

FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

Legislation, Regulations and Standards

California Lawmaker Introduces Offshore Aquaculture Bill	1
FDA Announces WHO Grants to Support Food Safety Strategies	1
FTC Seeks Comments on Third-Party Guidelines to Protect Children's Online Privacy	2
OSHA to Revise Employer Reporting Requirements for Fatalities, Injuries, Amputations	2
FAO Officially Declares Eradication of Deadly Cattle Plague	3
European Commission Adopts Threshold for GM Material in Feed Imports.	3
British Ad Authority Rejects Challenges to Nutella® TV Promotions	3

Litigation

SCOTUS to Hear Appeal on California Slaughterhouse Rules.	4
Ninth Circuit Affirms Dismissal of Diacetyl Lawsuit	5
Hot Dog Fracas Continues, Court Refuses to Grant TRO Motion.	5
Class Action Challenges Wesson Oil "100% Natural" Claims	6
Coffee Capsule Dispute in Switzerland Returned to Lower Court	6
Workers' Compensation Awarded in Obese Woman's Death.	7

Media Coverage

A. Barton Hinkle: "Want to see a corpse on a can of Pringles?," <i>Richmond Times-Dispatch</i> , June 28, 2011.	7
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Other Developments

Pediatrics Group Issues Policy Statement on Media's Alleged Link to Childhood Obesity.	8
PHAI Calls on Health-Focused Organizations to Be Wary of Soft Drink Industry Campaigns	9
Industry Watchdog Issues Study on Health Claims for Alcoholic Beverages	9
IASO Publishes Report on Food Marketing to Children	10

Scientific/Technical Items

Study Claims Early BPA Exposure Affects Spatial Learning in Male Deer Mice.	11
Harvard Study Links Potatoes to Weight Gain	11



LEGISLATION, REGULATIONS AND STANDARDS

California Lawmaker Introduces Offshore Aquaculture Bill

U.S. Representative Lois Capps (D-Calif.) has reportedly introduced a bill (H.R. 2373) that would establish a federal regulatory framework for the development of offshore aquaculture. The National Offshore Aquaculture Act would provide "standardized, precautionary measures to protect the environment and coastal communities," according to Capps.

Key provisions include (i) "establishing a clear, streamlined regulatory process for offshore aquaculture with specific provisions and permit terms to protect marine ecosystems and coastal communities"; (ii) "requiring coordinated, regional programmatic environmental impact statements to provide regulatory certainty, ensure environmental protection for sensitive marine areas, and reduce conflicts among competing uses of the marine environment"; and (iii) "authorizing new funds for research to provide the crucial feedback needed for adaptive, environmentally- and socioeconomically-sound management of this new use of offshore waters."

Noting that the bill is in accordance with the National Ocean Policy for the Stewardship of the Ocean, Coasts and Great Lakes, Capps asserts that the measure represents the first national law addressing how offshore farming should be regulated. "If marine aquaculture, especially of ocean fish, is to be part of our country's sustainable seafood supply, our nation must have a regulatory system in place that is capable of addressing the host of unique challenges that aquaculture poses," she was quoted as saying. *See Noozhawk*, June 30, 2011.

FDA Announces WHO Grants to Support Food Safety Strategies

The Food and Drug Administration (FDA) has [announced](#) the availability of up to \$260,000 in grant funds slated for "the support of a sole source" cooperative agreement between the agency and the World Health Organization (WHO) Department of Food Safety and Zoonoses. According to FDA, the cooperative agreement represents "the continuation of a long-standing collaboration

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 400 | JULY 1, 2011

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between WHO and FDA in support of strategies and approaches that align well domestically and globally to address food safety problems."

Relevant strategies include (i) "efforts to strengthen data and information systems so they are comparable, comprehensive, and robust, thereby allowing for better decision-making for all Member States"; (ii) "enhanced capacity around the globe to improve detection of and response to food safety threats through preventive controls, data, information, surveillance systems, and risk-based approaches"; and (iii) "global harmonization of science-based standards and adoption or adaption of international standards by national authorities." See *Federal Register*, June 28, 2011.

FTC Seeks Comments on Third-Party Guidelines to Protect Children's Online Privacy

The Federal Trade Commission (FTC) has issued a [notice](#) requesting public comments on a proposal submitted by Aristotle International, Inc. seeking agency approval of self-regulatory guidelines under the safe harbor provision of the Children's Online Privacy Protection Rule. Written comments must be submitted by August 8, 2011.

While the rule requires certain Website operators to "post privacy policies, provide notice, and obtain parental consent" before collecting, using or disclosing personal information from children, it also contains a "safe harbor" allowing industry groups and others to seek FTC approval of self-regulatory guidelines that would implement the rule's protections. Aristotle's proposed "[Integrity Children's Privacy Compliance Program](#)" would allow member companies to display a seal of approval to assure parents that the Website has conformed to a set of privacy protection requirements and submits to ongoing monitoring and enforcement.

Among other matters, FTC requests comments on whether the program would provide the same or greater protections for children as the rule's requirements. See *Federal Register*, June 27, 2011.

OSHA to Revise Employer Reporting Requirements for Fatalities, Injuries, Amputations

The Occupational Safety and Health Administration (OSHA) has issued a [notice of proposed rulemaking](#) that would revise recordkeeping and reporting requirements for work-related injuries and illnesses. According to a news release, employers must currently report to OSHA, "within eight hours, all work-related fatalities and in-patient hospitalizations of three or more employees." The new rules, however, would require employers to report "any work-related fatalities and all in-patient hospitalizations within eight hours, and work-related amputations within 24 hours." The agency would also update the list of partially exempted industries to rely on the newer North

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 400 | JULY 1, 2011

American Industry Classification System, as opposed to the Standard Industrial Classification system.

“Making all in-patient hospitalizations and amputations reportable will provide OSHA with additional information on the causes of workplace incidents and lead to greater prevention of injuries,” said OSHA in its June 22, 2011, *Federal Register* notice, which requests public comments by September 20. “Although information reported regarding amputations will not necessarily result in an inspection, OSHA can use this information to better target inspections to workplaces with serious hazards in order to prevent any further workplace injuries.”

FAO Officially Declares Eradication of Deadly Cattle Plague

The U.N. Food and Agriculture Organization (FAO) has officially declared the eradication of a fatal cattle virus known as rinderpest. Approving a resolution stating that “the world was free” of the highly infectious plague in a June 28, 2011, meeting in Rome, FAO also “called on the world community to follow up by ensuring that samples of rinderpest viruses be kept under safe laboratory conditions and that rigorous standards for disease surveillance and reporting be applied.” Details of the plague and its pending eradication were discussed in [Issue 368](#) of this *Update*. See *U.N. Service Press Release*, June 28, 2011.

European Commission Adopts Threshold for GM Material in Feed Imports

The European Commission has reportedly adopted rules to allow imported feed to contain up to 0.1 percent unauthorized genetically modified (GM) material, a limit that reflects the lowest level of GM presence considered by the EU GMO Reference Laboratory when validating detection methods. According to the draft regulation submitted in February 2011 by the Standing Committee on the Food Chain and Animal Health, the new rules would apply only to GM feed material “authorized for commercialization in a third country and for which an authorization procedure is pending in the EU or of which the EU authorization has expired.” Under these rules, “feed will be considered non-compliant with EU legislation when the presence of this GM feed material is, after due consideration of the margin of error, above the technical zero.”

The Commission evidently passed the regulations to address “the current uncertainty EU operators face when placing on the market feed products imported from third countries.” Additional details about the proposal appear in [Issue 383](#) of this *Update*. See *Reuters*, June 24, 2011.

British Ad Authority Rejects Challenges to Nutella® TV Promotions

Concluding that advertisements for Nutella® hazelnut spread were “unlikely to encourage poor nutritional habits or an unhealthy lifestyle in children,”

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 400 | JULY 1, 2011

the British Advertising Standards Authority (ASA) has reportedly rejected 31 complaints challenging the promotional messages as misleading. The ads, which show people preparing toast with the spread for breakfast, included a voiceover calling attention to the hazelnut, skimmed milk and cocoa content and stating, “Nutella releases its energy slowly. Wake up to Nutella”; they apparently aired between November 2010 and February 2011 on TV and video on demand (VOD) services.

The consumer watchdog Which? reportedly called the ruling a “huge disappointment,” stating, “[I]t is completely unacceptable to position a product packed with fat and sugar as a suitable breakfast for children, and only to refer to the healthier ingredients it contains. With child obesity rates at a record high, food companies must promote their products more responsibly, and the regulator must get tough on adverts to ensure consumers aren’t given the impression that products are healthier than they really are.”

A company spokesperson apparently expressed satisfaction with the ruling, saying, “[W]e believe that Nutella, as a hazelnut spread, can be eaten as part of a good breakfast and our latest advertisement was carefully developed with this in mind.” In its response to ASA, Ferrero UK indicated that it had restricted the content and scheduling of the advertisements because of the product’s status as an HFSS (high in fat, salt, sugar) product. The company did not apparently realize that it was unable to fully control VOD scheduling and did not know until it saw the complaints that its ads were shown, against company policies relating to health, obesity and child hyperactivity, at about the time “Jamie’s American Food Revolution” aired. Ferrero will not, accordingly, advertise Nutella® in the future via VOD services. *See FoodManufacture.co.uk*, June 29, 2011.

LITIGATION

SCOTUS to Hear Appeal on California Slaughterhouse Rules

The U.S. Supreme Court has granted the petition for certiorari filed by the National Meat Association (NMA) to review a Ninth Circuit Court of Appeals decision denying NMA’s request for preliminary injunction in a challenge to the application of California’s rules requiring the humane treatment of downer animals in slaughterhouses. *Nat’l Meat Ass’n v. Harris*, No. 10-224 (U.S., cert. granted June 25, 2011). NMA represents the interests of swine producers and argued that, as applied to swine, the state regulations, prompted by a Humane Society video showing the mistreatment of downer cattle, were preempted by the Federal Meat Inspection Act (FMIA). More details about the case appear in [Issue 344](#) of this *Update*.

The questions before the U.S. Supreme Court are as follows: (i) “Did the Ninth Circuit err in holding that a ‘presumption against preemption’ requires a

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 400 | JULY 1, 2011

'narrow interpretation' of the FMIA's express preemption provision, in conflict with this Court's decision in *Jones v. Rath Packing Co.*, 430 U.S. 519, 540 (1977), that the provision must be given 'a broad meaning?"; (ii) "Where federal food safety and humane handling regulations specify that animals (here, swine) which are or become nonambulatory on federally-inspected premises are to be separated and held for observation and further disease inspection, did the Ninth Circuit err in holding that a state criminal law which requires that such animals not be held for observation and disease inspection, but instead by immediately euthanized, was not preempted by the FMIA?"; and (iii) Did the Ninth Circuit err in holding more generally that a state criminal law which states that no slaughterhouse may buy, sell, receive, process, butcher, or hold a nonambulatory animal is not a preempted attempt to regulate the 'premises, facilities, [or] operations' of federally-regulated slaughterhouses?"

According to an NMA spokesperson, the Court took the case on the basis of a brief from the U.S. Solicitor General advising the Court that the Ninth Circuit erred. See *Law360*, June 27, 2011.

Ninth Circuit Affirms Dismissal of Diacetyl Lawsuit

The Ninth Circuit Court of Appeals has affirmed a district court order excluding the expert testimony proffered by a plaintiff alleging that his residential exposure to the butter-flavoring chemical diacetyl in microwave popcorn caused his bronchiolitis obliterans, a debilitating lung disease. *Newkirk v. ConAgra Foods, Inc.*, No. 08-00273 (9th Cir., June 17, 2011) (unpublished). The Ninth Circuit determined that the lower court did not abuse its discretion in excluding the testimony and that, without evidence of specific or general causation, the lower court properly granted the defendants' motion for summary judgment. Additional information about the case, filed by a man who purportedly consumed four to six bags of microwave popcorn daily, appears in [Issue 274](#), [Issue 356](#) and [Issue 360](#) of this *Update*.

Hot Dog Fracas Continues, Court Refuses to Grant TRO Motion

A federal court in Illinois has refused to temporarily stop Red Hot Chicago from allegedly marketing its hot dogs by referring to Ladany family recipes, claiming its recipes date back to 1893 or indirectly implying an affiliation with Vienna Beef. *Vienna Beef, Ltd. v. Red Hot Chicago, Inc.*, No. 11-03825 (U.S. Dist. Ct., N.D. Ill., E. Div., order entered June 21, 2011). More information about the trademark-infringement lawsuit appears in [Issue 398](#) of this *Update*.

Vienna Beef claimed, in its motion for a temporary restraining order (TRO), that it would be irreparably harmed while its action was pending. The court disagreed finding that, with the exception of a single advertisement for Red Hot products appearing in the May 2011 issue of a trade publication, "the complained of advertising has been in use for years and thus this Court fails to see the emergency necessitating a TRO."

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 400 | JULY 1, 2011

The court not only found that Vienna Beef was unlikely to succeed on the merits of its false-advertising and trademark-infringement claims, it also noted that a TRO would not prevent customer confusion because Vienna Beef had shown “no evidence of any customer confusion.” The court also concluded that “a TRO would not be in the public interest since it would curtail commercial competition when Vienna Beef has not carried its burden to show that such an order is necessary to prevent harm.”

Class Action Challenges Wesson Oil “100% Natural” Claims

A California resident has filed a putative class action against ConAgra Foods alleging that the company misrepresents its Wesson cooking oils by marketing them as “100% Natural,” when they contain genetically modified (GM) ingredients. *Briseño v. ConAgra Foods, Inc.*, No. 11-05379 (U.S. Dist. Ct., C.D. Cal., filed June 28, 2011). Seeking to certify a nationwide class of consumers, the plaintiff alleges false and misleading advertising, unfair and deceptive business practices, violation of California’s Consumers Legal Remedies Act, and breach of express warranty. Alleging that he did not get the benefit of his bargain in purchasing Wesson oils, the plaintiff seeks declaratory and injunctive relief, compensatory damages, restitution, disgorgement, attorney’s fees, and costs.

Among other matters, the complaint alleges that ConAgra discusses GM food crops on its corporate Website, noting that its customers will ultimately “decide what is acceptable in the marketplace [as to bioengineered foods] based on the best science and public information available. We will continue to listen carefully to our customers and consumers on biotechnology and provide alternatives for those who demand products without biotechnology ingredients.” According to the plaintiff, “ConAgra’s Wesson Oils’ advertising robs consumers of the ability to make an *informed* decision because they are told that Wesson Oils are ‘100% Natural.’ Further, reasonable consumers told that Wesson Oils are ‘100% Natural’ have no reason to ‘demand products **without biotechnology ingredients**’—the ‘natural’ designation represents to consumers that they are getting biotech-free food.”

Coffee Capsule Dispute in Switzerland Returned to Lower Court

The Swiss Federal Supreme Court has reportedly ruled in Nestlé SA’s favor in an intellectual property dispute with a competitor, which was selling a single-serve coffee “capsule” that fits in Nestlé’s Nespresso® machines and is allegedly the same shape as Nestlé’s patented product. Rival Denner was apparently allowed to return its coffee capsules to store shelves after a lower court withdrew a preliminary injunction that Nestlé won in January 2011. According to a news source, the Supreme Court returned the case to the lower court to give Nestlé the opportunity to prove that capsules of different shapes can be used in its machines. A Denner spokesperson indicated that the company intends

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 400 | JULY 1, 2011

to continue selling its capsule and that it will show the court that capsules must conform to a certain shape to fit the machines properly.

Nestlé has apparently challenged other companies trying to enter the lucrative single-serve coffee market; lawsuits against Sara Lee and the Ethical Coffee Co. are pending in France and the Netherlands. See *BeverageDaily.com*, June 30, 2011.

Workers' Compensation Awarded in Obese Woman's Death

According to a news source, a New Jersey appeals court has determined that the husband of an obese woman who died of a blood clot after working long hours in her home office may recover workers' compensation benefits. Cathleen Renner, who had been employed by AT&T for 25 years, apparently died after working overnight to finish a project from her home office in Edison; a blood clot apparently formed in her leg and lodged in her lung. Renner's husband filed a workers' compensation claim on her behalf following her death, alleging that the clot developed while she was at her desk. AT&T claimed that conditions, such as Renner's sedentary lifestyle, enlarged heart and obesity (she apparently weighed more than 300 pounds), which were unrelated to her job, caused the clot. She had also reportedly begun taking birth control pills, another risk factor for blood clots.

While acknowledging Renner's sedentary lifestyle, the court determined that she was even less active when she worked from her home office. With the medical experts agreeing that the clot likely formed during her overnight work session, the court ruled that the evidence was sufficient to support the workers' compensation claim. A company spokesperson indicated that it was reviewing the ruling, but did not apparently indicate whether AT&T would appeal the decision to the New Jersey Supreme Court. Legal commentators are evidently uncertain how the decision will affect other obesity-related cases, given the narrow section of the law at issue. Still, they recognize that the ruling could have broader implications with millions of Americans working at sedentary desk jobs. See *Insurance Journal*, June 30, 2011.

MEDIA COVERAGE

A. Barton Hinkle: "Want to see a corpse on a can of Pringles?," *Richmond Times-Dispatch*, June 28, 2011

"Since the gross-out is cross functional, it's reasonable to ask when the federal government will start showing us disgusting pictures on packages of food, in which Washington also takes a keen interest," writes Hinkle in this opinion piece speculating about whether the food industry will be required to provide graphic warning labels similar to those recently imposed on cigarette makers.

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 400 | JULY 1, 2011

Hinkle suggests that “the arc of food regulation seems to be following the arc of tobacco regulation: ‘voluntary’ measures imposed ‘for the sake of the children’ at first—followed by less voluntary, more comprehensive regulation undertaken for the sake of the common good, defined in both public-health terms and public-finance terms.”

The logic behind Washington’s new cigarette warning labels, Hinkle asserts, “holds that government should frighten people away from consumer goods that impose social costs. If we apply that consistently, then there is no reason federal regulators should not adorn bags of potato chips with garish photos of morbidly obese corpses, cutaways of clogged arteries or glistening mounds of fatty tissue hacked out of cadavers.”

OTHER DEVELOPMENTS

Pediatrics Group Issues Policy Statement on Media’s Alleged Link to Childhood Obesity

The American Academy of Pediatrics (AAP) has issued a [policy statement](#) on children, obesity and the media, recommending that pediatricians continue counseling parents “to limit total non-educational screen time to no more than 2 hours/day.” Published in the July 2011 issue of *Pediatrics*, the policy statement claims that media continues to contribute to childhood and adolescent obesity as “screen time may displace more active pursuits, advertising of junk food and fast food increases children’s requests for those particular foods and products, snacking increases while watching TV or movies, and late-night screen time may interfere with getting adequate amounts of sleep.”

AAP urges doctors to “encourage parents to discuss food advertising with their children,” as well as work with other child health advocates at the local, state and national levels to implement (i) “a ban on junk food advertising”; (ii) “restrictions on interactive food advertising to children via digital media”; (iii) further research “into the health and psychosocial effects of heavy media use in children”; and (iv) “more prosocial media platforms and resources for children that encourage them to choose healthy foods.”

“We’ve created a perfect storm for childhood obesity – media, advertising, and inactivity,” said lead author Victor Strasburger, a member of the AAP Council on Communications and Media. “Thirty years ago, the federal government ruled that young children are psychologically defenseless against advertising. Now, kids see 5,000 to 10,000 food ads per year, most of them for junk food and fast food.” See *AAP Press Release*, June 27, 2011.

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 400 | JULY 1, 2011

PHAI Calls on Health-Focused Organizations to Be Wary of Soft Drink Industry Campaigns

The Public Health Advocacy Institute (PHAI) has issued a [paper](#) titled “Organizations That Care About Health Should Play No Part in the Soft Drink Industry’s Effort to Rehabilitate Its Public Image.” The paper discusses how soft drink makers have responded to sagging sales by engaging in corporate social responsibility campaigns that involve “cause-marketing,” through which a corporation collaborates with a nonprofit, generally through online social networking. As an example, the June 20, 2011, paper describes the “Pepsi Refresh Project” “whereby members of the public submit ideas with a funding request and vote on whether or not to fund the concept.” PepsiCo has apparently pledged \$20 million to the campaign, whose underlying goal, according to the PHAI paper, “is to sell more Pepsi products.”

PHAI contends that “emerging soft drink industry corporate social responsibility efforts that use cause-marketing and public relations tactics require special attention.” The institute concludes that organizations which care about health “should establish a policy that identifies and distinguishes between traditional business relationships, corporate philanthropy and cause-marketing and should commit to not participate in cause-marketing campaigns that promote products, such as sugary drinks, that pose a public health threat.” PHAI is a Boston-based legal research center that focuses on public health law including tobacco control and obesity-related issues.

Industry Watchdog Issues Study on Health Claims for Alcoholic Beverages

The Marin Institute has published a [study](#) titled, “Questionable Health Claims by Alcohol Companies: From Protein Vodka to Weight-Loss Beer,” highlighting several vodka and beer products purportedly marketed with claims about protein fortification, antioxidant nutrients, all-natural ingredients, and fitness and weight-loss qualities. According to the institute, the study has been forwarded to the Federal Trade Commission with a “demand for increased oversight and legal action to stop these obviously deceptive marketing claims.”

The study’s co-authors, including attorney Michele Simon, who serves as the institute’s Research and Policy Director, conclude that lax federal oversight and a trend made popular by the food industry have combined to allow the industry to promote their “potentially dangerous” products with “healthy, strong sports stars and colorful, enticing fruit images” that tend to “further the normalization of drinking alcohol and to excess” as well as “send the message that drinkers can actually gain nutritional benefits from consuming a potentially deadly product.”

Claiming that “[a]lcohol is not a health and wellness product,” Simon said, “The wine industry has been exaggerating wine’s health benefits for years.

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 400 | JULY 1, 2011

Now Big Alcohol is taking such messages to a whole new level." She contends that "Even moderate consumption is responsible for a wide range of health problems, including heart disease and various cancers, not to mention an epidemic of underage drinking. Alcohol is not a health tonic; it can cause life-long suffering and destroy families. Where are those messages?" See *Marin Institute Press Release*, June 28, 2011.

IASO Publishes Report on Food Marketing to Children

The International Association for the Study of Obesity (IASO) recently published an EU-funded briefing paper titled [*A Junk-Free Childhood: Responsible Standards for Marketing Foods and Beverages to Children*](#), which claims that "food company competition" has undermined corporate pledges to cease youth marketing efforts. Part of IASO's StanMark Project, the report compares several company-led voluntary initiatives, expressing concern that self-regulation is allegedly inconsistent, insufficiently monitored and weakly enforced. In particular, IASO noted that youth marketing pledges varied as to (i) "which foods are being promoted to children"; (ii) "when advertisements can be broadcast on television"; (iii) "what is meant by a 'child'"; and (iv) "how the Internet should be regulated."

"Among the voluntary pledges, we found a wide range of nutrition criteria describing what the industry would voluntarily restrict," said one author in a June 30, 2011, IASO press release. "We found disagreement concerning what age the rules should apply, and whether or not company-owned Websites should be included in self-regulations... Companies can now use new technologies to encourage children to market to each other and by-pass any parental controls."

IASO is also concerned about the ability of national authorities to regulate cross-border marketing, especially when Internet access "is largely unmediated." It is advocating universal standards that would incorporate the 63rd World Health Assembly's recommendations to reduce the exposure of children to the marketing of foods or beverages "high in saturated or *trans* fat, free sugars or salt (HSTFSS)." According to IASO, these cross-border rules would (i) confine food and beverage promotions to those products which meet the dietary standards laid out by the World Health Organization's *Global Strategy on Diet, Physical Activity and Health*; (ii) limit marketing to "those persons who have reached an age when they are legally considered to be competent enough to protect their own welfare"; (iii) cover "all media which carry marketing messages as well as those which cross national borders"; (iv) exclude techniques—including the use of cartoon characters, animation and celebrities—"with special appeal to children and adolescents"; (v) treat brands with recognizable links to food and beverage products "as if they were promotions"; (vi) prohibit food and beverage advertising in "all settings where children gather"; and (vii) "hold all parties involved in conveying a marketing message to be accountable." See *The Daily Mail*, June 30, 2011.

**FOOD & BEVERAGE
LITIGATION UPDATE**

ISSUE 400 | JULY 1, 2011

SCIENTIFIC/TECHNICAL ITEMS

Study Claims Early BPA Exposure Affects Spatial Learning in Male Deer Mice

A recent study has reportedly claimed that male deer mice exposed to bisphenol A (BPA) through maternal diet “showed no changes in external phenotype, sensory development, or adult circulating concentrations of testosterone and corticosterone, but spatial learning abilities and exploratory behaviors were severely compromised compared with control males.” Eldin Jašarevic, et al., “Disruption of adult expression of sexually selected traits by developmental exposure to bisphenol A,” *Proceedings of the National Academy of Sciences*, June 27, 2011. According to University of Missouri researchers, “adult male-male competition for mates in this species is supported by enhanced spatial navigational and exploratory abilities, which enable males to search for prospective, widely dispersed females.” But males exposed to BPA *in utero* and while nursing allegedly lost their spatial-navigation skills when running a maze, as well as their ability to attract females, which evidently preferred the control group on a 2-to-1 basis.

As lead author Cheryl Rosenfeld explained in a June 27, 2011, *PBS* article, “Non-BPA exposed males can almost immediately get to the correct hole [in a maze]. The BPA exposed male took quite a bit longer. They didn’t use the most efficient strategy and just wandered around aimlessly.” Her team had hypothesized that if male deer mice were exposed to BPA “when testosterone begins programming the brain, later behaviors would be affected,” and in particular “sexually selective traits, or behaviors that are differently expressed between males and females.”

“Clearly males and females do not react to this chemical in the same way,” Rosenfeld concluded. “Many previous studies have been generic testing rather than being tailored to factors that are relevant to a particular species and behaviors that are consistent with whether they are male or female. If you test behaviors that are not important to that gender, you may or may not get an effect.”

Harvard Study Links Potatoes to Weight Gain

A recent Harvard School of Public Health study has allegedly linked potatoes, sugar-sweetened beverages and meat to weight gain, finding that “modest changes in specific foods and beverages, physical activity, TV-watching and sleep duration were strongly linked with long-term weight gain.” Dariush Mozaffarian, et al., “Changes in Diet and Lifestyle and Long-Term Weight Gain in Women and Men,” *New England Journal of Medicine*, June 23, 2011. According to a June 22, 2011, press release, researchers evaluated “changes in multiple specific lifestyle factors and weight gain every four years over 12 to 20 years of follow-up in three separate large cohorts, the Nurses’ Health Study

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 400 | JULY 1, 2011

(NHS), the Nurses' Health Study II (NHS II), and the Health Professionals Follow-up Study (HPFS). Their results evidently showed that, across all three cohorts, "the foods associated with the greatest weight gain over the 20-year study period" included potato chips, other potatoes, sugar-sweetened beverages, unprocessed meats, and processed meats.

The study's authors recommend that those looking to prevent long-term weight gain focus on (i) "improving carbohydrate quality by eating less liquid sugars (e.g. soda) and other sweets, as well as fewer starches (e.g. potatoes) and refined grains"; and (ii) "eating more minimally processed foods (e.g. fruits, vegetables, whole grains, nuts, yogurt) and fewer highly processed foods (e.g. white breads, processed meats, sugary beverages)." As one author concluded, "These findings underscore the importance of making wise food choices in preventing weight gain and obesity. The idea that there are no 'good' or 'bad' foods is a myth that needs to be debunked."

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FOOD & BEVERAGE LITIGATION UPDATE

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.

SHB 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.

SHB lawyers have served as general counsel for feed, grain, chemical, and fertilizer associations and have testified before state and federal legislative committees on agribusiness issues.

