

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards

U.S. Congress

[1] Latest Proposals Address GE Foods and Use of Antibiotics in Animals

Representative Dennis Kucinich (D-Ohio) has introduced a number of bills that address the regulation of genetically engineered (GE) plants, animals, bacteria, and other organisms. Among them are (i) [H.R. 2919](#), the Genetically Engineered Organism Liability Act of 2003, which would make biotech companies “liable to any party injured by the release of a genetically engineered organism into the environment if that injury results from that genetic engineering”; and (ii) [H.R. 2920](#), the Real Solutions to World Hunger Act of 2003, intended to “ensure that efforts to address world hunger through the use of genetically engineered animals and crops actually help developing countries and peoples while protecting human health and the environment.” Other bills in the package include the Genetically Engineered Food Right to Know Act of 2003, the Genetically Engineered Food Safety Act of 2003, the Genetically Engineered Crop and Animal Farmer Protection Act of 2003, and the Genetically Engineered Pharmaceutical and Industrial Crop Safety Act of 2003. Introduced on July 25, 2003, the bills have been referred to a number of House committees.

Meanwhile, companion bills introduced in the House ([H.R. 2932](#)) and Senate ([S.1460](#)) would amend

the Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases. Titled the Preservation of Antibiotics for Medical Treatment Act of 2003, the bills contain findings about antibiotic resistance and state in this regard “many scientific studies confirm that the nontherapeutic use of antibiotics in agricultural animals contributes to the development of antibiotic-resistant bacterial infections in people.” The bills call for phasing out the use of some antibiotics for nontherapeutic purposes in food-producing animals. The antibiotics specifically mentioned include penicillin, tetracycline, bacitracin, aminoglycoside, and their derivatives. Food producers, who claim they have been looking for some time for alternatives to reduce the use of growth-promoting drugs, reportedly oppose the measures. *See MaineToday.com*, July 17, 2003.

Federal Interagency Forum on Child and Family Statistics

[2] Annual Report Provides First Ever Warning on Overweight Children

According to [the seventh annual report on the condition of American children](#), which for the first time listed overweight as a measure of children’s health, “the prevalence of overweight children has emerged as a serious public health concern.” In this regard, the report notes that the percentage of children ages 6 to 18 who are overweight increased from 11 percent in the years 1988-1994 to 15 percent in 1999-2000. Significant differences between boys



and girls, and among racial and ethnic groups are reported, with black, non-Hispanic girls and Mexican American boys at particularly high risk of being overweight.

Discussing the sharp increases observed since 1980, the report states “The reasons for the increase in children who are overweight are not entirely clear and little is known about the prevention and treatment of overweight on a population basis. Numerous factors (e.g., advances in technology and trends in eating out) have been suggested as causes; however, definitive data linking these factors to the recent trends are lacking. On an individual basis, it is clear that overweight is a result of an imbalance between energy intake and energy expenditure.” The report calls for research to identify the social, economic and cultural forces contributing to the problem.

Litigation

Ice Cream

[3] **Specter of Litigation Raised in Letters to Ice Cream Parlor Chains**

In conjunction with the release of its [July/August 2003 newsletter](#) which focuses on the calorie and saturated-fat content of ice cream products, the Center for Science in the Public Interest (CSPI) and law professor John Banzhaf have sent letters to ice cream parlor chains demanding that such information appear on menu boards and/or menus. The letters state “Your failure to disclose such obviously material information as unusually large calorie and saturated-fat loads may violate state consumer protection laws and/or your common-law duty to disclose material facts, and may invite law suits from concerned consumers, legal action organizations, or even state officials.”

According to CSPI, an empty Ben & Jerry’s chocolate-dipped waffle cone has 320 calories and half-a-day’s worth of saturated fat. CSPI also claims that Cold Stone Creamery’s regular Mud Pie Mojo is equivalent to two Pizza Hut Personal Pan Pepperoni Pizzas at 1,180 calories and 26 grams of saturated fat. The Häagen-Dazs Mint Chip Dazzler, a three-scoop sundae, apparently contains 1,270 calories and 38 grams of saturated fat, equivalent to a T-bone steak, Caesar salad and baked potato with sour cream. CSPI notes that “everyone knows that ice cream isn’t a health food, but the staggering calorie and saturated-fat content of most treats served up at chains like Baskin-Robbins, Ben and Jerry’s, Cold Stone Creamery, Friendly’s, Häagen-Dazs, and TCBY is bound to surprise most consumers.” An industry trade group has reportedly responded by claiming that providing nutritional content would be “too cumbersome” for most restaurants. A spokesperson for Cold Stone Creamery was quoted as saying, “Ice cream is an indulgent dessert, and like any indulgence, is meant to be enjoyed in moderation. Lower calorie options for our customers, such as yogurt, sorbet and lowfat and nonfat mix-ins are also made available in all our stores.” See *Reuters* and *CSPI Newsroom*, July 23, 2003; *The Washington Times*, July 24, 2003.

Other Developments

[4] **Food Watchdog Group Releases Report on Food Marketing to Children**

On behalf of a consortium of nongovernmental organizations, the United Kingdom’s Food Commission has released [a report](#) recommending that the World Health Organization (WHO) take on the food industry and protect the world’s children from “the marketing of energy-dense, low-nutrient food.” The report, titled *Broadcasting Bad Health: Why Food Marketing to Children Needs to be Controlled*, asserts that

the total world food-industry advertising budget was estimated at \$40 billion in 2001, and for every \$1 WHO spends on trying to improve nutrition, the food industry spends \$500 to promote processed foods that are high in fat, sugar and salt.

Linking consumption of such foods to the growing problem of obesity and obesity-related disease, the report claims that “food advertising targeted at children” has been identified as “one of the top five causes of childhood obesity.” The report focuses on several companies and discusses their children’s advertising and promotion campaigns. Complaining that the food industry has “unfettered access to children” in most countries and that voluntary regulatory schemes do not work, the report calls for, among other things, restrictions on marketing food to children, prohibitions on the marketing of high-energy, low-nutrient foods and drinks in schools, and creation of initiatives that promote nutrition education. See *Daily Record* and *foodproductiondaily.com*, July 29, 2003.

[5] **Applebee’s, Weight Watchers Strike Deal**

Next year, the menus at all Applebee’s restaurants in the United States and Canada will begin featuring a section of appetizers, entrees and desserts co-developed with Weight Watchers International Inc., both companies have announced. Individual selections reportedly will include the number of “winning points” Weight Watchers has assigned to them.

“Studies tell us that 75 percent of U.S. adults are weight cautious. That’s a really sizable market for both of us,” a Weight Watchers spokesperson is quoted as saying. Applebee’s chief marketing officer, John Cywinski, reportedly predicted that the announcement “will move other companies to look into similar partnerships.”

The companies began discussing the arrangement about 18 months ago, according to news reports.

Applebee’s Neighborhood Grill & Bar® restaurants, with more than 1,500 locations, comprise the United States’ largest casual-dining chain. See *The Kansas City Business Journal*, *The Kansas City Star* and *Washington Post*, all July 25, 2003; *Newsday*, July 26, 2003.

Earlier in July, Kraft Foods announced that it would reduce its portion sizes and improve the overall nutritional content of its foods. See issue 38 of this Update, July 9, 2003.

[6] **U.K. Report Finds No Evidence of GM Food Risk**

The Prime Minister’s Strategy Unit has released [a report](#) which concludes that there is “no verifiable untoward toxic or nutritionally deleterious effect” associated with the worldwide consumption of genetically modified (GM) foods by humans and livestock during the last seven years. The report, titled *Field Work: Weighing up the Costs and Benefits of GM Crops*, also concludes that while GM crops could offer some cost and convenience advantages to U.K. farmers in the short term, weak consumer demand will probably limit the demand for products containing GM foods. For the longer term, public attitudes and the ability of the regulatory system to manage uncertainties are viewed as the key determinants of costs and benefits. The Strategy Unit is soliciting responses which can be submitted to GMCrops@cabinet-office.x.gsi.gov.uk.

[7] **Harvard: Social Norms Programs Don’t Curb College Drinking**

A [new study](#) by the Harvard School of Public Health reports no decline in the volume or frequency of student alcohol use on college campuses with social norms campaigns, which attempt to dispel misperceptions that fellow students drink more than they actually do. At some schools using social norms messages, reported alcohol usage increased, while



comparable increases were not found in schools that did not use such messages, according to researchers.

The study examined questionnaire responses from 98 colleges, 37 of which had social norms programs. Researchers compared seven aspects of alcohol consumption: drinking in the past year; drinking in the past month; binge drinking; drinking 20 or more drinks in the past month; drinking 10 or more times in the past month; drunk three or more times in the past month; and usually consuming five or more drinks at a time.

The article appears in the July issue of the *Journal of Studies on Alcohol*, published by the Center of Alcohol Studies at Rutgers University.

Scientific/Technical Items

Overweight/Obesity

[8] Study Links Eating Habits to Obesity Risk

New study results indicate that weight control may be about more than eating right and getting plenty of physical exercise. Researchers from the University of Massachusetts Medical School have determined that eating patterns – eating frequency, meal skipping and eating out – have the potential to influence obesity risk. M. Yunsheng, et al., “Association Between Eating Patterns and Obesity in a Free-Living US Adult Population,” *American Journal of Epidemiology* 158: 85-92, 2003. Over a one-year period, the research team gathered data on diet, exercise and weight from 499 adults, who were already enrolled in a separate study on cholesterol. After controlling for a host of other obesity risk factors, including caloric intake and exercise frequency, they were able to identify three eating habits that independently influenced obesity. Eating more frequently, four or more times a day versus

three or less, lowered the risk for obesity. In contrast, skipping breakfast and eating meals away from home increased risk. Based on the results presented, skipping breakfast had the strongest influence. Participants who routinely skipped this meal were more than four times as likely to be obese. The researchers suggest that by spreading caloric intake over the day and not skipping meals, people might better control blood insulin levels, levels that influence both feelings of hunger and how fat is deposited throughout the body.

Alzheimer's Disease

[9] Certain Foods Found to Have Possible Protective Effect

Consumption of polyunsaturated fatty acids, found in fish, nuts and oil-based salad dressings, may protect against Alzheimer's disease, according to research results just published in the journal *Archives of Neurology*. M.C. Morris, et al., “Consumption of Fish and n-3 Fatty Acids and Risk of Incident Alzheimer Disease,” *Archives of Neurology* 60(7): 940-946, 2003. Clinical investigators followed 815 initially dementia-free nursing home residents for approximately four years. Over the course of the study, 131 participants developed Alzheimer's disease. Overall, those participants who ate fish at least once a week had a 60 percent lower risk of Alzheimer's compared to those who rarely or never ate fish. General intake of polyunsaturated fatty acids was also associated with a reduced risk for Alzheimer's. Martha Clare Morris, lead investigator in the study, notes that fatty acids are also found in the membranes of brain cells; she speculates that such fatty acids may help protect these cells.



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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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