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FOOD & BEVERAGE LITIGATION UPDATE

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LEGISLATION, REGULATIONS AND STANDARDS

U.S. Lawmakers Reintroduce Legislation Mandating GE Labeling for Food

U.S. Sens. Barbara Boxer (D-Calif.), Richard Blumenthal (D-Conn.) and Rep. Peter DeFazio (D-Ore.) have reintroduced a proposed bill that would require the Food and Drug Administration to initiate labeling rules for foods that contain genetically engineered (GE) ingredients.

"Some in the food and chemical industry say adding this very small piece of information to food labels will confuse people, will alarm people," Boxer said. "Well, that argument is a familiar one. It's been raised by almost every single industry when they want to avoid giving consumers basic facts about the product they're buying."

The Genetically Engineered Food Right-to-Know Act reportedly has wide-ranging **support** from more than 120 public health, consumer and environmental organizations. The congressional lawmakers introduced similar legislation in the 113th Congress. *See The Hill* and *Press Release of Congressman Peter DeFazio*, February 12, 2015.

FDA Says Dark Chocolate May Contain Undeclared Milk

The U.S. Food and Drug Administration (FDA) has **issued** the results of a study finding that dark chocolate products may contain milk that is not declared on other labels. According to a February 11, 2015, consumer update, the agency tested dark chocolate bars for the presence of milk after dividing them into categories based on their labeling: (i) those that included precautionary statements such as "may contain milk" or "may contain traces of milk"; (ii) those labeled "dairy-free" or "allergen-free"; (iii) those that made no mention of milk on the label; and (iv) those with inconsistent labels—for example, a "vegan" product with a label indicating the possible presence of milk traces.

The results evidently identified milk in (i) two of the 17 dark chocolates labeled "dairy-free" or "allergen-free"; (ii) 55 of the 93 products that gave no clear indication of the presence of milk in the products; and (iii) all seven bars that declared the presence of milk. In addition, FDA reported, six of the 11 products disclosing "traces of milk" contained milk "at detectable levels high enough to potentially cause severe reactions in some individuals."

"First of all, milk-allergic consumers should be aware that a high proportion of the dark chocolates we tested contained milk, even when the label failed to list milk as an ingredient," said FDA researcher Binaifer Bedford. "And because consumers can't be sure that a statement about milk is completely accurate, they may want to contact the manufacturer to find out how it controls for allergens such as milk during production."

EFSA to Hold Meeting on Caffeine Safety

The European Food Safety Authority (EFSA) has **announced** a March 5, 2015, stakeholder meeting to discuss its draft opinion on the safety of caffeine. Authored by the agency's Nutrition Unit, the draft opinion finds, among other things, that "single doses of caffeine up to 200 mg and daily intakes of up to 400 mg do not raise safety concerns for adults." It also considers the following: (i) "caffeine consumption during pregnancy, and adverse health effects on the fetus"; (ii) "acute and long-term effects of caffeine consumption on the central nervous system (e.g. sleep, anxiety, behavioral changes) in adults, adolescents, and children"; (iii) "long-term adverse effects of caffeine consumption on the cardiovascular system in adults"; (iv) "acute effects of caffeine consumption in 'energy drinks' and risk of adverse health effects in adolescents and adults involving the cardiovascular and central nervous systems, particularly when consumed within short periods of time, at high doses, and in combination with alcohol and/or physical exercise"; (v) "acute effects of caffeine in combination with synephrine on the cardiovascular system."

The meeting will address these topics with "interested parties from national and international risk assessment bodies, academia, consumer organizations, and food sector operations." Additional details about the public consultation, which ends March 15, 2015, appear in Issue **551** of this *Update*.

EFSA Issues Scientific Opinion on Nickel in Vegetables, Water

At the request of the Hellenic Food Authority, the European Food Safety Authority's (EFSA's) Panel on Contaminants in the Food Chain (CONTAM Panel) has **issued** a scientific opinion on the public health risks associated with the presence of nickel (Ni) in food—especially vegetables—and drinking water. Citing the established tolerable daily intake (TDI) of 2.8 µg Ni/kg body weight (bw) per day, the CONTAM Panel concluded that chronic dietary exposure to nickel represents a concern for the general population and that consumers already sensitized to nickel through dermal contact may develop eczematous flare-up skin reactions at the current levels of acute dietary exposure levels.

The CONTAM Panel relied on a total of 18,885 food samples and 25,700 drinking water samples to estimate dietary exposure to nickel, finding that the following food groups were the main contributors across age categories: (i) grain and grain-based products; (ii) non-alcohol beverages (except milk-based beverages); (iii) sugar and confectionary; (iv) legumes, nuts and

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oilseeds; and (v) vegetable and vegetable products—with milk and dairy products an additional contributor in young populations. In particular, the panelists reported that "the relatively high consumption of chocolate and chocolate-based products made 'sugar and confectionary' one of the main contributors" of dietary nickel for adolescents and other children, while the consumption of cocoa beverages and coffee made "non-alcoholic beverages" a main contributor for young and adult populations, respectively.

Toddlers and other children reportedly showed the highest chronic and acute dietary exposure to nickel. According to the panel, which reported that mean acute dietary exposure in the young population ranged from 3.4 to 14.3 µg Ni/kg bw per day, "[t]he mean chronic dietary exposure to Ni across the different dietary surveys and age classes, ranging from 2.0 (minimum LB, 'Elderly') to 13.1 µg Ni/kg bw per day (maximum UB, 'Toddlers') is close to the TDI or above it particularly when considering the young age groups ('Infants,' 'Other Children,' 'Toddlers,' and 'Adolescents')." In addition, EFSA noted that "[t]he 95 percentile dietary exposure ranging from 3.6 (minimum LB, 'Elderly') to 20.1 µg Ni/kg bw per day (maximum UB, 'Toddlers') is above the TDI for all age groups."

"The CONTAM Panel concluded that the exposure via the diet likely represents the most important contribution to the overall exposure to Ni in the general population," states the scientific opinion. "The CONTAM Panel noted the need for mechanistic studies to assess the human relevance of the effects on reproduction and development observed in experimental animals and for additional studies on human absorption of Ni from food, for example in combination with duplicate diet studies."

LITIGATION

Meat Industry's COOL Challenge Dropped

Challengers to the U.S. Department of Agriculture's country-of-origin labeling (COOL) rules requiring meat products to indicate where the animals were born, raised and slaughtered reportedly will not continue to pursue their claims, according to a stipulation of dismissal. *Am. Meat Inst. v. USDA*, No. 13-1033 (U.S. Dist. Ct., D.C., stipulation filed February 9, 2015).

The meat and poultry groups lost their First Amendment challenge to the mandatory labeling rules in the D.C. Circuit Court and were later denied a rehearing. The stipulation comes after a World Trade Organization (WTO) ruling against the United States in favor of Canada and Mexico, which argue that the rules discriminated against their livestock producers. "While we remain disappointed with the court's ruling on country of origin labeling (COOL), we agree with the World Trade Organization's assessment that the U.S. rule is out of compliance with its trade obligations to Canada and Mexico," North American Meat Institute CEO Barry Carpenter reportedly said. "As USDA

Secretary Tom Vilsack has said, a statutory fix is needed to bring the U.S. into compliance to avoid retaliatory tariffs and we're committed to working with Congress to fix COOL once and for all." Additional information about the WTO ruling appears in Issue 542 of this *Update*, and details of the D.C. Circuit's decision appear in Issue 532. *See Law360*, February 10, 2015.

Food & Water Watch Challenge to New Poultry Inspection System Dismissed

Finding a lack of standing, a D.C. federal court has dismissed Food & Water Watch's lawsuit alleging that the U.S. Department of Agriculture's (USDA's) New Poultry Inspection System (NPIS) is inconsistent with the Poultry Products Inspection Act (PPIA), which requires USDA to ensure that poultry products are wholesome, unadulterated and properly marked, labeled and packaged. *Food & Water Watch v. Vilsack*, No. 14-1547 (U.S. Dist. Ct., D.C., order entered February 9, 2015). The NPIS reduces the number of USDA inspectors at the slaughter line of poultry production facilities, "freeing up [USDA Food Safety and Inspection Service] resources to conduct offline inspection activities that are more important for food safety, such as verifying compliance with sanitation and [other] requirements, or conducting Food Safety Assessments."

Food & Water Watch challenged the NPIS as consumers of poultry, arguing that the USDA inspection label indicated to them that a federal employee had inspected the poultry and that the product met federal safety and quality standards. According to the court, the complaint called NPIS "'an unprecedented elimination of inspection resources for a secret set of young chicken and turkey slaughterhouses' that will ultimately 'threat[en] public health and introduc[e] unwholesome poultry into interstate commerce.'"

The court found that the Food & Water Watch leaders, as individuals, did not have standing to sue because "the harm that purportedly results from the challenged conduct must be imminent (aka 'certainly impending'), which ordinarily means that the plaintiff must show that the injury *will* occur as a result of the challenged act." Acknowledging that an increased risk of harm will suffice, the court stated that the plaintiff "must do more than merely assert that there is some conceivable risk that she will be harmed on account of the defendant's actions"; rather, the plaintiffs must show that the increased risk and the probability of the harm occurring are substantial. The plaintiffs also alleged that the NPIS would cost them money because they would seek out poultry produced at non-NPIS facilities, and this avoidance injury gave them standing to sue, but the court disagreed. "[A] plaintiff cannot transform a remote risk into a concrete injury merely by taking steps to avoid that risk; to hold otherwise would eliminate the injury-in-fact requirement entirely because plaintiff's actions are always within plaintiff's control."

The court also refused to hold that by implementing a labeling scheme, the PPIA requires USDA to disclose information about poultry inspection to the

public. "[I]t does not make sense to construe this particular statute to require the disclosure of certain information on the basis of its labeling provision because the PPIA broadly defines the required 'official inspection legend' as '*any* symbol prescribed by regulations of the Secretary showing that an article was inspected for wholesomeness in accordance with this chapter' [] and does not obligate Defendants to include any particular information about the inspection process specifically or food safety in general."

Further, Food & Water Watch did not have standing to sue, the court said, because (i) the organization's mission does not conflict with USDA's conduct, (ii) the organization's programmatic concerns were not injured and (iii) Food & Water Watch failed to properly assert an informational injury. Finding no standing to base the challenge upon, the court denied Food & Water Watch's motion for a preliminary injunction and dismissed the case.

Marie Callendar's "All Natural" Suit to Proceed

A California federal court has allowed most of the claims to proceed in a lawsuit alleging that Marie Callendar's baking mixes are labeled "all natural" despite containing the synthetic ingredient Sodium Acid Pyrophosphate. *Musgrave v. ICC/Marie Callendar's Gourmet Prods. Div.*, No. 14-2006 (U.S. Dist. Ct., N.D. Cal., order entered February 5, 2015). The court dismissed the plaintiff's request for an injunction and unjust enrichment claim but denied the food company's motion to dismiss all other claims.

The court assessed each argument in the motion to dismiss in turn, finding first that the plaintiff's claims were not preempted by the Federal Food, Drug, and Cosmetic Act or subject to the primary jurisdiction of the U.S. Food and Drug Administration. It then discussed whether a reasonable consumer would be deceived by the term "natural" on the baking mixes. The court dismissed the food company's argument that the plaintiff offered inconsistent meanings of "natural" because he did not need to "allege that every consumer shares the same definition of 'all natural,' only that a reasonable consumer could interpret these words to exclude synthetic compounds." The court also accepted the plaintiff's argument that the premium he paid for the "all natural" baking mixes was sufficient to be an economic injury.

The plaintiff also had standing to sue, even for those products he did not personally purchase, because whether he could properly represent the proposed class was an issue for the class certification stage. The court also preserved the breach of contract claim because the meaning of unambiguous or uncertain contract terms—"all natural"—should be determined at a later stage as well.

Lawsuit Challenging Florida Skim Milk Labeling to Continue

A Florida federal court has denied the state's motion to dismiss a First Amendment lawsuit challenging regulations that require products labeled as "skim milk" to contain the same amount of vitamin A as whole milk. *Ocheesee Creamery, LLC v. Putnam*, No. 14-621 (U.S. Dist. Ct., N.D. Fla., Tallahassee Div., order entered February 7, 2015). Because the process of skimming cream from milk removes much of the vitamin A content, the regulation requires skim milk to contain added vitamin A to bear the "skim milk" label; otherwise, it must be labeled as "imitation milk product."

Ocheesee Creamery's November 2014 complaint claimed that by refusing to allow the company to sell its pasteurized skim milk with a "skim milk" label unless it added vitamin A—which the creamery views as tainting its "all-natural" products—Florida is censoring its use of the phrase "skim milk." In its motion to dismiss, the state argued that the creamery had no standing and failed to join an essential party; because the Florida restriction echoes a similar federal law, the state asserted, the Department of Health and Human Services should have been a party to the suit.

The court disagreed on both arguments, finding that the federal restriction applies only to milk in interstate commerce, but the creamery sells its products only within Florida; thus, only Florida law applies. "While the constitutionality of the Florida laws and similar federal laws likely reduces to the same question, here the Creamery seeks relief only from Florida labeling laws," the court concluded. "The Department of Health and Human Services is not an indispensable party."

Fourth Circuit Confirms Dismissal of Spam Marketing Suit Against Kraft

The Fourth Circuit Court of Appeals has affirmed a lower court's dismissal of a case alleging that Kraft spammed an Internet service provider (ISP) with advertisements for its Gevalia® coffee products. *Beyond Systems, Inc. v. Kraft Foods, Inc.*, No. 13-2137 (4th Cir., order entered February 4, 2015). Beyond Systems sued Kraft alleging violations of Maryland's and California's anti-spam statutes, but the circuit court agreed with the district court's determination that Beyond Systems "invited its own purported injury and thus could not recover for it."

Beyond Systems is a Maryland ISP with servers housed at the residence of the owner's parents, and the owner's brother owns Hypertouch, Inc., a similar "nominal" ISP with servers in California. Both ISPs host websites with hidden email addresses that only "spam crawlers" can find, and Beyond Systems uses the email addresses as "spam traps"; the court notes that "spam-trap-based litigation has accounted for 90% of Beyond Systems' income in recent years."

These spam-trap addresses apparently received hundreds of emails advertising Kraft's Gevalia® coffee that allegedly contained false headers in violation of anti-spam statutes.

The court classified the Maryland and California anti-spam statutes as tort-based, noting that a tort cannot be committed upon a willing person. Accordingly, the recipient of a spam message may not seek out the message then allege a tort for receiving the message. "Beyond Systems increased its e-mail storage capacity to retain a huge volume of spam, by which it hoped to increase its eventual recovery under anti-spam statutes," the court found. "And it intentionally participated in routing spam e-mail between California and Maryland to increase its exposure to spam and thereby allow it to sue under both states' laws." Because Beyond Systems consented to receiving the emails, the circuit court affirmed the district court's ruling in favor of Kraft.

California Lawsuit Alleges That P.F. Chang's Surcharge on Gluten-Free Foods Violates ADA

A consumer has filed a putative class action alleging the $1 surcharge that P.F. Chang's imposes on its gluten-free menu items violates the Americans with Disabilities Act (ADA) by discriminating against those with celiac disease. *Phillips v. P.F. Chang's China Bistro*, No. 15-344 (U.S. Dist. Ct., N.D. Cal., removed to federal court January 23, 2015).

The complaint asserts that P.F. Chang's maintains a separate gluten-free menu that charges $1 more than seemingly identical items on its regular menu and that it does not add a similar surcharge for other dietary accommodations. The plaintiff alleges that the surcharges lack justification because they "do not reflect additional costs of ingredients" and some of the items "are the same as the non-gluten free options or contain fewer ingredients" or are "naturally gluten free." The plaintiff seeks certification of a California class and violations of the state's Unruh Act, Disabled Persons Act and Unfair Competition Law.

Putative Class Action Alleges Damage to Guatemalan Environment by Chiquita Supplier

A consumer has filed a proposed class action in California federal court alleging that Chiquita Brands, Inc. is responsible for the destructive practices of its "*de facto* subsidiary," Cobigua, including the effects of its use of pesticides on the water supply of neighboring communities. *Jablonowski v. Chiquita Brands, Inc.*, No. 15-262 (U.S. Dist. Ct., S.D. Cal., filed February 5, 2015).

In the complaint, the plaintiff points to Chiquita's efforts to represent itself as a responsible company that protects natural ecosystems—including its "famous blue sticker" designed to show that a banana meets the company's "strict standards"—and he argues that the company indicates that its suppliers are held to the same standards. Cobigua, a Guatemalan company that appar-

ently sells about 95 percent of its stock to Chiquita, "contaminates rivers and drinking water in the affected area with fertilizers, pesticides, fungicides, and organic matter" and "mixes fertilizers into its irrigation system every 14 to 21 days and aerial fumigates its banana fields every 6 to 8 days using toxic chemicals" without leaving any buffer zone between its property and schools and homes, the complaint alleges.

The plaintiff argues that Cobigua's actions have resulted in contamination of the neighboring communities' drinking water supplies with levels of nitrites, nitrates and heavy metals "10 times the maximum level recommended by the World Health Organization." These activities rebut Chiquita's representations of itself and its suppliers, the complaint says, and had he known of them, the plaintiff would not have purchased Chiquita's products. The complaint alleges violations of California consumer protection statutes as well as fraud by concealment and unjust enrichment, and the plaintiff seeks damages, certification of a California class and attorney's fees.

Red Bull Criticized for Opposition to "Old Ox" Trademark Registration

Red Bull GmbH has filed a notice of opposition to Old Ox Brewery's federal trademark application, arguing that the brewery's marks are likely to confuse consumers because both animals "fall within the same class of 'bovine' animals and are virtually indistinguishable to most consumers." *In re Application No. 86/269,626 and 86/269,577* (U.S. Pat. & Trademark Office, Trademark Trial & Appeal Board, notice of opposition filed January 28, 2015).

Red Bull claims that the similarities between the marks would likely cause consumers to believe that the products are affiliated with each another. The Virginia brewery responded in an **open letter** on its website, calling the company a "Red Bully" that is "holding us hostage with a list of demands that, if agreed to, would severely limit our ability to use our brand. Demands like, never use the color red, silver or blue; never use red with any bovine term or image; and never produce soft drinks."

UC Davis Settles Dispute with Strawberry Commission

The University of California, Davis, and the California Strawberry Commission (CSC) have issued a joint press release announcing the settlement of CSC's lawsuit and the university's countersuit. CSC initially alleged that the university allowed two of its strawberry developers to leave its employment to privatize the cultivation process using money provided by CSC growers, and the university filed a counterclaim accusing CSC of unfair business practices.

Conclusion of the lawsuit coincided with the university's hiring of Steven Knapp, former global director of Monsanto's Vegetable Research and Development, who will oversee the university's new strawberry breeding program.

"Over the next five years, UC Davis will release new strawberry varieties available to all farmers, and the California Strawberry Commission will assist UC Davis in its identification of new commercial varieties," the press release states. In addition, "a new strawberry advisory committee will be formed, comprised of university representatives, strawberry farmers and commission representatives." Additional details about the lawsuit appear in Issue 522 of this *Update*. *See UC Davis and California Strawberry Commission Press Release*, February 9, 2015.

OTHER DEVELOPMENTS

New Nonprofit Watchdog Aims to "Expose What the Food Industry Doesn't Want Us to Know"

U.S. Right to Know (USRTK), an Oakland, California-based nonprofit, launched in late January 2015 under the leadership of Gary Ruskin, former executive director of Commercial Alert. The group claims to be "working to expose what the food industry doesn't want us to know. We do research and communications on the failures of the corporate food system. We stand up for the right to know what is in our food, and how it affects our health. We unearth the political economy of our food system, and how big food companies buy political influence in a quest for profit that has led to an epidemic of food-related diseases. We believe that transparency — in the marketplace and in politics — is crucial to building a better, healthier food system. … If you are a whistleblower, or know of any food scandals, send us your documents, and tell us what you know."

A January 20 USRTK report titled ***Seedy Business: What Big Food Is Hiding with Its Slick PR Campaign*** details 15 assertions that purportedly demonstrate how the agrichemical and food industries "have manipulated the media, public opinion and politics with sleazy tactics, bought science and PR spin." The assertions include (i) "The agrichemical companies have a history of concealing health risks from the public"; (ii) "What the agrichemical and tobacco industries have in common: PR firms, operatives, tactics"; (iii) "The pesticide treadmill breeds profits, so it will likely intensify"; (iv) "GMO science is for sale"; and (v) "A few other things the agrichemical industry doesn't want you to know about them: crimes, scandals and other wrongdoing."

A February 11 article in *ScienceInsider* reports that USRTK recently peppered at least four public universities with Freedom of Information Act requests for correspondence and emails between academic researchers and agricultural companies, trade associations and PR firms.

RWJF Doubles Financial Commitment to Expand Programs Aimed at Reducing Childhood Obesity, Issues Priorities for Next Decade

The Robert Wood Johnson Foundation (RWJF) will reportedly commit $500 million over the next 10 years to intensified efforts ensuring that "all children in the United States—no matter who they are or where they live—can grow up at a healthy weight." According to a February 5, 2015, news release, the health philanthropy's new initiatives will focus on developing strategies to reducing the health disparities that contribute to higher rates of obesity among children of color and children living in poverty.

"We have made substantial progress, but there is far more to do and we can't stop now," said RWJF President and CEO Risa Lavizzo-Mourey "We all have a role to play in our homes, schools, and neighborhoods to ensure that all kids have healthy food and safe places to play."

RWJF's stated priorities for the next decade include (i) eliminating sugar-sweetened beverage consumption among 0- to 5-year-olds; (ii) making a "healthy school environment the norm and not the exception across the United States"; (iii) making physical activity "a part of the everyday experience for children and youth"; and (iv) making "healthy foods and beverages the affordable, available and desired choice in all neighborhoods and communities." *See RWJF Press Release*, February 5, 2015.

IOM Workshop to Explore Role of Chemical Exposures in Development of Obesity

The Institute of Medicine's (IOM's) Roundtable on Environmental Health Sciences, Research, and Medicine is **hosting** a March 2-3, 2015, workshop in Research Triangle Park, North Carolina, to discuss the "interplay between environmental exposures and obesity." Topics of discussion will include the alleged links "between exposure to environmental chemicals and increased incidence of weight gain, glucose intolerance and insulin sensitivity, inflammation, and aspects of metabolic syndrome in animal models and human studies." March 3 sessions will target the potential roles of antibiotics, high-fructose corn syrup and artificial sweeteners as well as potential policy solutions to address reducing chemical exposures associated with the development of obesity.

MEDIA COVERAGE

Atlantic Profile Questions Value of "Food Babe" Tactics

The Atlantic's February 11, 2015, **profile** of blogger Vani Hari—also known as "The Food Babe"—highlights the growing rift between the scientific community and consumer activists who position themselves as dietary crusaders, despite having "no training in human metabolism, toxicology, or environmental science."

Titled *The Food Babe: Enemy of Chemicals,* the article by *Atlantic* Senior Editor James Hamblin examines a new crop of writers and activists who have harnessed the Internet to campaign against genetically modified organisms (GMOs) and other food ingredients deemed "unnatural." With a new book and TV show in the works, Hari has evidently mobilized what she calls "The Food Babe Army" to besiege companies that use allegedly suspect substances, in the process drawing the ire of "many scientists who believe her claims are inaccurate or even dangerous."

In particular, Hamblin speaks to scientists who have found themselves in Hari's crosshairs for questioning her tactics or evidence. The profile notes that even as Hari has monetized her blog and the "Food Babe" brand, she dismisses most scientists as having financial ties with industry—whether or not that is truly the case. In the meantime, Hamblin suggests, the guarded and "deferential" language used in scientific writing holds little sway in "the emotion-laden mainstream Internet." As he writes, "Hari is a paragon of opportunism in that way, turning criticism in her favor, incorporating it as part of her outsider identity. Her critics are part of an establishment trying to suppress the truths she holds, the truths they don't want you to hear… The establishment is the problem, and she is its antithesis. She is at once the victim and the hero."

"There's a disconnect between the language of science and the language of common communication," explains one academic researcher. "You can never demonstrate that something is 'safe.' Whether it's water or sugar; there's no way… All we can say is, of all the things we've looked at, there's no evidence of harm… Even though her heart's in the right place, and I understand what she's going for, you don't use coercion and intimidation to achieve a scientific end."

SCIENTIFIC/TECHNICAL ITEMS

Energy Drinks Allegedly Increase Hyperactivity Risk in Children

Researchers with the Yale School of Public Health have published a study claiming that "middle-school children who consume heavily sweetened energy drinks are 66% more likely to be at risk for hyperactivity and inat-

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tention symptoms." Deborah Schwartz, et al., "Energy Drinks and Youth Self-Reported Hyperactivity/Inattention Symptoms," *Academic Pediatrics,* February 2015. The study relied on data from more than 1,500 middle-school students who completed the hyperactivity/inattention subscale of the Strengths and Difficulties Questionnaire and self-reported their sugar-sweetened beverage consumption during the preceding 24 hours.

In addition to concluding that the risk of hyperactivity/inattention increased with energy drink consumption, the study's authors apparently found that the risk of hyperactivity/inattention "increased by 14% for each additional sweetened beverage consumed." As one researcher elaborated in a February 9 press release, "Our results support the American Academy of Pediatrics recommendation that parents should limit consumption of sweetened beverages and that children should not consume any energy drinks."

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