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FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 490 | JULY 12, 2013

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

FDA Proposes Action Level for Inorganic Arsenic in Apple Juice

The Food and Drug Administration (FDA) has **proposed** "an 'action level' of 10 parts per billion (ppb) for inorganic arsenic in apple juice," the same level established by the U.S. Environmental Protection Agency for drinking water. According to a July 12, 2013, press release, FDA set this threshold based on its latest analysis of organic and inorganic arsenic in apple juice as part of its **draft guidance** to industry.

"The FDA is committed to ensuring the safety of the American food supply and to doing what is necessary to protect public health," said FDA Commissioner Margaret Hamburg. "We have been studying this issue comprehensively, and based on the agency's data and analytical work, the FDA is confident in the overall safety of apple juice for children and adults." The agency will accept comments on the proposed action level and draft guidance for 60 days after publication in the *Federal Register*.

FDA Finalizes Rule on BPA in Infant Formula Packaging

The Food and Drug Administration (FDA) has issued a final **rule** amending 21 C.F.R. 175.300 to reflect the industry's abandonment of bisphenol A (BPA)-based epoxy resins as coatings in infant formula packaging. As of July 12, 2013, the food additive regulations will no longer provide for this use of BPA. According to FDA, its action followed Rep. Edward Markey's (D-Mass.) petition asserting that industry had stopped using BPA in infant formula packaging; the action "is not "related to the safety of BPA." *See FDA Center for Food Safety and Applied Nutrition—Constituent Update*, July 11, 2013.

USDA Approves Horse Slaughter Plant

According to a news source, the U.S. Department of Agriculture (USDA) has granted permission for slaughterhouses in New Mexico and Iowa to convert their facilities into horse-processing plants, the first such facilities to be

licensed since Congress banned the practice seven years ago. Other applications for horse-processing plants are reportedly being considered in Missouri, Oklahoma and Tennessee.

Before horse slaughter can begin, however, plants must be inspected by USDA inspectors who have reportedly not yet been hired. "This is very far from over," an attorney for the New Mexico plant was quoted as saying. "The company is going to plan to begin operating in July. But with the potential lawsuits and the USDA—they have been dragging their feet for a year—so to now believe they are going to start supplying inspectors, we're not going to hold our breath." *See The Associated Press,* June 28, 2013; *Emporiagazette.com,* July 11, 2013.

NOAA Issues Final Dolphin-Safe Tuna Labeling Rule

The National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA) has published a final **rule** "to enhance the requirements for documentation to support labels on tuna products that represent the product as dolphin-safe." According to NMFS, the rule "is intended to better ensure dolphin-safe labels comply with the requirements of the DPCIA [Dolphin Protection Consumer Identification Act] and to ensure that the United States satisfies its obligations as a member of the World Trade Organization (WTO)." Information about an adverse WTO ruling in a dispute with Mexico over U.S. dolphin-safe labeling provisions appears in Issue **424** of this *Update. See Federal Register*, July 9, 2013.

Codex Adopts New Food Safety and Nutrition Standards

The Codex Alimentarius has announced new food safety and nutrition **standards** that strive to "protect the health of consumers worldwide." The regulations include guidance on preventing and reducing ochratoxin A—a reportedly carcinogenic contaminant—in cocoa, avoiding microbiological contamination of berries, preventing hydrocyanic acid in cassava, and when to label food with "non-addition of sodium salts."

The commission also seeks to protect consumers against fraud and ensure fair food trade practices for products such as avocados, chanterelles, pomegranates, olives, and fish products. "The standards help buyers and sellers establish contracts based on Codex specifications and make sure that the consumers get from the products what they expect," explained a news release. The recommendations also include nutrient references for sodium and saturated fat, as well as maximum pesticide residue limits for certain food additives.

Meanwhile, Codex celebrated its 50th anniversary at its annual meeting, held in Rome, July 2, 2013. The session was attended by 620 delegates from 128 member countries and one member organization, one observer country and 41 international governmental and nongovernmental organizations, including UN agencies. *See WHO News Releases,* June 28, July 2 and 8, 2013.

SHB 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.

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EFSA Finalizes Guidance on Pesticide-Related Risk to Bees

Following a request from the European Commission concerning the declining health of bees in Europe, the European Food Safety Authority (EFSA) has published new **guidance** for assessing the potential risks to bees from the use of pesticides. Noting that a previous risk assessment for honeybees did not fully account for risks from chronic or repeat exposure to pesticides, or the potential risks to larvae, EFSA said that the new guidance fills these gaps, adds schemes for bumble bees and solitary bees and proposes a new method for assessing whether the potential harm posed to bees from the use of a plant protection product is acceptable. "This method—which gives a more precise assessment of acceptable loss of foragers than the existing approach—should afford greater protection to honey bee colonies situated on the edge of fields treated with pesticides," said EFSA.

According to EFSA pesticide experts, the attributes to protect honey bees are directly related to colony strength—the number of individuals in a hive—and the scheme for honey bees evidently suggests that it is not acceptable for colony size to fall by more than 7 percent as a result of exposure to pesticides at any time. *See EFSA News Release,* July 4, 2013.

FSA Issues Final Report on Horse Meat Investigation

At the behest of the U.K. Food Standards Agency (FSA), an independent reviewer has **issued** a final report on the agency's response "to the adulteration of processed beef products with horse and pork meat and DNA." Authored by Pat Troop, former chief executive of the Health Protection Agency, the report evaluates FSA's "relevant capacity and capabilities," including (i) "the response of the FSA to any recent prior intelligence on the threat of substitution of horsemeat for beef in comminuted beef products available in the U.K.," (ii) the "strategic, tactical and operational response" to initial test results, (iii) "communication from the FSA to the public, parliament, and other stakeholders," (iv) FSA's engagement with the food industry and other regulatory agencies, and (v) "the enforcement response of the FSA, in terms of the powers available and arrangements for conducting investigations into potential breaches of food law or other law, including liaison and collaboration with other law enforcement agencies."

The report ultimately recommends that FSA work to improve intelligence across the food chain, partly by increasing targeted sampling programs "delivered by not just the FSA and local authorities, but also by industry." It also urges the agency to revisit its major incident plan, better define "the role of government departments in large, complex incidents," and review "the use of framework agreements and codes of conduct." FSA has announced plans to publish its official response to these findings in advance of its July 16, 2013, board meeting. *See FSA News Release,* July 5, 2013.

Proposed Changes to Prop. 65 Warnings Focus of Upcoming OEHHA Workshop

California EPA's Office of Environmental Health Hazard Assessment (OEHHA) has slated a public pre-regulatory **workshop** for July 30, 2013, to gather input from stakeholders "on the content of a regulation that would address Proposition 65 (Prop. 65) warnings." According to OEHHA, the regulation, "if formally proposed and adopted, would either supplement or replace existing OEHHA regulations governing Proposition 65 warnings and conform to any statutory changes if enacted." Gov. Jerry Brown (D) has indicated his intent to amend the law in 2013.

Among the proposed changes OEHHA is considering are (i) requiring, at a minimum, information in all warnings, the health effect for which the chemical was listed, how a person will be exposed and "simple information (such as washing hands) on how to avoid or reduce an exposure"; (ii) "Approved warning methods and content for use by manufacturers and retailers regarding exposures to listed chemicals in foods, including foods sold at retail establishments and food products sold via the internet. These approved methods may include alternatives to on-product warnings"; and (iii) the means to provide "additional contextual information to persons concerning exposures to listed chemicals," available to the public on a Web site or other generally accessible medium. OEHHA has provided **examples** of warnings that would satisfy these requirements. The workshop will be Webcast, and written comments on the proposal are requested by August 30, 2013. *See OEHHA News Release*, July 9, 2013.

Maine Governor Vetoes BPA Disclosure Measure

Maine Governor Paul LePage (R) has reportedly vetoed legislation (LD 1181) that would have required food companies with more than $1 billion in annual sales to disclose their use of priority chemicals such as bisphenol A (BPA) to the state. According to his July 8, 2013, **veto letter**, LePage rejected the measure for lack of funding, writing that lawmakers failed to allocate adequate resources for the program's administration. He also noted that the bill would have established the actions of other states as "credible scientific evidence," "regardless of whether other states use scientific analyses to reach their conclusions," while asking Maine agencies "once again to re-visit which chemicals are considered of 'high concern.'"

"In addition, the federal government, through potential amendments to the Toxic Substances Control Act, may be exploring reasonable and consistent measures to address these concerns," concluded LePage, who previously supported legislation designed to strengthen Maine's Priority Chemicals laws. "I am willing to engage further in such dialogue but the bill as drafted goes too far and constituted an unfunded mandate." *See The Bangor Daily News,* June 20, 2013.

LITIGATION

Court Dismisses Deceptive Marketing Claims Against Margarine Maker

A federal court in California has dismissed as preempted certain claims filed by a putative class alleging that Unilever deceptively markets "I Can't Believe It's Not Butter! Spray." *Pardini v. Unilever U.S., Inc.*, No. 13-1675 (U.S. Dist. Ct., N.D. Cal., order entered July 9, 2013). The dismissal was without prejudice, and the plaintiff has 30 days to amend her complaint. Other claims were also dismissed without prejudice because they were not sufficiently pleaded or because the plaintiff lacked standing to assert a claim under the consumer protection laws of the other states named in the complaint. A claim for unjust enrichment was dismissed with prejudice.

The plaintiff claims that the product is deceptively marketed as having "0 fat" and "0 calories" when it actually contains 771 calories and 82 grams of fat per bottle. While the product label specifies that the no-fat and no-calories claim is per serving, and users are referred to the nutrition label for serving size, the plaintiff alleges that the defendant has "set an artificially small serving size so that the calories and fat per serving can be rounded down to zero" and that the listed serving sizes fail to account for the manner in which the product is customarily used. She seeks to represent a nationwide class of purchasers.

The court determined that the plaintiff's serving size claim is preempted by federal law, but indicated that in amending the complaint, the plaintiff must allege specific facts showing why the product is not a spray and should identify the appropriate serving size for the product, "as well as the fat and calorie content associated with that serving size."

Not preempted was the plaintiff's "asterisk" claim, which alleged that because the product packaging "makes a 'zero fat' nutrient content claim, the nutrition label must include an asterisk next to 'soybean oil' and 'buttermilk' and a notation indicating that these ingredients contain some amount of fat." The court rejected the defendant's claim that the label statement "Contains 0 g fat" is a "voluntary disclosure that explains the basis for the '0 g trans fat' claim," finding that "this argument is inconsistent with the FDCA [Food, Drug, and Cosmetic Act] and its implementing regulations."

The court also rejected the defendant's argument that the claims should be dismissed "because they are based on alleged violations of the FDCA and because there is no private right of action under the statute." According to the court, the claims fall within the category of "state law claims alleging that non-compliance with the FDCA regulations deceived and harmed consumers, i.e., claims that would exist in the absence of the FDCA." As such, and "[a]bsent an FDCA violation, these allegations could potentially support a claim for violation" of state laws.

Shook, Hardy & Bacon L.L.P.

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 490 | JULY 12, 2013

Court Orders Partial Dismissal of False Ad Claims Against Food Companies

A federal court in California has dismissed in part and granted in part allegations in a second amended, putative class complaint filed against three food and beverage companies for alleged violations of state consumer fraud laws in the labeling claims on a plethora of products including chewing gum, juices, cookies, crackers, granola, stuffing, and cheese. *Ivie v. Kraft Foods Global, Inc.*, No. 12-2554 (U.S. Dist. Ct., N.D. Cal., San Jose Div., order entered June 28, 2013). Information about a previous ruling in the case appears in Issue **473** of this *Update*.

The court dismissed with prejudice (i) the plaintiff's claim that a "natural flavors" label on Crystal Light® is misleading because the product contains artificial flavors; the court found that the two specific ingredients alleged to be "artificial" flavors are artificial ingredients and nothing in the Food and Drug Administration regulations suggests that potassium citrate and sodium citrate are flavors; and (ii) the majority of the claims for products not purchased by the plaintiff and lacking sufficiently similar packaging and labels to those she did purchase. The court will allow the plaintiff to amend her complaint as to allegations involving "excellent source," "healthy" and "wholesome" on the companies' Websites, finding the claims insufficiently pleaded.

The court denied the motion to dismiss as to nutrient content claims on a Planters Nut-rition product and Kraft Mexican Style Four Cheese blend. According to the court, the plaintiff sought to impose state law requirements identical to federal regulations, so they were not preempted. The court also determined that they were not precluded under the primary jurisdiction doctrine, stating "plaintiff's case does not require this court to determine difficult issues of first impression better left to the FDA's [Food and Drug Administration's] expertise, but instead only requires the application of well-understood FDA regulations directly on point."

The court rejected the defendants' argument that the claims should be dismissed "because the labels, even if in technical violation of FDA regulations, are unlikely to deceive a reasonable consumer, and plaintiff therefore has no standing. According to the defendants, because plaintiff could not have known about the FDA's regulations regarding the font size and placement of the disclosure statements, she could not have relied on or been deceived by the alleged violations." The court found that she had satisfied the state consumer fraud law standing requirements: she essentially alleged that "because the defendants' labels did not comply with state and federal requirements regarding the font-size and placement of the disclosure statement, she could not see or did not understand the disclosures, and therefore was misled by the unlawful packaging and purchased the product based thereon. . . . and suffered economic injury because she purchased a product she otherwise would not have."

Meat Trade Groups Challenge COOL Labeling Regulations

Trade organizations representing the interests of cattle and pork producers and meat processors in Canada and the United States have filed a lawsuit against the U.S. Department of Agriculture (USDA), challenging country-of-origin (COOL) labeling regulations that took effect May 23, 2013. ***Am. Meat Inst. v. USDA*, No. 13-1033 (U.S. Dist. Ct., D.D.C., filed July 8, 2013**). They seek declaratory and injunctive relief, an order vacating the final rule, attorney's fees, and costs.

Explaining that meat producers and processors in the United States, Canada and Mexico have for years freely "commingled" livestock born, raised and processed across their borders, the plaintiffs allege that new requirements forcing them to "list separately, in sequence, the specific country where the animal was 'born,' the country where it was 'raised,' and the country where it was 'slaughtered,'" will impose significant costs and entail extensive detail and paperwork for no health or safety reasons. They allege that the COOL regulations violate their First Amendment rights, the COOL statute and Administrative Procedure Act.

Putative Class Challenges Fruit Juice Labeling

A California resident has filed consumer fraud claims on behalf of a putative statewide class against a company that makes fruit juices with "No Sugar Added" statements on the product labels and without a statement that the juice is not a "low calorie" or "calorie reduced" product allegedly in violation of federal regulatory requirements. *Cuzakis v. Hansen Beverage Co.*, No. BC513620 (Cal. Super. Ct., Los Angeles Cnty., filed June 27, 2013). According to the complaint, the juices are made from fruit juice concentrate and thus cannot be labeled "No Sugar Added," and with 120 calories per reference serving greater than 30 grams ("about as much as a conventional soft drink") must include a disclosure that they are not "low calorie."

While the plaintiff alleges that he is a diabetic and must purchase products low in sugar, he does not seek damages for personal injury; rather, he claims he would not have purchased the products if he had known that they were misbranded and labeled with claims that the company was not legally permitted to make. Alleging violations of the Unfair Business Practices Act, False Advertising Act and Consumers Legal Remedies Act, as well as negligent misrepresentation and breach of quasi-contract, the plaintiff seeks a declaratory judgment; an order requiring the company to change its labeling; corrective advertising; statutory, actual and punitive damages; attorney's fees; interest; and costs. Also included as a defendant is Monster Beverage Corp., which the plaintiff alleges is Hansen Beverage's parent company.

Animal Rights Groups Challenge USDA Action on Horse Meat Plants

A coalition of animal rights organizations has sued U.S. Department of Agriculture (USDA) Secretary Tom Vilsack under the National Environmental Protection Act (NEPA), claiming that the agency failed to conduct a required environmental review before granting the application of a "horse slaughter plant operator in New Mexico, bringing the nation closer to its first horse slaughter operation since federal courts and state lawmakers shuttered the last three U.S.-based plants in 2007." *Front Range Equine Rescue v. Vilsack*, No. 13-3034 (U.S. Dist. Ct., N.D. Cal., San Francisco Div., filed July 2, 2013).

The parties agreed to voluntarily transfer the suit to the District of New Mexico as a more appropriate venue, and the court entered an order granting the transfer on July 10, 2013. Because the defendants advised the plaintiffs that no federal inspections at horse slaughter facilities will take place before July 29, the court vacated its expedited scheduling order.

In their complaint, the organizations claim that at least six applications from operations in five states have been filed with USDA "since Congress appropriated funding for inspections." They include facilities in Iowa, Missouri, Tennessee, and Oklahoma. The plaintiffs claim that the "defendants have violated NEPA by failing to prepare an environmental impact statement or an environmental assessment prior to granting inspection to horse slaughter plants located throughout the United States. . . . Defendants have taken this action notwithstanding USDA's obligations to comply with NEPA, and USDA's actual knowledge that horse slaughter causes significant environmental harms related specifically to the means and methods of horse slaughter, the potentially toxic nature of the waste generated by this industry, and the fact that horse meat endangers consumers." *See The Human Society of the United States Press Release*, July 2, 2013; *Courthouse News Service*, July 10, 2013.

Counsel Awarded $90.8 Million in Black Farmers' Discrimination Suit

A federal court has awarded $90.8 million to the attorneys who represented African-American farmers in litigation against the U.S. Department of Agriculture alleging discrimination in the loan application process. *In re Black Farmers Discrimination Litig.*, No. 08-0511 (U.S. Dist. Ct., D.D.C., decided July 11, 2013). Additional details about class counsels' request appear in Issue **405** of this *Update*.

Explaining the challenges counsel faced, their extensive efforts to secure an award for the class of farmers in excess of $1 billion, the millions they incurred in unreimbursed expenses, as well as the hours devoted to assisting the Claims Administrator during the claims process, the court found an award representing 7.4 percent of the claims fund reasonable. According to the court, "Class counsel have undertaken the immense challenge presented by this action with the utmost professionalism and integrity, exhibiting skill, diligence, and efficiency in all aspects of their duties."

Naked Juice to Pay $9 Million to Resolve False Ad Suit

Naked Juice Co. has agreed to settle putative class claims that it falsely advertised some of its juice and smoothie products as "all natural" and not genetically modified (GMO); while denying the allegations, the company will establish a $9-million settlement fund. *Pappas v. Naked Juice Co. of Glendora, Inc.*, No. 11-8276 (U.S. Dist. Ct., C.D. Cal., motion for preliminary approval filed July 2, 2013). Members of the putative nationwide class will each be eligible under the proposed agreement to recover a maximum of $45 dollars. The agreement will also require Naked Juice to establish a product verification program, hire or assign a quality control manager to oversee the independent testing process for the company's product line, establish a database to allow the electronic tracking and verification of product ingredients, and modify future labeling, advertising and marketing to cease using "All Natural" and related statements.

Wrongful Death Action Filed Against Monster Beverage

A woman who claims that her 19-year-old son died as a result of consuming at least two 16-oz. cans of Monster Energy® drinks every day for three years has filed a survival and wrongful death action against the company. *Morris v. Monster Beverage Corp.*, RG1368528 (Cal. Super. Ct., Alameda Cnty., filed June 25, 2013). According to the complaint, the young man went into cardiac arrest on July 1, 2013, "[w]hile engaged in sexual activity with his girlfriend," and efforts to revive him were unsuccessful. The autopsy report allegedly attributed his death to "cardiac arrhythmia due to cardiomyopathy." The plaintiff focuses on the beverage's caffeine and other ingredients that have purportedly been shown to produce adverse health effects, "including cardiac arrest."

The plaintiff alleges strict liability—design defect, failure to warn—negligent design, manufacture, sale, and failure to warn; concealment, suppression or omission of material facts; breach of implied warranties; punitive damages; and wrongful death. She seeks property damages and medical expenses, damages for loss of companionship and other non-economic damages, funeral and burial expenses, and the costs of suit.

Australian Court Rules "Free to Roam" Chicken Producer Claims False

A federal court in Australia has determined that processors advertising their chickens as "free to roam" on packaging and in advertisements and publications were liable to mislead the public as to the nature and characteristics of the product. ***Australian Competition & Consumer Comm'n v. Turi Foods Pty. Ltd.*, (No. 4) [2013] FCA 665 (Fed. Ct. of Austl., decided July 8, 2013)**.

The court's opinion details the efforts undertaken to determine stocking densities at various stages of a chicken's development and includes the results of site visits by the court, support staff and the parties' legal representatives.

At certain times in their development, according to the court, thousands of chickens live in such close proximity in the sheds that "very little, if any, of the floor surface could be seen." Thus, the court ruled that the "impugned statements . . . were apt to mislead and deceive and were false insofar as they were made in respect of chickens in barns up to or shortly before the 42nd day of their growth cycle." The court ordered the parties to confer to "agree on the terms of declaration which reflect the findings recorded in these reasons."

OTHER DEVELOPMENTS

Rudd Center Study Targets Food and Beverage Ads on Children's Websites

Yale University's Rudd Center for Food Policy and Obesity has **published** a paper criticizing the use of food and beverage advertising on Websites directed at children. A.E. Ustjanauskas, et al., "Food and beverage advertising on children's web sites," *Pediatric Obesity,* July 2013. Using data provided by comScore, researchers evaluated a total of 3.4 billion food and beverage advertisements shown over a one-year period on 72 popular children's sites, including Nick.com, NeoPets.com and CartoonNetwork.com. Of the 254 different food products advertised, cereals apparently accounted for 45 percent of ad impressions, followed by fast food restaurants (19 percent) and prepared foods and meals (8 percent).

The study singled out companies committed to the Children's Food and Beverage Advertising Initiative (CFBAI), reporting that signatories were responsible for 89 percent of all food and beverage advertisements on children's sites. In particular, the authors claimed that CFBAI companies "placed 320 million impressions for brands not approved for children's advertising, including 95% of candy ads on children's web sites and 100% of carbonated beverage ads," while only 16 percent of ads met sodium, saturated fat, *trans* fat, and added sugar guidelines set by the federal Interagency Working Group on Food Marketed to Children (IWG).

"As previously shown in studies of television food advertising to children, nearly all ads for brands that CFBAI-participating companies have approved for advertising on child-directed web sites are high in fat, sodium and/or sugar," concludes the study. "Despite CFBAI companies' pledges to market only healthier dietary choices in child-directed media, display advertising for CFBAI-approved products was less likely to meet IWG standards than advertising for CFBAI company products not approved for child-targeted media. Further, ads for CFBAI-approved products were less likely to meet the standards than ads from non-participating companies. These findings demonstrate that CFBAI self-regulatory pledges in the United States do not protect children from marketing of nutritionally poor foods." *See Rudd Center Press Release,* July 8, 2013.

Advertising Standards Board Upholds Two Complaints over Cereal Bar Commercials

The Obesity Policy Coalition (OPC) has announced that the Australian Advertising Standards Board (ASB) has upheld its complaints alleging that TV commercials for Kellogg Co.'s LCM® cereal bars violated the Responsible Children's Marketing Initiative (RCMI). According to OPC, the two advertisements in question were directed primarily toward children but failed to promote "a healthy dietary choice consistent with established scientific or Australian government standards," healthy dietary habits or physical activity.

In upholding the two complaints, ASB disagreed with Kellogg's claims that the commercials were not aired during programming "where the proportion of children under 12 years of age is below 25%," ruling instead that LCM® products "do not meet the Kellogg Global Nutrient Criteria for a healthier dietary choice" and therefore are "not permitted to be advertised to children under 12." The board also found that although the commercials did not violate any provisions of the Australian Association of National Advertisers marketing codes, they reportedly failed to encourage healthy dietary habits or physical activity as required under RCMI. Based on these findings, Kellogg Co. has agreed to stop airing these commercials during children's programming.

"We know the power and influence of advertisements using cartoon characters and fantasy on children, as do parents. These ads create pester power, something which undermines the efforts of parents and educators. This flagrant marketing to children is irresponsible at a time when children's diets are so poor, leading to increasing rates of overweight and obesity," said OPC Executive Manager Jane Martin in a July 4, 2013, press release. "This is the second time in as many weeks the ASB has upheld these complaints by the OPC against Kellogg's, and is a really encouraging result." Addition details about the ASB ruling in a separate OPC complaint about cereal advertising appear in Issue 489 of this *Update*.

MEDIA COVERAGE

Atlantic Article Questions "Regulating Sugar Like Alcohol"

Recapitulating the neuroendocrinologist Robert Lustig's arguments for regulating sugar based on its alleged ubiquity, toxicity, addictiveness and "negative impact on society," a recent article in *The Atlantic* considers whether the sweetener meets these four criteria for government intervention. According to staff writer Megan Garber, Lustig in a June 29, 2013, interview at the Aspen Ideas Festival pointed to research linking sugar to increased liver fat, insulin resistance and other ailments as evidence that regulation is overdue. But Garber notes that only "sugar's utter ubiquity" is beyond argument, raising questions about what it would mean to regulate the substance "like alcohol."

"[I]f Lustig gets his way—if people do come to see sugar as substance that can be abused—public awareness might offer its own kind of regulation," writes Garber. "Sugar, Lustig put it, is 'great for your wallet, but crappy for your health.' The companies that profit from its sales might not, at the moment have an incentive to change their ways; the more the public learns about sugar's effects, though, the more we might limit our intakes of the stuff. Voluntarily." *See The Atlantic,* June 29, 2013.

SCIENTIFIC/TECHNICAL ITEMS

Drug-Resistant Bacteria Allegedly Linked to Industrial Farm Workers

A recent **study** examining the prevalence of methicillin and multidrug resistant *Staphyloccocus aureus* (MRSA and MDRSA) among farm workers has reported that livestock-associated strains of both bacteria were present only in individuals employed at "industrial livestock operations" (ILOs) and not those employed at "antibiotic-free livestock operations" (AFLOs). Jessica Rinsky, et al., "Livestock-Associated Methicillin and Multidrug Resistant *Staphylococcus aureus* Is Present among Industrial, Not Antibiotic-Free Livestock Operation Workers in North Carolina," *PLoS One,* July 2013. Researchers with the University of North Carolina, George Washington University and Johns Hopkins University's Bloomberg School of Public Health reportedly examined nasal swab samples from 99 ILO and 105 AFLO workers, finding that of the 41 ILO and 42 AFLO workers carrying *S. aureus* bacteria, 7 percent of each group tested positive for MRSA. In addition, the study's authors identified MDRSA in 37 percent of ILO *S. aureus* carriers and 19 percent of AFLO *S. aureus* carriers, noting that the *S. aureus* clonal complex (CC) unique to livestock "was observed only among workers and predominated among ILO (13/34) compared with AFLO (1/35) *S. aureus*-positive workers."

"Despite similar *S. aureus* and MRSA prevalence among ILO and AFLO-exposed individuals, livestock-associated MRSA and MDRSA… were present only among ILO-exposed individuals," the study elaborated. "These findings support growing concern about antibiotic use and confinement in livestock production, raising questions about the potential for occupational exposure to an opportunistic and drug-resistant pathogen, which in other settings including hospitals and the community is of broad public health importance."

Article Questions Effect of Artificial Sweeteners on Metabolic Conditions

A recent opinion piece published in *Trends in Endocrinology and Metabolism* has suggested that artificial sweetener consumption increases the risk of certain health outcomes, including "excessive weight gain, metabolic syndrome, type 2 diabetes and cardiovascular disease." Susan Swithers, " Artificial sweeteners produce the counterintuitive effect of inducing metabolic

Shook, Hardy & Bacon L.L.P.

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 490 | JULY 12, 2013

derangements," *Trends in Endocrinology and Metabolism,* July 2013. Authored by Purdue University Professor of Behavioral Neuroscience Susan Swithers, the article hypothesizes that "consuming sweet-tasting but noncaloric or reduced-calorie food and beverages interferes with learned responses that normally contribute to glucose and energy homeostasis."

To this end, Swithers points to several prospective cohort and interventional studies linking artificially-sweetened beverages to "a variety of negative health outcomes," as well as research examining physiological responses to high-intensity sweeteners, which are "largely inert with regard to effects on glucose homeostasis because they do not reliably elicit post-ingestive responses similar to caloric sugars." Based on these findings, she argues that "when considered within the framework of Pavlovian conditioning principles, experiences with noncaloric sweet tastes that are not accompanied by typical and expected post-ingestive consequences, such as post-prandial release of insulin, GLP-1, or GIP, or activation of brain regions sensitive to energy or reward, might eventually degrade or partially extinguish the capacity of caloric sweet tastes to evoke these responses."

"Public health officials are rightfully concerned about the consequences of consuming sugar-sweetened beverages, such as soft drinks, but these warnings may need to be expanded to advocate limiting the intake of all sweeteners, including no-calorie sweeteners and so-called diet soft drinks," explained Swithers in a July 11, 2013, press release. "Although it seems like common sense that diet sodas would not be problematic, that doesn't appear to be the case. Findings from a variety of studies show that routine consumption of diet sodas, even one per day, can be connected to higher likelihood of heart disease, stroke, diabetes, metabolic syndrome and high blood pressure, in addition to contributing to weight gain."

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