Fat Labeling Compliance

FDA has published [guidance](#) for the food industry about written requests for agency discretion in enforcing *trans* fat labeling requirements that take effect January 1, 2006. The revised regula-



tions call for labels to bear the gram amount of *trans* fat without a percent Daily Value on the Nutrition Facts panel of most food products sold in the United States. FDA will evaluate requests for the use of non-compliant (i.e., existing) labels on a case-by-case basis and consider such factors as (i) whether the product's declared label value for *trans* fat is 0.5 grams or less per serving, (ii) the number of existing labels a company wants to use, and (iii) the amount of time necessary to exhaust the supply of existing labels.

United Kingdom (UK)

[3] British Government Issues Nanotechnology Research Agenda

The UK's Department for Environment, Food and Rural Affairs last week announced £5 million in funding for research outlined in a [report](#) titled *Characterising the potential risks posed by engineered nanoparticles*. The report identifies 19 research objectives to (i) characterize, define and measure nanoparticles, (ii) understand the effect of nanoparticles on humans and the environment, and (iii) understand how nanoparticles travel through the environment, including the human body. Nanotechnology applications with respect to food include packaging, contaminant detection and supply chain tracking. See *DEFRA News Release*, November 30, 2005.

France

[4] French Health Ministry Proposes Warning Labels for Wine

Citing a government-commissioned report that indicates 23,000 adult deaths are linked to alcohol consumption each year, France's Ministry of Health has reportedly proposed cigarette-style warning labels for wine. Report author Hervé Chabalier was quoted as saying the intent of the warnings is not to discourage drinking, but to inform consumers that alcohol "is really a drug." Wine industry representatives have denounced the proposed warnings, claiming the purported risks of drinking wine and smoking cigarettes are not comparable. "It's ridiculous," a Vin et Société spokesperson said. "If you drink alcohol in moderation, you face no risks to your health. There are even benefits." According to news sources, the health ministry has not yet commented on the likelihood of expanding the warnings to all alcoholic beverages. A government mandate requiring wine to carry warnings that advise pregnant women to limit alcohol consumption takes effect in 2006. See *BBC News*, November 25, 2005; *Decanter.com*, December 1, 2005.

Other Developments

[5] European Food Companies Address Possible Solutions to Obesity Issue

The Confederation of the Food and Drink Industries of the European Union (CIAA) recently submitted to EU regulators the group's "[collective commitments](#)" for addressing the multifactorial causes of obesity. Members of the CIAA include Kraft, Kellogg's, Nestlé, Unilever, and Tate & Lyle.



With respect to advertising aimed at children, CIAA advocates marketing communications that do not (i) “create a sense of urgency, for example, by using the words ‘now’ and ‘only,’”; (ii) “mislead about potential benefits from the consumption of a product, such as status or popularity with peers, sports success, and intelligence”; or (iii) “undermine the authority of parents and other appropriate adult role models.” See *CIAA Press Release* and *The New York Times*, November 24, 2005.

[6] Soft Drink Sales in Schools Declining, Says American Beverage Association

Sales of full-calorie carbonated soft drinks in U.S. schools dropped by 24 percent during 2002-2004, according to a [study](#) the American Beverage Association (ABA) issued last week. Using school shipment data and U.S. Census Bureau estimates of the nation’s student population, an independent economist also concluded that student purchases of sports drinks increased by 70 percent, bottled water by 23 percent, diet soft drinks by 22 percent, and 100-percent juices by 15 percent during the same two-year period. “Litigation and legislation aren’t the answers to a complex social problem,” ABA President Susan Neely was quoted as saying. “Consumer preferences are changing, and the choices students are making from school vending machines are reflecting that,” she said.

The Associated Press described the ABA report as an attempt to “deflate” the threat of a putative class action lawsuit against soft drink manufacturers the Public Health Advocacy Institute and the Center for Science in the Public Interest are poised to file in Massachusetts state court. Among other things, the lawsuit will reportedly assert that soft drink companies market their products to children in

spite of numerous studies alleging links between their consumption and various adverse health effects. See *The Associated Press* and *ABA News Release*, December 1, 2005.

Media Coverage

[7] “A Jolt of Caffeine, by the Can,” Melanie Warner, *The New York Times*, November 23, 2005

The amount of caffeine contained in most energy drinks promotes “addiction among teenagers” and the addition of various amino acids and herbs that allegedly boost vigor is superfluous, contend public health advocates in this article discussing the nutritional value and marketing of the popular beverages. Roland Griffiths, Ph.D., a professor of psychiatry and neuroscience at Johns Hopkins University, describes the products as mere “caffeine delivery systems. They’re being marketed cleverly to imply they have other ingredients that may be useful to some end,” he said. A few energy drinks reportedly bear voluntary advisories recommending that “children, pregnant women or people sensitive to caffeine” not consume them. According to the author, however, “the definition of ‘children’ is not always clear” because Hansen Natural Corp., for example, the manufacturer of Monster Energy, says its product is “appropriate for anyone over 13.”



Scientific/Technical Items

Caffeine

[8] Johns Hopkins' Study Alleges Link Between Caffeine Dependence and Family History of Alcoholism

Pregnant women with a “serious caffeine habit” and a family history of alcohol abuse are less likely to abstain from caffeine-containing foods and beverages during pregnancy, say Johns Hopkins University researchers in a study published last week. (D. Svikis, et al., “Caffeine Dependence in Combination with a Family History of Alcoholism as a Predictor of Continued Use of Caffeine During Pregnancy,” *American Journal of Psychiatry* 162: 2344-2351, December 2005). The research team found that 50 percent of the study participants who had both a lifetime history of caffeine dependence and a family history of alcoholism continued to consume caffeine during pregnancy despite advice recommending they limit their intake to avoid the possibility of spontaneous abortion or reduced fetal growth. “This study helps to validate the diagnosis of caffeine dependence as a clinically significant phenomenon,” co-author Roland Griffiths, Ph.D., said. “It’s one thing to speculate how powerful the dependence is, but here we have an example of people who are not following physician recommendations and are unable to quit caffeine in spite of wanting to do so.”



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