
Food & Beverage

LITIGATION UPDATE

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Obesity Lawsuit Amended and Refiled Against McDonald's Corporation

The Claims

Undeterred by a court's dismissal of their initial claims that fast food caused their obesity and consequent health problems, plaintiffs Ashley Pelman and Jazlen Bradley have filed an amended class action complaint against McDonald's Corp. in the U.S. District Court for the Southern District of New York. Their first complaint was dismissed in late January 2003 in a 65-page opinion that granted plaintiffs leave to file an amended pleading. Further details about Judge Robert Sweet's opinion appear in issue 14 of this Update, January 22, 2003.

Filed February 19, the amended complaint comprises some 45 pages with numerous endnotes and exhibits. It discusses the purported detrimental effects of obesity and notes that "vast medical authorities and researchers, including Defendant's own Nutritional Division in France... have warned that Defendant's certain foods are not nutritious, can not be easily consumed as part of a balanced daily diet and that users and children should not consume the Defendant's certain product [sic] more than once per week...." Information about the McDonald's France warnings appear in issue 5 of this Update, November 6, 2002. The complaint also contains more detailed information about the purported deceptive advertisements and the promotional campaigns that included toys which allegedly led plaintiffs to believe "such foods were healthy and wholesome."

The amended complaint alleges "deceptive practices in the promotion, distribution, advertising, processing and sale of certain products." Specifically, plaintiffs claim that (i) McDonald's violated consumer fraud statutes and the New York Consumer Protection Act by conducting widespread advertising campaigns since 1987 that its foods "were nutritious, of a beneficial nature/effect, and/or easily part of a healthy lifestyle if consumed on a daily basis," (ii) plaintiffs relied on these "representations and nutritional claims of the attributes of the aforementioned products in connection with the

use and consumption of said food products,” (iii) any company representation that “it provides nutritional brochures and information at all of [its] stores” is misleading for failing to include information as to the “nutritional consequences of consumption of said foods,” and (iv) the fast-food products “were so processed with additives and other ingredients and preservatives, as to create a danger and hazard unknown to the Plaintiff purchasers and consumers if consumed on a daily basis, over several years.” The Chicken McNugget and Fish Filet Patty ingredients lists are reproduced to support the allegation that these products are “hazardous or detrimental to an extent beyond which was contemplated or understood by the reasonable and ordinary Plaintiff purchaser / consumer.” The french fries ingredients list is included to launch a series of allegations about *trans* fatty acids.

The Relief Requested

Claiming that their regular consumption of McDonald’s food has caused them to exceed the Body Mass Index established by government authorities and has “been a significant or substantial factor in the development of their obesity, diabetes, coronary heart disease, high blood pressure, elevated cholesterol intake, and /or other detrimental and adverse health effects and /or diseases,” plaintiffs seek an order certifying the plaintiff class; compensatory, pecuniary, and /or punitive damages; “funding of an educational program to inform children and adults of the dangers of eating certain foods sold, marketed, produced by Defendants and containing high levels of fat, salt, sugar and cholesterol content,” attorney’s fees, costs and expenses; and other appropriate relief.

McDonald’s Response

According to news sources, McDonald’s has characterized the re-filed complaint as “senseless,” stating that the lawsuit’s “selective focus on only one food organization is not only absurd when you look at the facts, but is a serious disservice to anyone who is looking for real answers and information about healthy lifestyles, energy balance and personal responsibility.” The McDonald’s statement further says, “McDonald’s continues to be a leader in providing customers with nutritional information about our food through in-store brochures, our Web site, or toll-free customer telephone number.” See *Chicago Tribune* and *Reuters*, February 20, 2003.

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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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