Food & Beverage

LITIGATION UPDATE

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Legislation, Regulations and Standards

Food and Drug Administration (FDA)

[1] Center for Science in the Public Interest Asks FDA to Mandate Health Warnings on Soft Drinks

The Center for Science in the Public Interest (CSPI) filed a **petition** with the FDA last week asking the agency to mandate (i) rotating health warnings on non-diet soft drinks containing more than 1.1 grams of high-fructose corn syrup or other caloric sweeteners per ounce and (ii) disclosure of the amount of caffeine in soft drinks containing more than 10 mg. per 12-ounce serving. "Just as the soaring rates of obesity have shocked Americans, so should the increasing consumption by teenagers of one of the causes of obesity," CSPI Executive Director Michael Jacobson said. "How did a solution of high-fructose corn syrup, water and artificial flavors come to be the default beverage?"

Specific warnings CSPI advocates for soft drinks include (i) "The U.S. government recommends that you drink less [sic] (non-diet) soft drinks to help prevent weight gain, tooth decay, and other health problems"; (ii) "Drinking soft drinks instead of milk or calcium-fortified beverages may increase you risk of brittle bones (osteoporosis)"; and (iii) "A x-ounce serving of this drink contains x milligrams of caffeine, a mildly addictive stimulant drug. Not appropriate for children."

CSPI has also issued an updated version of its 1998 **report** titled *Liquid Candy: How Soft Drinks Are Harming Americans' Health.* The report claims that soft drinks are the single largest source of calories in the U.S. diet and recommends state and local taxes on soft drinks to fund health programs as well as disclosure of soft drinks' calorie content on restaurants' menus and menu boards. *See CSPI News Release* and *Reuters,* July 13, 2005.

U.S. Congress

[2] House Proposal Addresses Government's Role in Combating Obesity

Some 97 million adult Americans are overweight or obese and therefore face a substantially heightened risk of death from cardiovascular disease, certain cancers and type-2 diabetes, according to a proposed concurrent resolution (**H. Con. Res. 204**) introduced last week by Representative Robert Andrews (D-N.J.). The proposal suggests that the federal government has a responsibility to (i) raise awareness about the medical complications of obesity; (ii) increase funding for obesity research; and (iii) improve access to quality health care services for the early assessment of risk and treatment of obesity. It also calls for the director of the National Heart, Lung, and Blood Institute to assume a leadership role in federal anti-obesity efforts and the designation of a National Obesity Awareness Month.

[3] Chemicals in Consumer Products Target of New Senate Legislation

"We have laws to make sure that pesticides and medicines are safe, but we fail to require similar analysis for the chemicals used in baby bottles, water bottles, food packages, and thousands of other products. This is inexcusable," Senator Frank Lautenberg (D-N.J.) said last week when introducing the proposed Child, Worker and Consumer Safe Chemicals Act (**S. 1391**). Lautenberg offered the legislation in response to a June 2005 Government Accounting Office report recommending additional authority for the U.S. Environmental Protection Agency (EPA) to assess chemical risks under the Toxic Substances Control Act (TSCA). Among other things, the bill would (i) require manufacturers to provide EPA with health and safety data on chemicals before using them in consumer products; (ii) require EPA to establish a priority list of chemicals for safety determination; and (iii) direct the EPA administrator to form an Interagency Science Advisory Board on Children's Health and Toxic Substances. The proposal has been referred to the Committee on Environment and Public Works.

Meanwhile, the Environmental Working Group has issued a **study** titled *BodyBurden: The Pollution in Newborns.* The study reports that an average of 200 industrial chemicals were detected in the umbilical cord blood of 10 babies born in U.S. hospitals during August and September of 2004. The chemicals reportedly included eight perfluorochemicals used as stain and oil repellants in fast-food packaging, clothes and textiles. *See EWG Press Release* and *Reuters,* July 14, 2005.

Litigation

Beef Imports

[4] Ninth Circuit Lifts Ban on Canadian Beef Imports

Late last week, a three-judge panel of the Ninth Circuit Court of Appeals **overturned** a district court's preliminary injunction that closed the border to certain beef imports pending the outcome of a lawsuit against the U.S. Department of Agriculture (USDA). *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Department of Agriculture,* No. 05-35264, (9th Cir. 7/14/05).

The United States prohibited imports of Canadian cattle in May 2003 after tests revealed that a North Alberta downer cow was infected with bovine spongiform encephalopathy (BSE). In March 2005, USDA planned to resume imports of live cattle younger than age 30 months and beef products derived from cattle of the same age until the nonprofit group representing cattle producers filed a lawsuit in federal court in Montana. Among other things, the group claims that relaxing import restrictions will expose U.S. consumers to "an increased risk of an invariably fatal disease associated with consumption of BSE-contaminated meat, will increase the risk of invariably fatal BSE infection in cattle in the United States, and will expose U.S. cattle producers to severe economic hardship." The district court has scheduled a hearing in the case for July 27. *See Reuters* and *Associated Press,* July 14, 2005.

Child Labor Claims

[5] Human Rights Group Alleges Companies Use Forced Child Labor to Harvest Cocoa Beans

The International Labor Rights Fund has **sued** three U.S. companies in federal court in Los Angeles, claiming the companies have failed to increase monitoring efforts to ensure that their Ivory Coast suppliers of cocoa do not rely on forced child labor for their harvests. *John Doe I, et al., v. Nestle, et al.,* No. unknown (U.S. District Court, Central District, California) (complaint filed 7/14/05). Defendants named in the putative class action include Nestle, Archer Daniels Midland Co. and Cargill Inc. Brought under the Torture Victims Protection Act and the Alien Tort Claims Act, the complaint asserts that the human rights group filed the suit on behalf of "former child slaves" from Mali "who were trafficked and forced to work harvesting and/or cultivating cocoa beans on farms in Côte d'Ivoire." Plaintiffs were allegedly forced to work 12-14 hours daily without pay, given little food, forced to sleep in uncomfortable conditions, and beaten when "not performing adequately." They seek compensatory and punitive damages and disgorgement of profits resulting from the companies' alleged unfair business practices. *See ILF Press Release,* July 14, 2005; *Reuters,* July 15, 2005.

Scientific/Technical Items

Aspartame

[6] Aspartame Allegedly Linked to Increased Risk of Certain Cancers

Initial findings from a much-publicized Italian study suggest that consumption of the artificial sweetener aspartame is associated with an increased incidence in lymphoma and leukemia in female rats. (M. Soffritti, et al., "Aspartame Induces Lymphomas and Leukemias in Rats," *European Journal of Oncology* 10(2): 2005 (in press). Lead author Morando Soffritti, scientific director of the European Ramazzini Foundation of Oncology and Environmental Sciences, will reportedly present the final results of the study at the Third International Scientific Conference of the Collegium Ramazzini in Bologna, Italy, this September.

In the study, researchers added aspartame to the standard rat diet at various doses, including amounts that simulated daily human intake. Statistically significant increases in lymphomas and leukemias among female rats were observed at dose levels lower than the accepted daily intake for aspartame consumption in humans that is currently permitted by U.S. and European regulators. No statistically significant increase in malignant brain tumors was observed.

Composed of phenylalanine, aspartic acid and methanol, aspartame is contained in an estimated 6,000 food and pharmaceutical products worldwide, including diet soft drinks, yogurt and medicines for children. The Food and Drug Administration approved the use of aspartame in 1981, but requires all products containing the sweetener to carry warnings for people with the genetic disease phenylketonuria (PKU) and pregnant women with hyperphenylalanine (elevated blood levels of phenylalanine) because such individuals are unable to effectively metabolize phenylalanine. Previous reviews of animal studies have concluded that typical daily human consumption of aspartame does not present a health risk to consumers. The European Food Safety Authority has announced its intent to conduct an immediate assessment of the Italian study to ascertain any implications for human health. *See EFSA* and *European Ramazzini Foundation Press Releases* and *BBC News*, July 14, 2005.

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Mark Cowing 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,
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