

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards

Food and Drug Administration (FDA)

[1] FDA Traces *E. Coli* Outbreak to Natural Selection Foods

On September 29, 2006, FDA [announced](#) that “all spinach implicated in the current outbreak has traced back to Natural Selection Foods LLC of San Juan Bautista, California.” FDA, the agriculture department, the state of California, and the Centers for Disease Control and Prevention will reportedly continue the disease investigation by inspecting and sampling facilities, water sources and the environment. FDA and California officials have also called on industry to “develop a plan to minimize the risk of another outbreak due to *E. Coli* O157:H7 in all leafy greens, including lettuce.” Industry trade associations have vowed to redouble efforts to provide consumers with a safe product.

In related news, restaurateurs seeking to fill the spinach void have apparently settled on an unlikely candidate. “Arugula is sort of the frisky Italian in the slim-cut suit winking at you,” said food author David Kamp in one report about the spicy green. With sales increasing by more than 20 percent by one estimate, arugula has reportedly appeared on menus nationwide. “We’re going to introduce America to arugula,” said the vice president of menu

development at Applebee’s. “It’s definitely an up-and-comer.” See *The Wall Street Journal*, September 29, 2006.

Litigation

Genetically Modified Organisms (GMOs)

[2] WTO Rules in United States’ Favor on GM Crops

The World Trade Organization (WTO) has [determined](#) that the European Union (EU) imposed an illegal moratorium on approving agricultural GM products from 1999 through 2003. The challenge was brought by the United States, Argentina and Canada in May 2003. Further details about the case appear in issue 31 of this Report. While the WTO ruling is being hailed as a significant victory by U.S. trade officials, European consumers have long been opposed to GM crops, so GM foods are not on supermarket shelves in EU countries. Moreover, the WTO made no judgment on the safety of such products.

According to the WTO, “there was undue delay in the completion of the approval procedure with respect to 24 of the 27 relevant products. We therefore conclude that, in relation to the approval procedures concerning these 24 products, the European Communities has breached its obligations under Article 8 and Annex C of the *SPS Agreement*.” The products at issue include maize, sugar beets,



fodder beets, cotton, and oilseed rape. The WTO also determined that individual EU member states breached their obligations by prohibiting a number of GM products, because they did not have adequate risk assessments “which would reasonably support the prohibition of the biotech products at issue.” See *Press Releases of the Office of the United States Trade Representative and Institute for Agriculture and Trade Policy*, September 29, 2006.

Other Developments

[3] U.K. Food Department Seeks Information on Nanotechnologies

According to a news source, Britain’s Department for Environment, Food and Rural Affairs has launched a voluntary reporting scheme that asks food manufacturers, researchers and others to submit information over the next two years about the nanotechnologies they are developing. The department hopes to assess any potential risks presented by nanotechnology-based products. An industry spokesman was quoted as saying, “The safety of these materials is of paramount importance to the [Nanotechnologies Industry Association] and the scheme aligns with the NIA’s advocacy of a measured and responsible approach and has our full support.” While surveys have apparently shown that people in European countries support the development of nanotechnologies, consumers have concerns about ingesting nanoscale ingredients. Accordingly, nanotechnology “has made minor inroads in the food and drink industry.” It is, however, expected to offer opportunities for the packaging industries. See *Food Production Daily.com*, September 27, 2006.

[4] Public Watchdog Group Says Nutrition Journal Failed to Disclose Conflicts of Interest

The Center for Science in the Public Interest (CSPI) claimed this week that the *Journal of the American College of Nutrition* failed to disclose a guest editor’s ties to the salt industry. The editor in question, who also advises the sodium committee of the International Life Sciences Institute, was apparently selected to oversee the June 2006 supplement on salt intake. CSPI alleges that in neglecting to print the professional affiliations of its editors and writers, the journal violated its own conflict of interest policies as well as those of the National Library of Medicine, which published the supplement’s abstracts on MEDLINE. CSPI is calling for the journal to apologize to readers and for MEDLINE to remove the articles.

In related developments, *Food Navigator USA.com* reported that World Action on Salt and Health (WASH) has launched a campaign “to pressure food companies into reducing dietary salt intake in order to lower blood pressure.” Alleging that salt levels in food vary significantly from country to country, WASH apparently believes that industry should adhere to a uniform standard, despite the fact that many scientists disagree over the effect of salt on overall health. WASH reportedly planned its initiative to overlap with a World Health Organization summit on the role of salt in global health.

In a separate article on industry efforts to reduce sodium levels while maintaining a food’s flavor and texture, *Food Navigator* reported that International Flavors & Fragrances (IFF) says it has created a line of flavor systems that could reduce the sodium levels in some foods by as much as 50 percent. According to the firm’s global director of flavor



applications, IFF has designed an “internal program for generic products,” which can then be customized to mimic the flavors usually provided by salt. IFF also reportedly claims that it can reduce sodium without altering consumer preference, although country regulations can influence “which components are used in each system.” See *Food Navigator.com*, October 3 and 4, 2006.

[5] **New Study Claims Food Advertising Affects Brand Recognition in Preschoolers**

Food advertisements aired during preschool programs build brand recognition through positive associations with fun and excitement. S. Connor, “Food-Related Advertising on Preschool Television: Building Brand Recognition in Young Viewers,” *Pediatrics* 118(4): 1478-1485, 2006. Disney, the Public Broadcasting Service and Nickelodeon reportedly had a combined total of 130 food-related ads, more than one-half of which allegedly targeted children, during 48 randomly selected hours of preschool television. Of the commercials directed at children, the majority were purportedly for fast food restaurants or sweetened cereals.

Susan Connor of Cleveland’s Rainbow Babies & Children’s Hospital said she conceived of the study after her own toddler learned the McDonald’s jingle from Disney’s “The Wiggles.” Spokespeople from Disney and PBS, both sponsor-supported networks, told the press that sponsor messages receive limited airtime and must promote education or social development, while Nickelodeon has cut food ads by 20 percent in the last two years. See *Associated Press*, October 2, 2006.

[6] **Obesity Conference to Address Nutritional Standards in Europe**

Organized by the publishers of *EU Food Law*, *Eurofood* and *Obesity Policy Report*, “Combating Obesity: Establishing a Healthy Eating Strategy for Europe” is slated for December 5-6, 2006, in Brussels, Belgium. The conference will focus on “nutritional standards across Europe and the implications these will have for the food and beverage industry,” with representatives from Unilever, Nestlé and Kraft Foods addressing “industry initiatives contributing to the fight against obesity and the ways in which [businesses] can profit from increasing opportunities in the healthy foods market.” Interested parties may register for the conference on Agra-net.com.

Scientific/Technical Items

Allergens

[7] **New Assay Technique Could Reveal Peanut Allergens in Chocolate**

Scientists writing in the *Journal of Agricultural and Food Chemistry* have reportedly found a way to test for the presence of peanut allergens that may be contained in dark chocolate. Apparently, most foods can be reliably tested for peanut allergens by using an enzyme-linked immunoabsorbant assay. The tannins in dark chocolate bind with proteins and make the detection of allergens in the structure with this assay difficult. Although still in the early stages of development, a new technique that uses peptide markers can evidently identify allergen molecules in very low concentrations and may make it easier for those with peanut allergies to consume dark chocolate in the future knowing it is safe. See *Food Production Daily.com*, October 2, 2006.



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