

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards U.S. Congress

[1] House Government Reform Subcommittee Holds Oversight Hearing on Obesity Epidemic

“Conquering Obesity: The U.S. Approach to Combating This National Health Crisis” was the title of an oversight hearing convened today by the House Government Reform Subcommittee on Human Rights and Wellness. “It is imperative for the health and financial well-being of Americans that we find an effective way to reign in this health care epidemic,” Subcommittee Chair Dan Burton (R-Ind.) was quoted as saying. Discussions at the hearing reportedly focused on the health and financial implications of the nation’s escalating rates of obesity as well as various government programs addressing the issue. Those expected to testify included representatives of the Centers for Disease Control and Prevention, Grocery Manufacturers of America, National Food Processors Association, and the American Obesity Association. *See Subcommittee on Human Rights and Wellness News Release*, September 14, 2004.

[2] Senate Appropriations Committee Rejects New Start Date for Country-of-Origin Labeling

The Senate Appropriations Committee yesterday approved an \$84 billion agriculture appropriations bill, but rejected an amendment offered by Senator Byron Dorgan (D-S.D.) that would have implemented the mandatory country-of-origin labeling program for meat, fruit and vegetables as of January 1, 2005. The labeling regulations were mandated in the 2002 farm bill and originally scheduled for implementation by September 30, 2004; a rider contained in the 2003 omnibus appropriations bill later delayed their start date until September 30, 2006. Several Republicans on the committee were quoted as saying they supported the labeling program, but voted against Dorgan’s proposal for fear that a January 2005 start date “could create chaos at the agriculture department.” *See CQ Today* and *U.S. Senate Committee on Appropriations Press Release*, September 14, 2004.

Food and Drug Administration (FDA)

[3] FDA Allows Qualified Health Claims for Omega-3 Fatty Acids

Claiming that heart disease results in 500,000 deaths every year in the United States, the FDA last week announced the availability of a qualified health



claim for reduced risk of cardiovascular disease on conventional foods that contain eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA) omega-3 fatty acids. Oily fish – e.g., salmon, tuna and herring – and various products enriched with the compounds can now include the statement, “Supportive but not conclusive research shows that consumption of EPA and DHA omega-3 fatty acids may reduce the risk of coronary heart disease.” According to the American Heart Association, omega-3 fatty acids decrease (i) the risk of arrhythmias, (ii) triglyceride levels and (iii) the growth rate of atherosclerotic plaque. See *FDA News Release*, September 8, 2004.

Federal Trade Commission (FTC)

[4] New FTC Chair Wants Agency to Be More Active in Food Issues

In an interview last week with *The Washington Post*, FTC Chair Deborah Majorus said she would like the agency to have a larger role in helping educate consumers by working with the Food and Drug Administration on food labeling rules. “I am pushing for us to come up with a game plan on where we can fit in,” she was quoted as saying. “Not only are we in favor of banning the deceptive stuff, but we want information to be on the label so people know what they’re eating and can make their decisions.” Formerly a deputy assistant attorney general in the antitrust division at the U.S. Department of Justice, the 41-year-old Majorus was appointed to the FTC’s top post during the congressional recess and was most recently working

in private practice. With respect to antitrust issues generally, Majorus said she will strive for greater efficiency in the agency’s review of mergers and more flexibility “in imposing remedies for any found to be anticompetitive.” See *The Washington Post*, September 10, 2004.

United Kingdom (UK)

[5] Britain’s Food Watchdog Launches Campaign to Cut Salt Consumption

Britain’s Food Standards Agency launched a £4 million educational [campaign](#) this week cautioning the public of the dangers associated with consuming large amounts of salt in their diets. “Cutting down on salt can significantly reduce your risk of developing high blood pressure,” FSA Chair Sir John Krebs said. “By cutting back on adding salt to food at home and when eating out, as well as looking at what’s on the labels of processed foods, it’s possible for people to make positive health choices,” he said. According to FSA, 75 percent of salt comes from processed foods, while 10 to 15 percent is added by consumers and 10 to 15 percent is naturally present in food. The agency recommends that people ages 11 and older consume no more than 6 grams of salt daily. Even though many food and beverage companies have already been working with FSA to reduce the sodium content of their products, Krebs renewed his call for them to further reduce sodium levels and include sodium content on labeling.



The Salt Manufacturers' Association has attacked the campaign, claiming that alcohol consumption and obesity play a larger role in development of hypertension than salt intake. "The government would have us believe that the evidence for salt reduction is now beyond question," an association representative said. "The reality is that it [FSA] is relying heavily on research that is at best inconclusive and contradictory." See *FSA and Salt Manufacturers' Association Press Releases*, September 13, 2004.

Media Coverage

- [6] "You Are What You Eat: Get Rid of Those Empty Calories with 'Nutri-wash,'" Michele Simon, *The San Francisco Chronicle*, September 8, 2004

According to Simon, "the environmental movement coined the term 'greenwashing' to describe how corporations use public relations to make themselves appear environmentally friendly. Now, nutrition advocates need their own moniker for a similar trend among major food companies – call it 'nutri-washing.'" The author, a public health lawyer and director of the California-based [Center for Informed Food Choices](#), questions the sincerity of various food companies, including Kraft and McDonald's, in their efforts to respond to public criticism about the healthiness of their products by implementing nutrition education programs or reformulating their products. "To praise companies for such 'reforms,'" says Simon, "too easily rewards them with the positive public-relations spin they seek. Also these voluntary actions deliberately

attempt to deflect any mandatory government regulations – for, as we are starting to learn, voluntary acts can easily be rescinded."

Simon will reportedly be a speaker at the Public Health Advocacy Institute's [second annual conference](#) on legal approaches to the obesity epidemic on September 17-19, 2004, at the Northeastern University School of Law in Boston. On September 20, she will participate in a lecture titled "Is Junk Food the Next Tobacco" at the New York University School of Law.

Scientific/Technical Items

Obesity

- [7] **Physical Inactivity, Obesity Increase Women's Disease Risks**

Studies published in the *Journal of the American Medical Association* last week (*JAMA* 292(10): September 8, 2004) assessed the relative contributions of physical inactivity and obesity as risk factors for cardiovascular disease and type-2 diabetes in women. The first study, authored by Timothy Wessel and colleagues, examined risk factors in women undergoing coronary angiography. ("Relationship of Physical Fitness vs. Body Mass Index with Coronary Artery Disease and Cardiovascular Events in Women": 1179-1187) The authors found that overweight women were more likely than normal-weight women to have risk factors for coronary artery disease, but neither body mass index nor abdominal obesity measures were significantly



associated with obstructive coronary artery disease or adverse cardiovascular events. On the other hand, physically inactive women were significantly more likely to have risk factors for coronary artery disease and obstructive artery disease. Increases in activity were independently associated with decreases in risks of major adverse cardiovascular events during follow-up.

In a second article, Amy Weinstein and colleagues reported that both body mass index and low-physical activity were significant predictors of type-2 diabetes in women. (“Relationship of Physical Activity vs. Body Mass Index with Type-2 Diabetes in Women”: 1188-1194) In a combined analysis of risk factors, the authors found that overweight and obese participants, whether active or inactive, also had significantly elevated risks for type-2 diabetes compared with normal-weight active individuals.

Low-Carbohydrate Diets

[8] Danish Researchers Question Efficacy of Low-Carb Diets

A systematic review of low-carbohydrate diets suggests that weight loss resulting from low-carbohydrate diets is associated with the duration of the diet and reduced energy intake, not necessarily

the restriction of carbohydrates. (A. Astrup, et al., “Atkins and Other Low-Carbohydrate Diets: Hoax or An Effective Tool for Weight Loss?” *The Lancet* 364: 897-899, September 4, 2004) The authors argue that the reason *ad libitum* intake of high-fat foods on low-carb diets produces weight loss is due initially to the depletion of glycogen stores and the associated excretion of bound water, not fat loss. The depletion of glycogen in the body also produces an increase in circulating ketones that, in turn, are believed to act as appetite suppressors. High protein diets are highly satiating and therefore have a net effect of reducing spontaneous food intake; the limited food choices associated with low-carbohydrate diets also lead to decreased energy intake. The reviewers note, however, that long-term studies are needed to measure changes in nutritional status and body composition during low-carbohydrate dieting and to assess cardiovascular risk factors and other potential adverse effects associated with the diets. “Without that information,” the authors write, “low-carbohydrate diets cannot be recommended.”



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