

## CONTENTS

### LEGISLATION, REGULATIONS AND STANDARDS

CDC Updates Foodborne Disease Outbreak Database . . . . .	1
UK Health Agency Urges Sugar-Reduction Measures . . . . .	1
EFSA Sets Dietary Reference Values for Iron and Copper. . . . .	2

### LITIGATION

Federal Court Approves Beck's® False Advertising Settlement . . . . .	3
Whole Foods Reaches Settlement in Coupon Tax Dispute . . . . .	3
Subway to Measure Sandwiches Under Proposed Settlement Agreement . . . . .	3
Jury Awards \$240,000 to Muslim Workers Fired for Refusal to Transport Beer . . . . .	4
Finnish Market Court Sides with Icelandic Company in "Skyr" Spat . . . . .	4
Proposed "All Natural" Class Action Filed Against Weber® BBQ Sauce Maker . . . . .	4
Plum Organics to Change Product Names in Response to CSPI's Litigation Threat . . . . .	5

### SCIENTIFIC/TECHNICAL ITEMS

Long-Chain Fatty Acids Allegedly Linked to Autoimmune Disease Severity . . . . .	5
--	---

## LEGISLATION, REGULATIONS AND STANDARDS

### CDC Updates Foodborne Disease Outbreak Database

The Centers for Disease Control and Prevention (CDC) has launched a newly interactive iteration of its **Foodborne Outbreak Online Database Tool**. The resource allows users to search data by year, state, location of food preparation, food and ingredient, and implicated germ.

The information captured in the database comes from CDC's Foodborne Disease Outbreak Surveillance System, which tracks data on outbreaks caused by enteric bacterial, viral, parasitic, and chemical agents reported by local, state and territorial health agencies. CDC estimates that one in six Americans becomes sick annually from consuming contaminated foods and beverages. *See CDC News Release, October 20, 2015.*

### UK Health Agency Urges Sugar-Reduction Measures

**Public Health England** (PHE) has issued an October 2015 **evidence review** urging the U.K. government to reduce sugar consumption. Building on the Scientific Advisory Committee on Nutrition's (SACN's) conclusion that free sugar intake should constitute less than 5 percent of dietary energy, the report discusses food and beverage marketing, sugar accessibility and product composition, educational efforts, and local initiatives. PHE also addresses taxation schemes, noting that price increases "can influence purchasing of sugar-sweetened drinks and other high sugar products at least in the short-term."

The findings target retail promotions and marketing to children as two key aspects of the food environment that allegedly promote sugar consumption. Among other things, the report specifically recommends (i) restricting the number and type of price promotions across all retail outlets; (ii) reducing food and beverage marketing to children as well as adults; (iii) defining high-sugar foods according to Ofcom's nutrient profiling model; (iv) instituting a program to gradually reduce portion sizes and the amount of sugar contained in food and drink products; and (v) introducing a 10 to 20 percent minimum tax on high-sugar products and sugar-sweetened beverages. In addition, PHE asks the government

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 582 | OCTOBER 23, 2015

to implement “buying standards for food and catering services across the public sector... to ensure provision and sale of healthier food and drinks in hospitals, leisure centers, etc.”

“PHE’s evidence review shows there is no silver bullet solution to the nation’s bad sugar habit. A broad and balanced approach is our best chance of reducing sugar consumption to healthier levels and to see fewer people suffering the consequences of too much sugar in the diet,” said Chief Nutritionist Alison Tedstone in an October 22 press release, which estimates that reducing sugar consumption to recommended levels would save the National Health Service approximately £480 million annually. “We’ve shared [our] findings with the Government and are working with them on its childhood obesity strategy.”

Additional details about SACN’s dietary recommendations appear in Issue [529](#) of this *Update*.

### EFSA Sets Dietary Reference Values for Iron and Copper

The European Food Safety Authority’s (EFSA’s) Panel on Dietetic Products, Nutrition and Allergies (NDA Panel) has issued two scientific opinions deriving dietary reference values (DRVs) for **iron** and **copper**. After estimating whole-body iron losses and absorption values for men and women, the panel set the population reference intake (PRI) at 11 mg/day for men and postmenopausal women; infants ages 7 to 11 months; children ages 7 to 11 years; and boys ages 12 to 17 years. It also established PRIs of 16 mg/day for premenopausal women; 13 mg/day for girls ages 12 to 17 years; and 7 mg/day in children ages 1 to 6 years.

Due to the absence of biomarkers indicating copper status as well as limited data, the NDA Panel only defined adequate intakes (AIs) “based on mean observed intakes in several European Union (EU) countries, given that there is no evidence of overt copper deficiency in the European population.” It has proposed the following AIs for copper: (i) 1.6 mg/day for men; (ii) 1.5 mg/day for pregnant and lactating women; (iii) 1.3 mg/day for women; (iv) 0.4 mg/day for infants ages 7 to 11 months; (v) 0.7 mg/day for children ages 1 to 3 years; (vi) 1 mg/day for children ages 3 to 10 years; and (vii) 1.1 mg/day and 1.3 mg/day for girls and boys ages 10 to 18 years, respectively.

Shook 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.

For additional information about Shook’s capabilities, please contact



**Mark Anstoetter**  
816.474.6550  
manstoetter@shb.com



**Madeleine McDonough**  
816.474.6550  
202.783.8400  
mmcdonough@shb.com

If you have questions about this issue of the *Update* or would like to receive supporting documentation, please contact Mary Boyd at [mboyd@shb.com](mailto:mboyd@shb.com).

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 582 | OCTOBER 23, 2015

### LITIGATION

#### Federal Court Approves Beck's® False Advertising Settlement

A Florida federal court has given final approval to the settlement agreement in a lawsuit alleging Anheuser-Busch falsely advertised its Beck's® beer as imported even though it was manufactured in St. Louis, Mo. *Marty v. Anheuser-Busch Cos., LLC*, No. 13-23656 (S.D. Fla., approval entered October 20, 2015). Under the agreement, Anheuser-Busch will offer refunds in several tiers, including \$0.10 per individual bottle, \$0.50 per six-pack and \$1.75 per 20-pack, with a cap of \$50 per household for those consumers with receipts and \$12 for those without. The company will also add language to Beck's® packaging indicating the beer is a "Product of USA." Additional details about the settlement appear in Issue **570** of this *Update*.

#### Whole Foods Reaches Settlement in Coupon Tax Dispute

Whole Foods Market Group and a consumer have reached a settlement agreement in a lawsuit alleging the company defrauded customers by calculating and adding sales tax to purchases before deducting any discounts from coupons. *Wong v. Whole Foods Mkt. Grp.*, No. 15-0848 (N.D. Ill., E. Div., stipulation filed October 12, 2015). The parties filed a joint stipulation of dismissal to the court but did not disclose the agreement's terms. The lawsuit is one of several alleging claims of consumer fraud, common law fraud and unjust enrichment against various retailers.

#### Subway to Measure Sandwiches Under Proposed Settlement Agreement

Subway has reached a settlement agreement in a case alleging its "foot-long" sandwiches were not 12 inches in length. *In re Subway Footlong Sandwich Mktg. & Sales Practices Litig.*, MDL No. 2439 (E.D. Wis., settlement agreement filed September 29, 2015). Under the agreement, Subway will require its franchisees to "use a tool for measuring bread in each Subway® restaurant to help ensure that the bread sold to customers is either 6 or 12 inches long" and will check for compliance during its monthly franchise inspections, with an increase in penalties for failure to measure up. If the court approves the agreement, Subway will pay each class representative \$1,000 and the class counsel's attorney fees of \$525,000, but no monetary awards will be distributed to class members. Additional information about the lawsuit appears in Issues **468** and **487** of this *Update*.

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 582 | OCTOBER 23, 2015

### Jury Awards \$240,000 to Muslim Workers Fired for Refusal to Transport Beer

A jury has awarded two Muslim men \$240,000 after they were fired from Star Transport Inc. for refusing to transport beer because of their religious beliefs. *EEOC v. Star Transport Inc.*, No. 13-1240 (C.D. Ill., jury verdict submitted October 21, 2015). Each man will receive \$20,000 for mental or emotional pain and \$100,000 in punitive damages. The court also awarded each \$1,500 in back pay.

"We are pleased that the jury recognized that these—and all—employees are entitled to observe and practice their faith, no matter what that might be," EEOC Supervisory Trial Attorney Diane Smason said in an October 22, 2015, press release.

### Finnish Market Court Sides with Icelandic Company in "Skyr" Spat

The Finnish Market Court has reportedly backed MS Iceland Dairies in a legal dispute with Arla Foods over the sale of skyr dairy products in Finland. According to media reports, the court ruled that "skyr" is not a generic term for a yogurt-like cultured dairy product, but rather a specific trademark for a product made in Iceland or Denmark according to recipes held by MS Iceland Dairies. The decision bars Arla Foods from marketing or selling skyr in Finland, with violations fetching fines of €500,000. *See Iceland Monitor*, October 7, 2015; *FoodBev.com*, October 13, 2015.

### Proposed "All Natural" Class Action Filed Against Weber® BBQ Sauce Maker

A Massachusetts consumer has filed a **putative class action** against ACH Food Companies, Inc., manufacturer of Weber® BBQ Sauces, alleging the company misleadingly markets its products as "All Natural" despite containing caramel coloring. *Demmler v. ACH Food Cos., Inc.*, No. 15-13556 (D. Mass., filed October 13, 2015).

The complaint asserts that under Massachusetts and federal regulations, the term "natural" cannot be used on products containing artificial ingredients such as added flavoring or coloring, so ACH's use of caramel coloring precludes it from labeling and marketing its products as natural. The plaintiff alleges he paid a premium for the sauce because he believed it to be natural, and he seeks to represent a class of consumers alleging unjust enrichment and a violation of state law.



## FOOD & BEVERAGE LITIGATION UPDATE

---

ISSUE 582 | OCTOBER 23, 2015

### Plum Organics to Change Product Names in Response to CSPI's Litigation Threat

Baby food manufacturer Plum Organics has agreed to adjust its products' names to more accurately reflect their contents in light of threatened litigation from consumer group Center for Science in the Public Interest (CSPI). CSPI contended Plum's products misleadingly featured names highlighting their "healthful, high-value ingredients, such as kale, quinoa, blueberries, and green beans," but were composed mostly of "less healthful, less-valuable ingredients, such as apple juice or apple puree." Further details about CSPI's letters to Plum and Gerber appear in Issue **565** of this *Update*.

"Plum's label improvements will be of enormous help to parents, who want to know at a glance what's in the food they buy for their infants and toddlers and don't have time to authenticate information on the front package by reading through every ingredient and disclosure on the back of the package," said CSPI Litigation Director Maia Kats in an October 22, 2015, press release. "By naming its pouched products based on the predominance of major ingredients, Plum will help push the marketplace in the right direction. We are pleased with the seriousness and dedication with which Plum addressed the concerns we brought to them in May. We hope other baby and toddler food companies follow Plum's leadership."

---

## SCIENTIFIC/TECHNICAL ITEMS

### Long-Chain Fatty Acids Allegedly Linked to Autoimmune Disease Severity

An animal study has reportedly **suggested** that dietary long-chain fatty acids (LCFAs) can increase the severity of chronic-inflammatory diseases such as multiple sclerosis. Aiden Haghikia, et al., "Dietary Fatty Acids Directly Impact Central Nervous System Autoimmunity via the Small Intestine," *Immunity*, October 2015. Using murine cell cultures and experimental models, researchers evidently showed that LCFAs "enhanced the differentiation and proliferation" of central nervous system reactive immune cells in the intestinal wall, while short-chain fatty acids (SCFAs) promoted the development of regulatory cells that control excessive inflammation.

"These data demonstrate a direct dietary impact on intestinal-specific, and subsequently central nervous system-specific, Th cell responses in autoimmunity, and thus might have therapeutic implications for

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 582 | OCTOBER 23, 2015

### ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.



autoimmune diseases such as multiple sclerosis,” states the study, which remarks that these effects did not appear in germ-free intestinal environments and raises questions about the role of the microbiome in mediating autoimmune responses. The researchers apparently plan to use their findings to “develop innovative dietary add-on therapies to established immunotherapies in multiple sclerosis.”