

# Food & Beverage

## LITIGATION UPDATE

Issue 172 • June 8, 2006

### Table of Contents

#### Legislation, Regulations and Standards

- [1] Restaurants Should Reduce Portion Sizes and Improve Nutrition, Says FDA-Funded Report .....1

#### Litigation

- [2] Frito-Lay Agrees to Label Products Containing Olestra to Avoid CSPI-Initiated Lawsuit .....1

#### Scientific/Technical Items

- [3] Rate of Twin Births Allegedly Linked to Dairy Consumption .....2
- [4] Overweight Teens Increase Among the Nation's Poor .....2

Shook,  
Hardy &  
Bacon L.L.P.®

2005 & 2006  
Global Product Liability Law Firm of the Year  
WHO'S WHO LEGAL  
The International Who's Who of Business Lawyers

[www.shb.com](http://www.shb.com)

# Food & Beverage

## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### Food and Drug Administration (FDA)

##### [1] Restaurants Should Reduce Portion Sizes and Improve Nutrition, Says FDA-Funded Report

Reversing the “public health crisis” of obesity by helping consumers better understand and manage the caloric impact of consuming “away-from-home” foods is the primary focus of a new [report](#) prepared by the Keystone Center on behalf of the FDA. Prepared by a group of industry representatives, physicians, nutritionists, and government officials, the 136-page report’s recommendations include: (i) moving the value proposition away from large portions and determining ways of marketing more appropriate portion sizes to different populations; (ii) encouraging the Children’s Advertising Review Unit to collaborate with key stakeholders to revise standards for marketing to children; (iii) promoting “lifestyle education” programs, e.g., a campaign emphasizing the importance of eating “better-quality food” instead of eating “more food”; and (iv) promoting low-calorie-dense diet patterns by bolstering educational campaigns touting the benefits of fruits, vegetables and low-fat dairy products. See *FDA News Release*, June 2, 2006.

### Litigation

#### Deceptive Trade Practices

##### [2] Frito-Lay Agrees to Label Products Containing Olestra to Avoid CSPI-Initiated Lawsuit

Frito-Lay has reportedly agreed to more prominently disclose the presence of the fat substitute olestra, or Olean, on “light” potato and tortilla chip product packaging. The company took the action in response to a lawsuit that the Center for Science in the Public Interest (CSPI) threatened to bring on behalf a Massachusetts woman who claimed she experienced severe gastrointestinal distress after eating a package of Ruffles Light cheddar potato chips in June 2005, not realizing the product contained olestra. Certain Frito-Lay products will now display an oval-shaped Olean logo, a “made with olestra” banner, and a statement noting the presence of olestra on the backs of packaging. The company will also donate \$150,000 to the Harvard Medical School Division of Nutrition. “We’re pleased that Frito-Lay agreed to these modest changes,” CSPI Executive Director Michael Jacobson was quoted as saying. “That this unsavory chemical was allowed to enter and remain in the food supply at all represents a serious mistake by the Food and Drug Administration.” See *Associated Press* and *CSPI News Release*, June 1, 2006.



## Scientific/Technical Items

### Dairy

#### [3] Rate of Twin Births Allegedly Linked to Dairy Consumption

Women who consume dairy products are purportedly five times more likely to give birth to fraternal twins than those who consume no dairy products. (G. Steinman, "Mechanisms of Twinning: VII. Effect of Diet and Heredity on the Human Twinning Rate," *Journal of Reproductive Medicine* 51(5): 405, May, 2006). The study compared twinning rates in women who regularly ate dairy products to those following vegetarian diets with no dairy intake. Steinman and colleagues report that while consumption of dairy products naturally increases blood levels of an insulin-like growth hormone that can stimulate the release of additional eggs at ovulation, dairy cattle are often injected with a synthetic version of the hormone that could further increase the likelihood of multiple ovulation. The researchers therefore opine that the use of synthetic growth hormone in U.S. cattle herds likely accounts for the nation's continuing increase in the number of twin births. Press reports indicate that U.S. twinning rates are double that of Britain's, where use of bovine growth hormone is prohibited. See *Scientific American.com*, May 22, 2006, *The New York Times*, May 30, 2006.

## Obesity

#### [4] Overweight Teens Increase Among the Nation's Poor

A research team from John Hopkins School of Public Health has reported that the percentage of impoverished 15-to 17-year-old teens who are overweight is nearly 50 times higher than the percentage of overweight teens from families living above the poverty line. (R. Miech, et al., "Trends in the Association of Poverty With Overweight Among U.S. Adolescents, 1971-2004," *Journal of the American Medical Association* 295(20): 2385-2393, May 24/31, 2006). The percentage of calories derived from consumption of sweetened beverages among all teens reportedly increased by more than 20 percent over the past 10 years and at an even faster rate among those living in poverty. Impoverished youth were also found to be less physically inactive and more likely to skip breakfast. "The campaign against obesity and the struggle against poverty are, in fact, one and the same," a Washington State health researcher was quoted as saying. "Healthier diets cost more," he said, and physical activity is often contingent "on how much money you've got." See *The Associated Press*, May 23, 2006.



---

# Food & Beverage

## LITIGATION UPDATE

Food & Beverage Litigation Update is distributed by  
Leo Dreyer 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 [ldreyer@shb.com](mailto:ldreyer@shb.com) or [mboyd@shb.com](mailto: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<sup>LLP</sup>®

**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.**

---