Shook, Hardy & Bacon L.L.P.

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FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

DOL Assures Withdrawal of OSHA Memo on Grain-Storage Safety

Following complaints that the Occupational Safety and Health Administration (OSHA) had improperly attempted to enforce workplace safety rules on farms with 10 or fewer employees, the U.S. Department of Labor (DOL) has **assured** members of the House Education & the Workforce Committee that OSHA will withdraw a June 2011 memorandum to regional administrators and state plan designees about limitations on their authority to "conduct enforcement activities at small farming operations during OSHA's grain safety campaign." DOL plans to issue new guidance in consultation with the U.S. Department of Agriculture and organizations representing farmers.

Committee members contended that OSHA's memorandum redefined "farming operations" to allow OSHA inspectors onto family farms. Their January 2014 **letter** stated that under OSHA's "new and unprecedented logic, it appears anything outside of the actual growing of crops and raising livestock could be deemed 'non-farming operations' that would subject family farms to OSHA inspections. The guidance is a clear attempt to circumvent the law and the will of Congress."

According to DOL, the memorandum was part of OSHA's effort to reduce fatalities in grain-storage facilities and structures; it was "intended to provide clarification and not to change longstanding OSHA policy." DOL also stated, "The Department takes seriously the congressional concerns raised in your letter and intends to fully comply with the small farms exemption." In 2011, DOL indicated that it planned to adopt workplace safety provisions for youth working in agriculture, and similar concerns about intrusions on family farms forced the Obama administration to withdraw the proposal the following year. Additional information about the action appears in Issue **438** of this *Update*. *See House Education & the Workforce Committee News Release*, February 11, 2014.

OSHA Issues Rule on FSMA Whistleblower Protections

The U.S. Occupational Safety and Health Administration (OSHA) has **issued** an interim final rule to establish procedures for handling retaliation complaints brought by whistleblowers who gained new protections under section 402 of the Food Safety Modernization Act (FSMA).

Effective on February 13, 2014, the interim rule establishes procedures and time frames applicable to retaliation complaints, including procedures and time frames for employee complaints to OSHA, OSHA investigations, appeals from OSHA determinations, administrative law judge (ALJ) hearings, Administrative Review Board review of ALJ decisions, and judicial review of the labor secretary's final decision. Comments on the interim final rule are requested by April 14, 2014.

FSMA protects employees from retaliation "by an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food," if the employees either provided or are about to provide their employer, the federal government or a state attorney general with information about Food, Drug, and Cosmetic Act (FDCA) violations; they have testified or are about to testify in a proceeding concerning an FDCA violation; or "objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee reasonably believed to be in violation of any provision of the [FDCA] or an order, rule, regulation, standard, or ban under the [FDCA]." *See Federal Register*, February 13, 2014.

TTB Updates Gluten Content Labeling Policy

The U.S. Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB) has issued a revised interim **policy** on gluten content statements permitted in wine, distilled spirits and malt beverage labeling and advertising. TTB took the action after reviewing the U.S. Food and Drug Administration's (FDA's) final rule on the use of "gluten-free" on labels for products within that agency's jurisdiction with the goal of making its approach "as consistent as possible with the regulations that FDA issued." Thus, TTB Ruling 2014-2 supersedes TTB Ruling 2012-2; it remains an interim ruling, however, until "FDA issues a final rule or other guidance with respect to fermented and hydrolyzed products."

Under TTB's revised interim policy, "the term 'gluten-free' may be used on labels and in advertisements if the product would be entitled to make a gluten-free label claim under the standards set forth in the new FDA regulations at 21 CFR 101.91. Thus, alcohol beverages that are made without any ingredients containing gluten (such as wines fermented from grapes or other fruit and distilled spirits distilled from materials other than gluten-containing grains, where such products do not include any ingredients containing gluten) may continue to make 'gluten-free' claims in the same way allowed in the new FDA regulations for inherently gluten-free products." TTB also "expects manufacturers using a 'gluten-free' claim to take appropriate measures to prevent cross-contact with gluten-containing grains during production, processing, storage, or other handling practices."

SHB offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

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Products not meeting the FDA "gluten-free" standard, i.e., those containing "an ingredient that is a gluten-containing grain, such as wheat, rye, barley, or a cross-bred hybrid of those grains," will be considered misleading if carrying a "gluten-free" label. TTB will, however, continue to allow malt beverages to "bear a claim that the product was 'Processed' or 'Treated' or 'Crafted' to remove gluten, together with the same qualifying statement set out in TTB Ruling 2012-2, and upon submission of certain supporting documentation." *See TTB Ruling 2014-2*, February 11, 2014.

HHS Announces Upcoming DGAC Web Meeting

The U.S. Department of Health and Human Services (HHS) and the Department of Agriculture have **announced** a March 4, 2014, public meeting of the 2015 Dietary Guidelines Advisory Committee (DGAC).

Accessible by Webcast only, meeting agenda items include topic-specific presentations from guest experts; a review of committee work since the last public meeting; and future committee plans. Registration is required for Web viewing. *See Federal Register*, February 11, 2014.

Agency Reportedly Lacks Resources to Implement FSMA

Testifying before the House of Representatives Energy and Commerce Committee on February 5, 2014, U.S. Food and Drug Administration (FDA) Deputy Commissioner for Foods and Veterinary Medicine Michael Taylor said that, while the agency has enough resources to issue the final rules for the Food Safety Modernization Act (FSMA), it lacks the resources to implement them.

"We will continue efforts to make the best use of the resources we have, but simply put, we cannot achieve FDA's vision of a modern food safety system and a safer food supply without a significant increase in resources," Taylor said in his **testimony**.

When FSMA was approved in 2010, the Congressional Budget Office estimated that FDA would need an increase of more than $580 million to fund the expanded food safety activities. Noting that FDA "cannot do all that is asked []without additional resources," Taylor cited in particular new FSMA mandates regarding imported food that place increased responsibility and burden on U.S. importers. "Without adequate funding, FDA will be unable to adequately fulfill its oversight responsibilities," he said. "This includes implementing the Foreign Supplier Verification Program; conducting more foreign inspections; working more closely on food safety with foreign governments to leverage their efforts; and improving []data and import systems to facilitate prompt entry of foods that meet [] safety standards." Implementation of FSMA is set to begin after all final rules are published in June 2015. *See FoodSafetyTech.com*, February 6, 2014.

Ad Watchdog Censures "French Beer" Brewed in UK

The U.K. Advertising Standards Authority (ASA) has **upheld** two complaints alleging that Heineken UK Ltd.'s print and TV advertisements gave the impression that its Kronenbourg 1664 beer was brewed in France and made primarily from French hops, despite text disclaimers stating that the product was "Brewed in the UK."

According to the February 12, 2014, ruling, the ads in question touted Kronenbourg 1664 as a "French beer… brewed with the aromatic Strisselspalt hop" sourced from Alsace, France. Although Heineken noted in its response that "Kronenbourg 1664 was an inherently French beer… first brewed in 1952 in Alsace by Brasseries Kronenbourg," ASA ultimately agreed with complainants that the print ad's "degree of emphasis… on the connection with France would lead consumers to believe that the entire brewing and manufacturing process took place in that country," while the TV ad's focus on the Strisselspalt hop "implied that all, or a significant majority of, hops used in the brewing process were sourced from France."

To this end, the ruling found that the "Brewed in the UK" disclaimers "contradicted rather than clarified the main message of the ad." Dismissing Heineken's arguments that "the beer's 'Frenchness' was an integral part of the brand that had been regularly communicated to consumers… and would not be a new concept for the general public," the agency also pointed to documentation showing that the Strisselspalt hop "did not constitute a significant majority of the total hops used in the recipe for the beer." As ASA thus concluded, "We told Heineken UK Ltd. to take care not to emphasize a connection with France to the extent that their ads implied that Kronenbourg 1664 was brewed in France, or that all or most of the hops used in the recipe were grown in France."

Meanwhile, Heineken has reportedly requested an independent review of the adjudication, citing "significant flaws" in ASA's reasoning. "We are clearly very disappointed about the ruling," a spokesperson told *Marketing Week*. "Kronenbourg 1664 is French by any reasonable measure, including brand ownership, history, heritage, and the authentic recipe used. We have never made any secret that it is also brewed in the UK, and this fact is clearly communicated within the two commercials that were challenged and on every bottle and can." *See Marketing Week,* February 12, 2014.

LITIGATION

Court Allows Claims Against Guacamole Maker to Proceed

A federal court in California has denied the motion to dismiss filed by guacamole maker Yucatan Foods, L.P. in a putative class action alleging violations of labeling laws based on the company's use of "evaporated cane juice" instead

of "sugar" on product labels. *Swearingen v. Yucatan Foods, L.P.*, No. 13-3544 (U.S. Dist. Ct., N.D. Cal., San Jose Div., order entered February 7, 2014).

So ruling, the court rejected Yucatan's arguments that (i) the "home state" exception of the Class Action Fairness Act should apply and divest the federal court of jurisdiction because a nationwide class of consumers cannot be certified given that California law cannot regulate conduct unconnected to the state—the court found that resolution of this issue was not appropriate at the pleadings stage; (ii) federal law preempts the plaintiffs' state law-based claims—the court determined that the claims rise and fall on the defendant's compliance with federal law, thus the requirements the plaintiffs seek to impose are identical to federal requirements; (iii) primary jurisdiction should apply because the Food and Drug Administration (FDA) does not yet have a final position on the use of "evaporated cane juice" on labeling—according to the court, FDA has draft guidance and continues to issue warning letters consistent with that position, suggesting that "the agency does not view the issue as unsettled"; (iv) the named plaintiffs lack standing, particularly as to products they did not purchase—the court rejected Yucatan's argument "for the most restrictive view of standing"; and (v) the plaintiffs failed to state a plausible claim for relief—the court ruled that the pleadings were sufficient under the theories alleged.

Class Claims HPP-Treated Fruit Drinks Cannot Carry "Raw" Labeling

A California resident has filed a putative nationwide class action against Suja Life, LLC, alleging that the company, which advertises and labels its juice products as "raw" and "cold-pressed," misleads consumers because it uses a high pressure processing (HPP) treatment that alters the nutrients and live enzymes that raw-product purchasers wish to consume. *Heikkila v. Suja Life, LLC*, No. 14-0556 (U.S. Dist. Ct., N.D. Cal., filed February 5, 2014). Claiming that HPP's effects on juice products are "identical to those of traditional pasteurization—inactivated enzymes, inactivated probiotics, altered physical properties of the product, and denatured proteins, among other undesirable qualities," the plaintiff alleges that the products "are nothing more than run-of-the-mill, processed juices."

According to the complaint, the plaintiff reviewed the company's Website, packaging and labeling before making her purchase and paid a premium price for the products. She contends that raw juices have a short shelf life and are thus more expensive than "the average 100% pasteurized juices. . . . Surprisingly, Defendant's Juice Products, unlike other raw and unpasteurized juices on the market have a considerably longer shelf life of about 30 days."

Alleging violation of the Magnuson-Moss Warranty Act, breach of express warranty and the implied warranty of merchantability, unjust enrichment/ common law restitution, and violations of California's Consumers Legal

Remedies Act, Unfair Competition Law and False Advertising Law, the plaintiff seeks declaratory and injunctive relief, compensatory and punitive damages, disgorgement, restitution, interest, attorney's fees, and costs.

According to a news source, the law firm that filed the suit also filed the same types of claims on behalf of four named plaintiffs in 2013 against Hain Celestial for its BluePrint HPP-treated juices, which are also marketed as "raw." That suit has apparently been dismissed without prejudice at the plaintiffs' request. While the U.S. Food and Drug Administration has defined "fresh," a term that cannot be used for HPP products, no specific regulations have been developed for those products labeled "raw." *See BevNet.com*, February 12, 2014.

Single-Serve Coffee Maker Alleges Unfair Competition in Market

TreeHouse Foods, Inc. has filed an antitrust and unfair competition lawsuit against Green Mountain Coffee Roasters, Inc. and Keurig, Inc., alleging that they have undertaken a series of unlawful practices that have allowed them to dominate the single-serve coffee market, despite the expiration of their "K-Cup" patents in 2012. *TreeHouse Foods, Inc. v. Green Mountain Coffee Roasters, Inc.*, No. 14-0905 (U.S. Dist. Ct., S.D.N.Y., filed February 11, 2014).

Among other matters, the plaintiffs claim that Green Mountain (i) eliminated potential competitors by acquiring them; (ii) systematically tied up vertical distribution channels for competitive cups by entering restrictive exclusive dealing contracts with companies at all levels of the compatible cup distribution system, including machinery sellers, compatible cup component sellers, competitor coffee roasters and coffee brands, and retailers selling compatible cups to end user consumers, businesses and institutions; (iii) filed an unsuccessful patent-infringement lawsuit against the plaintiff—the Federal Circuit concluded that "Keurig is attempting to impermissibly restrict purchasers of Keurig brewers from using non-Keurig [Competitive Cups] by invoking patent law"; and (iv) developed a new K-Cup brewer that will be able to identify if a competitive cup is inserted and prevent the brewer from working with it.

Asserting 18 counts under federal, Illinois, New York, and Wisconsin laws, the plaintiffs seek declaratory and injunctive relief; compensatory, trebled and punitive damages; interest; attorney's fees; and costs.

Trader Joe's Agrees to Settle "All Natural" False Ad Claims

A federal court in California has preliminarily approved a $3.375-million settlement of class-action claims that Trader Joe's misled consumers throughout the United States by selling a number of food products with "All Natural" labels despite the presence of synthetic or artificial ingredients. *Larsen v. Trader Joe's Co.*, No. 11-5188 (U.S. Dist. Ct., N.D. Cal., San Francisco Div., order entered February 6, 2014). Additional details about the complaint appear in

Issue 415 of this *Update*. According to a news source, the agreement would provide class members with proof of purchase the average price of the purchased items. Those without proof of purchase would receive between $2.70 and $39.99. The grocery chain has also apparently agreed to stop advertising the products as "all natural." The final approval hearing has been scheduled for July 9, 2014. *See Law360*, February 7, 2014.

Kroger "Simple Truth" Chicken Labeling Challenged in Class Action

Represented by animal rights organization Compassion over Killing, a California resident has filed a putative statewide class action against the Kroger Co., alleging that it misleads consumers by labeling its store-brand chicken products as "sourced from chickens raised 'cage free in a humane environment,'" when the company's "Simple Truth" chickens "are treated no differently than other mass-produced chickens on the market." *Ortega v. The Kroger Co.*, No. BC536034 (Cal. Super. Ct., Los Angeles Cnty., filed February 11, 2014).

Plaintiff Anna Ortega claims that she purchased the company's chicken products, sourced from Perdue, relying on the package representations and paid a premium for them, averaging 41 percent more than comparable products. The complaint outlines the industry standards that Perdue and other chicken processors follow, detailing how they fail to prevent pain, disease and injury from birth to slaughter for a significant number of birds. According to the complaint, Kroger and Perdue are the only companies using "humane" handling labeling on their chicken products, while Perdue's processing standards are based on the National Chicken Council's Animal Welfare Guidelines and Audit Checklist for Broilers, which not only are minimal standards but allow for a measure of non-compliance.

Alleging violation of the fraudulent and unlawful prongs of California's Unfair Competition Law, fraud in the inducement, negligent misrepresentation, breach of express warranty, and violations of the Consumers Legal Remedies Act, the plaintiff seeks declaratory and injunctive relief, restitution, disgorgement, interest, attorney's fees, and costs.

OTHER DEVELOPMENTS

WHO World Cancer Report Targets Diet and Nutrition

The World Health Organization's (WHO's) International Agency for Research on Cancer (IARC) last week published its *World Cancer Report 2014,* a collaborative effort providing "a professional, multidisciplinary assessment of all aspects of the geographical distribution, biology, etiology, prevention, and control of cancer." In addition to a chapter on cancer etiology as it relates to diet, obesity and physical activity, the report's third edition includes a section

focusing on regulatory and legislative initiatives—such as the taxation of sugar-sweetened beverages (SSBs)—designed to minimize behavior-related carcinogenic risk. It also features a "Perspectives" article by Harvard School of Public Health Professor Epidemiology and Nutrition Walter Willett that reviews "our current state of knowledge on diet, nutrition, and cancer."

Co-authored by Willett, the chapter on diet, obesity and physical activity warns that excess body fat "increases risk of cancers of the oesophagus, colon, pancreas, endometrium, and kidney, as well as post-menopausal breast cancer." Singling out high meat consumption for its alleged association with colorectal cancer, this section ultimately recommends making the reduction of SSB consumption "a high priority" and argues that even though a diet high in fruits, vegetables and whole grains "does not appear to be as strongly protective against cancer as initially believed," "this dietary pattern is still advisable because of the benefits for diabetes and cardiovascular diseases." It also emphasizes the challenges of measuring diet in cancer epidemiological studies and new research describing the effect of diet on gut microbes.

Meanwhile, the section on legislative and regulatory initiatives addresses what it describes as "behavior-related" cancer exposures, including "tobacco smoking, alcohol consumption and excessive food intake." Observing that regulatory measures to reduce obesity "are relevant to cancer control but [] adopted in the broad context of controlling diabetes and cardiovascular disease," this chapter highlights a case study of Brazilian markets suggesting that SSB taxation "would be an effective way to control and reduce the consumption of these products." As report editor Bernard Stewart, University of New South Wales, and IARC scientist Robert Baan note, however, "Measures to encourage good nutrition are available and are being further developed…, but these are not aimed at reducing exposure to agents generally recognized as carcinogens… A singular focus on cancer resulting from food contamination underpinned historic United States legislation—the Delaney Clause [of the Food, Drug, and Cosmetic Act] mentioned above—but any such risk is now considered to be best addressed in the context of general food safety legislation."

In his article titled "Diet, nutrition, and cancer: where next for public health?," Willett also considers augmenting current legislative and regulatory initiatives with public health approaches geared toward reducing obesity and encouraging physical activity. In particular, he discusses (i) education and awareness programs, specifically those that support "more intensive policies, such as taxation"; (ii) food and menu labeling; (iii) economic strategies, including taxing SSBs and offering subsidies for whole grains, fruits and vegetables; (iv) limiting or promoting the availability of certain foods; (v) fortifying foods to prevent cancer, if evidence supports such measures; and (vi) banning specific foods or ingredients, or limiting serving sizes through regulation. "As discussed elsewhere in this Report, the process of research and

translation leading to reductions in cancer rates has been highly successful for many types of exposures, including tobacco use, radiation, pharmaceuticals, and occupational hazards," concludes Willett. "From this experience, we have learned much about the process of cancer prevention that can be applied to dietary factors."

IOM Issues Report on Sustainable Diets

The Institute of Medicine (IOM) has issued a **report** that summarizes its Food Forum and Roundtable on Environmental Health Sciences, Research, and Medicine that took place May 7-8, 2013. Titled "Sustainable Diets: Food for Healthy People and a Healthy Planet - Workshop Summary," the report discusses current and emerging information on the food and nutrition policy implications of increasing environmental constraints on the food system as well as the relationship between human health and the environment.

California Meat Processor Recalls 8.7 Million Pounds of Beef

The U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) has **announced** that Petaluma, California-based meat processor Rancho Feeding Corp. has recalled nearly 9 million pounds of beef products—all of the beef processed by the company from January 2013 through January 2014 and shipped to California, Florida, Illinois, and Texas.

According to FSIS, "the products are adulterated, because they are unsound, unwholesome or otherwise unfit for human food and must be removed from commerce"; the company purportedly processed "diseased and unsound animals and carried out these activities without the benefit or full benefit of federal inspections." Although no reports of illness from consumption of these products have been submitted to FSIS, the recall was categorized as Class I, which means it presents "a health hazard situation where there is a reasonable probability that the use of the product will cause serious, adverse health consequences or death."

The company has reportedly been under scrutiny and last month recalled 40,000 pounds of meat products that similarly did not undergo a full inspection. According to a news source, FSIS indicated that the problems have been discovered as part of an ongoing investigation. *See FSIS News Release*, February 8, 2014; *HuffingtonPost.com*, February 9, 2014.

MEDIA COVERAGE

Efforts Underway to Interest State AGs in Obesity Litigation

According to *Politico.com*, an attorney who formerly represented cigarette manufacturers and served as in-house counsel for a major food company has written to the attorneys general (AGs) of 16 states seeking to interest them in bringing a lawsuit against "big food" to recover the financial Medicaid burdens associated with treating obesity-related diseases. Similar to AG efforts in the 1990s that culminated in a $246-billion tobacco industry settlement with 46 states, this initiative has its naysayers and supporters.

A former AG, now directing Columbia Law School's National State Attorneys General Program, claimed that the proposal will not gain traction because "[t]he food industry doesn't deny that eating lots of food causes obesity." On the other hand, Duke University's Sanford School of Public Policy Dean Kelly Brownell said, "I don't think it's far-fetched at all. It's probably not something that will happen immediately, but I don't think it's that far off." Some have reportedly suggested that "food addiction" will eventually be the theory underlying food industry lawsuits, and plaintiffs' lawyers will look for "smoking gun" documents to support the allegation. U.S. Chamber Institute for Legal Reform President Lisa Rickard speculated that "the food industry has a big target on its back," because plaintiffs' lawyers, who contribute to AG election campaigns, are typically hired to do legal work for AG offices in exchange for part of the settlement.

Former Mississippi AG Mike Moore, who filed the first lawsuit against the tobacco industry and spearheaded the class action settlement, noted that AGs were initially reluctant to take on the industry—"The issue was too controversial. Nobody thought we had a chance to win." Still, Moore distinguished the products, "It's just not the same. There is no safe use of cigarettes, but we live off food. I'd never say you can't make a case. That's all I heard for five years. But you'd really have to have some significant proof." *See Politico.com*, February 12, 2014.

NYT "Room for Debate" Contributors Urge CVS to Drop Soda, Energy Drinks

Contributors to a recent *New York Times* "Room for Debate" column have urged CVS Caremark Corp. to stop selling soda, energy drinks and high-calorie snacks in the wake of its decision to discontinue the sale of tobacco products. Noting in her debate response that "food is not tobacco," New York University Nutrition Professor Marion Nestle nevertheless encourages the retailer to increase its sales of fruits, vegetables and healthy snacks while decreasing the availability of items like soda, ice cream and chips. "If CVS wants to counter obesity," she opines, "dropping soft drinks is a good place to start. They have

scads of sugars, and kids who drink them regularly take in more calories, are fatter and have worse diets than kids who do not."

In addition, a senior scientist at the University at Buffalo Research Institute on Addictions calls on CVS pharmacies to prohibit the sale of caffeinated energy drinks to children younger than age 18. "The American Academy of Pediatrics, the Institute of Medicine and the American Medical Association have all issued statements recommending against energy drink use by children and adolescents," writes Kathleen Miller. "By restricting sales to minors, CVS could take another pioneering step in promoting the health of its most vulnerable customers." *See The New York Times,* February 7, 2014.

SCIENTIFIC/TECHNICAL ITEMS

Caffeine Intake of Youth Focus of New Study

A recent study has reported that although "mean caffeine intake has not increased among children and adolescents in recent years," "coffee and energy drinks represent a greater proportion of caffeine intake as soda intake has declined." Amy Branum, et al., "Trends in Caffeine Intake Among U.S. Children and Adolescents," *Pediatrics,* February 2014. Using 24-hour dietary recall data obtained from the National Health and Nutrition Examination Survey 1999-2010, researchers with the Centers for Disease Control and Prevention found that 73 percent of children consumed caffeine on a given day, with soda accounting for the majority of caffeine intake throughout the study period.

"However, the proportion of intake attributable to soda declined from 62% in 1999-2000 to 38% in 2009-2010," said the study's authors. "Coffee accounted for only 10% of caffeine intake in 1999-2000, but increased significantly to nearly 24% of caffeine intake in 2009-2010… Energy drinks did not exist as a category in 1999-2010, but represented nearly 6% of caffeine intake in 2009-2010." In addition, tea has purportedly remained "the second largest contributor to overall caffeine intake" among youth over the past 10 years.

Based on these results, the study ultimately questions whether recent measures to reduce soda and juice consumption will cause children and adolescents to view coffee or energy drinks as alternatives. "On average, a 12-oz serving of energy drink contains 36 g of sugar and ~160 calories, nearly the same as a 12-oz can of soda," conclude the authors. "However, the amount of caffeine in energy drinks varies between brands and can be as high as 130 mg in a 12-oz serving, equivalent to four 12-oz servings of caffeinated sodas… Future research should continue to monitor trends in energy drink and coffee consumption among youth, as well as determine the potential impact of these beverages on health outcomes."

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Lancet Article Questions Fruit Juice Consumption

A recent article published in *The Lancet: Diabetes & Endocrinology* has questioned current nutritional guidelines that permit the substitution of fruit juice for one daily fruit serving, arguing that some fruit juices contain as many calories as other sugar-sweetened beverages (SSBs). Jason Gill and Naveed Sattar, "Fruit juice: just another sugary drink?," *The Lancet: Diabetes & Endocrinology,* February 2014. After surveying approximately 2,000 adults "to assess knowledge of sugar content of a range of SSBs, fruit juices, and smoothies," researchers with the University of Glasgow's Institute of Cardiovascular and Medical Sciences reported that participants under-estimated the sugar content of fruit juices and smoothies by 48 percent on average while overestimating the sugar content of carbonated drinks by 12 percent on average.

The article suggests that many people perceive fruit juices and smoothies to be "low-sugar alternatives" to soda, even though the micronutrient content of these beverages "might not be sufficient to offset the adverse metabolic consequences of excessive fruit juice consumption." It also warns that allowing fruit juice to serve as a fruit equivalent "is probably counterproductive because it fuels the perception that drinking fruit juice is good for health, and thus need not be subject to the limits that many individuals impose on themselves for consumption of less healthy foods."

"Accordingly, we suggest that better labeling of fruit juice containers is needed, to include explicit recommendations on maximum recommended daily intake," conclude the authors. "A further, more radical suggestion would be to re-examine whether any fruit intake in the form of juices should be permissible within guidelines for daily fruit and vegetable intake… A fruit juice tax is probably not warranted; however, in the broader context of public health policy, it is important that debate about SSB reduction should include fruit juice."

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