

Food & Beverage

LITIGATION UPDATE

Issue 164 • March 29, 2006

Table of Contents

Legislation, Regulations and Standards

- [1] Cal/EPA Withdraws Options for Regulating Acrylamide Under Prop. 651

Litigation

- [2] California Appellate Court Denies Advocacy Groups' Petition to Compel Classification and Regulation of FMBs as Distilled Spirits1

Other Developments

- [3] Binge Drinking a Growing Problem Among Underage Girls, Says New CAMY Report1

Media Coverage

- [4] "Obesity on the Docket," *CQ Weekly*, March 20, 2006 .2

Science/Technical Items

- [5] Dairy Consumption Reduces Risk of Colorectal Cancer, Says Swedish Study2

Shook,
Hardy &
Bacon LLP

www.shb.com

Food & Beverage

LITIGATION UPDATE

Legislation, Regulations and Standards

State/Local Initiatives

[1] Cal/EPA Withdraws Options for Regulating Acrylamide Under Prop. 65

Cal/EPA's Office of Environmental Health Hazard Assessment (OEHHA) this week [withdrew](#) three regulatory proposals for acrylamide in food because the agency was unable to review voluminous public comments and redraft the proposed rulemakings "within the one-year time frame allowed by law." OEHHA reportedly intends to unveil new regulatory options for the chemical within 60 days.

The withdrawn proposals would have (i) set a "no significant risk level" (NSRL) for acrylamide of 1.0 microgram per day to replace the current 0.2 limit; (ii) set an NSRL for acrylamide in breads and cereals of 10.0 micrograms per day; and (iii) established new warning requirements for stores and restaurants if products sold by those establishments exceeded any new NSRLs for acrylamide.

Litigation

Youth Marketing Claims

[2] California Appellate Court Denies Advocacy Groups' Petition to Compel Classification and Regulation of FMBs as Distilled Spirits

The California Court of Appeal last week denied a petition from the Alcohol Policy Network and other advocacy groups asking the court to force the Department of Alcoholic Beverage Control to change the classification of flavored malt beverages (FMBs) from beer to distilled spirits. *Kiley et al. v. California Department of Alcoholic Beverage Control*, No. A112671 (Cal. Ct. App. 3/23/06). The change would have placed more restrictions on sales of the beverages, taxed them at a higher rate and prohibited television advertising of such products.

Other Developments

[3] Binge Drinking a Growing Problem Among Underage Girls, Says New CAMY Report

Georgetown University's Center on Alcohol Marketing and Youth (CAMY) issued a [report](#) this week that concludes underage girls are binge drinking more than their male peers. "At this crucial time when research shows that girls are binge drinking with alarming regularity, more must be done to reduce youth access to alcohol and the



appeal of alcohol to our youth,” CAMY Executive Director David Jernigan was quoted as saying. Among the report’s conclusions: (i) flavored malt beverages “are particularly attractive to girls and most popular with the youngest drinkers”; (ii) female high school seniors and binge drinkers consume more distilled spirits than beer; and (iii) in 2004, the 15 television programs with the largest audience of teenagers ages 12 to 17 all contained alcohol advertising. See *CAMY News Release*, March 27, 2006.

Media Coverage

[4] “Obesity on the Docket,” *CQ Weekly*, March 20, 2006

“Lawsuits send the absolute wrong signal to people who are obese, but the lawyers behind this are like Alexander the Great: they need new worlds to conquer,” says Shook, Hardy & Bacon partner [Victor Schwartz](#) in this article discussing the likelihood of consumer protection or obesity-related claims against food manufacturers. Even though many companies have altered their marketing practices or introduced “healthier” products in response to threatened litigation, “[i]ndustry executives suspect that plaintiffs’ attorneys will press forward with the suits, intent on using the ensuing publicity to spur copycat actions in other states and, possibly, inspire attorneys general to sue to recover the costs of treating diabetes, high blood pressure and other conditions linked to being overweight,” according to the article.

Schwartz points out that plaintiffs’ success with obesity-related claims will be contingent on courts redefining “product defect,” given that plaintiffs must show that a defect in the company’s product

caused the alleged harm. Federal legislation that would provide liability protection for food manufacturers in such lawsuits has passed the House twice but failed in the Senate. Schwartz chairs SHB’s Washington, D.C.-based Public Policy Practice. The article is available [here](#).

Science/Technical Items

Dairy

[5] **Dairy Consumption Reduces Risk of Colorectal Cancer, Says Swedish Study**

Swedish researchers reported this month that calcium and dairy food consumption in middle-aged and elderly men is associated with a reduced risk of colorectal cancer. S. Larsson, et al., “Calcium and Dairy Food Intakes Are Inversely Associated with Colorectal Cancer Risk in the Cohort of Swedish Men,” *American Journal of Clinical Nutrition* 83(3): 667-673, March 2006. Researchers followed 45,000 Swedish men for eight years and found that men with either a high total calcium intake or a high consumption of dairy foods were at significantly lower risk for developing colorectal cancer. They identified milk as the individual dairy food with the strongest influence on colorectal cancer Risk and the distal colon as the segment most affected (low- compared with high-intake group multivariate RR = 0.53).



Food & Beverage

LITIGATION UPDATE

Food & Beverage Litigation Update is distributed by
Mark Cowing 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 mcowing@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.

Shook,
Hardy &
Bacon^{LLP}

Geneva, Switzerland

Houston, Texas

Kansas City, Missouri

London, United Kingdom

Miami, Florida

Orange County, California

Overland Park, Kansas

San Francisco, California

Tampa, Florida

Washington, D.C.

