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FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

USDA-IOG Issues Audit Report on Organic Milk Operations

The U.S. Department of Agriculture's (USDA's) Office of Inspector General (OIG) has released a July 2013 audit report examining how the Agricultural Marketing Service's (AMS's) National Organic Program (NOP) established the "access to pasture" rule for organic dairy cattle. Although OIG generally found that the new rules for organic milk production were "successfully implemented," it nevertheless recommended that AMS clarify guidance for certifying agents "to ensure that all dairy producers are being treated consistently."

To this end, the audit noted that NOP (i) "had not clearly defined how producers should demarcate herds of organic milk-producing cattle, which meant that some certifying agents allowed producers to add cattle to organic herds," and (ii) "needs to include organic feed brokers within the NOP-certification process to ensure that organic feed is not commingled or contaminated." OIG also reported that certifying agents failed to take consistent enforcement actions "when their inspectors or reviewers identified possible noncompliance issues," and that smaller operations "were often unaware of the recordkeeping requirements of the access to pasture rule regarding livestock confinement, grazing, or the cattle's dry matter intake." AMS has reportedly concurred with all of OIG's recommendations.

CDC Releases Report on Obesity Rates in Children

The Centers for Disease Control and Prevention (CDC) has released a report indicating that obesity rates among preschoolers decreased in 19 states and the U.S. Virgin Islands between 2008 and 2011. Analyzing weight and height information from nearly 12 million children aged 2 to 4 years who participated in CDC's Pediatric Nutrition Surveillance System, the report showed that Florida, Georgia, Missouri, New Jersey, South Dakota, and the U.S. Virgin Islands saw at least a one percentage point decrease in obesity rates. According to CDC research, approximately one out of eight preschoolers in the United States is obese. "Although obesity remains epidemic, the tide has

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begun to turn for some kids in some states," said CDC Director Tom Frieden. "While the changes are small, for the first time in a generation they are going in the right direction. Obesity in early childhood increases the risk of serious health problems for life."

One area where this has been observed is in Connecticut, where a team of researchers from Yale University's Rudd Center for Food Policy and Obesity studied stores authorized by the Supplemental Nutritional Program for Women, Infants, and Children (WIC). The Rudd Center team apparently reported that many stores had responded to revised U.S. Department of Agriculture rules about which foods could be purchased with WIC coupons by "improving the availability and variety of healthy foods." Evidently, the businesses "'found a way'… to make room for low-fat milk on their shelves, and to stock fruits and vegetables and whole-grain breads and other products they had not sold before." According to a news source, Rudd Center Director Marlene Schwartz suggested that WIC reforms have "surely" played a role in the reduction of obesity rates in children. *See CDC News Release,* August 6, 2013; *The New Yorker,* August 9, 2013.

T.G.I. Friday's to Address Leave Policy Issues

According to a news source, restaurant chain T.G.I. Friday's has agreed to make leave-policy changes affecting the employees working at its 272 company-owned facilities. The U.S. Department of Labor's Wage and Hour Division apparently discovered violations of the federal Family and Medical Leave Act during an investigation of a company restaurant in Shreveport, Louisiana. The company had reportedly failed to reinstate an employee who took a legal leave under the law to the same or an equivalent position at the same pay and benefits, and had not allowed the employee to return immediately. The Labor Department determined that the restaurant owed the employee three weeks of lost wages. *See The Kansas City Star*, August 7, 2013.

EFSA Proposes Fluoride and Molybdenum Intake Requirements

The European Food Safety Authority (EFSA) has **proposed** adequate intake (AI) levels for fluoride and molybdenum as part of its effort to provide dietary reference values (DRVs) for micronutrients, including vitamin C, folate, iron, zinc, calcium, and iodine. Finalized by EFSA's Panel on Dietetic Products, Nutrition and Allergies (NDA Panel) after a public consultation, the proposed AI for fluoride is 0.05 mg/kg body weight per day "for children aged 7 months to 17 years as well as adults, including pregnant and lactating women," and the proposed AI for molybdenum is 65 micrograms per day for all adults and 10-65 micrograms per day for infants, children and adolescents.

According to EFSA, the NDA Panel has already proposed DRVs for energy, macronutrients—protein, fats and carbohydrates—dietary fiber, and water. In

turn, such DRVs are used "to establish reference values for nutrition labeling, for the assessment and planning of diets and for developing food-based dietary guidelines." The European Commission has asked EFSA to update its previous advice in these areas, "taking into account new scientific evidence and recent recommendations issued at [the] national and international level." *See EFSA News Story,* August 8, 2013.

EFSA Issues Guidance for Two-Year Whole Food Studies

The European Food Safety Authority (EFSA) has **issued** guidance principles for conducting two-year whole food studies "to assess the risk of cancer and/or toxicity from the long-term consumption of such foods by humans." Acting at the behest of the European Commission, EFSA relied on testing guidance (TG) 453 from the Organization for Economic Co-operation and Development in addition to considering the views of member state experts consulted through the Scientific Network for the Risk Assessment of GMOs. The agency has cautioned, however, that testing individual chemicals in animal models "may result in adverse effects caused by dietary imbalance rather than any potential toxicity of the whole food itself," urging researchers to carefully design studies to avoid this outcome and to use a larger number of animals when conducting whole food studies.

"[I]t is essential that scientists implementing its guiding principles should define clear and specific objectives before starting a two-year feeding study for whole food. Identifying the exact nature of the risk that the study seeks to assess is key to this process if potential hazards have previously been identified which warrant further investigation," noted EFSA in a July 31, 2013, news release. "The decision on the need for a two-year study should be based on an evaluation of all available information, such as results from previous analyses of the food's composition and findings from earlier nutritional and toxicological studies."

UK Watchdog Says 'Zero-Calorie Pasta' Ad Breaches Regulations

The U.K. Advertising Standards Agency (ASA) has **ruled** that pasta manufacturer NAH Foods, Ltd. cannot use a magazine ad for its "Slim Pasta" that features the heading "Zero Calorie Pasta?" and the subheading "UK & Ireland's No.1 Best Selling Zero Calorie Pasta, Noodles & Rice" because tests of the product revealed that it actually contains 7.7 calories per 100 grams.

In its defense, the company pointed out that the advertisement's heading, "zero calorie pasta?", contained a question mark and argued that it had not claimed "zero calorie pasta," but ASA, while noting the question mark, decided that "consumers would infer that the advertiser was selling zero calorie pasta."

According to European regulation, a food can claim to be energy-free if it contains no more than 4 calories per 100 ml, and to make a low-energy claim,

a food must contain no more 40 calories per 100 g for solid foods, or no more than 20 calories per 100 ml for liquids. ASA maintained that consumers were likely to interpret the zero-calorie claim to mean "energy-free" and therefore ruled that the ad breached regulations.

LITIGATION

JPML Denies MDL Transfer in Capatriti Olive Oil and Kashi Foods Cases

The Judicial Panel on Multidistrict Litigation (JPML) has denied transfer to a multidistrict litigation (MDL) court of consumer-fraud lawsuits involving Capatriti brand "100% Pure Olive Oil" made by Kangadis Food Inc. d/b/a The Gourmet Factory and numerous snack, cereal, protein bar, and frozen entrée products made by the Kashi Co. *In re Capatriti Brand Olive Oil Mktg. & Sales Practices Litig.*, MDL No. 2469; *In re Kashi Co. Mktg. & Sales Practices Litig.*, MDL No. 2456 (J.P.M.L., decided August 6, 2013).

According to the court, centralization is not appropriate in the olive oil suit because the Southern District of New York action has made "significant progress" and the number of actions pending in adjacent districts is small with a "correspondingly limited number of involved counsel and courts." Because the plaintiff in a New Jersey action has considered voluntarily transferring his action to New York, the JPML found that alternatives to centralization such as the transfer "or voluntary cooperation among the few involved counsel and two judges . . . appear to be workable and, in our judgment, preferable to centralization in these circumstances." The plaintiffs allege that the products are misbranded because they actually contain olive-residue oil, or Pomace.

The JPML refused to centralize the Kashi litigation, finding that the issues are not "sufficiently complex or numerous to warrant the creation of an MDL." The court acknowledged that the suits share some factual issues, that is, "whether Kashi inappropriately listed 'evaporated cane juice' or 'evaporated cane juice crystals' as ingredients in numerous food products," but concluded that "centralization would not necessarily serve the convenience of the parties and witnesses or promote the just and efficient conduct of the actions" in light of the small number of actions and districts involved. The court suggested that counsel dismiss the New Jersey action and refile it in California or seek transfer from New Jersey to California, noting that "all the parties are amenable to proceeding in the Southern District of California."

Florida Melamine-Tainted Milk Importer Seeks Bankruptcy Protection

A Florida-based import-export company has filed for Chapter 7 protection in bankruptcy court, listing more than $204 million in liabilities from litigation over its role in the import from China of powdered milk contaminated with

melamine. *In re Exim Brickell, LLC*, No. 13-28502 (U.S. Bankruptcy Ct., S.D. Fla., filed August 3, 2013). Exim Brickell, LLC declared $300 in office furniture as its only asset. According to a news source, the 2008 tainted Chinese milk scandal, which affected hundreds of thousands of children in that country and killed six, resulted in verdicts and legal fees against the company as a result of litigation involving a Venezuelan company that recently won an appeal in their breach of contract dispute. *See Law360*, August 7, 2013.

In a related development, a new milk contamination scandal has developed in China over whey protein concentrate potentially contaminated with the *C. botulinum bacterium*. The dairy farm near Tangshan purportedly linked to the contaminated ingredient is managed by New Zealand's Fonterra—a global dairy giant with revenues of about $16 billion—which announced that some of the ingredients used in infant formula and sports drinks tested positive for the bacteria. Producers in the supply chain immediately acted to stop sales and recall affected products. Fonterra has reportedly informed eight customers about the problem, which involves whey protein produced during the past year, but apparently refused to reveal who they are or what products and countries are affected. Botulism, although rare, can be a fatal paralytic illness caused by a nerve toxin.

Information about the contamination is slowly accumulating in media reports. New Zealand's Ministry for Primary Industries has indicated that Nutricia used some of the tainted ingredient in its Karicare® line of infant formula and warned parents not to use it. Students at a New Zealand high school reportedly consumed protein drinks with the affected whey protein, supplied to the school in February. Minister of Health Tony Ryall reportedly said that illness was highly unlikely and the students are not at risk. Chinese officials called on milk powder producers to better manage their operations and said that any companies with quality or safety problems would be "severely" punished. Chinese consumers have apparently paid a premium for New Zealand milk products because of the country's reputation for good manufacturing practices. China has also reportedly scrutinized milk powder producer pricing practices and this week fined six companies, including Fonterra, $110 million for price-fixing and anti-competitive behavior. *See Associated Press*, August 8, 2013; *Reuters*, August 9, 2013.

Federal Court Dismisses Misbranding Claims Against 7-Eleven

A federal court in California has dismissed with prejudice the breach of warranty claims made by a putative class as to purportedly "misbranded food products" sold by 7-Eleven, but dismissed the remaining consumer fraud claims without prejudice to allow the plaintiff to amend the complaint to meet the stringent pleading requirements for fraud-based allegations. *Bishop v. 7-Eleven, Inc.*, No. 12-2621 (U.S. Dist. Ct., N.D. Cal., San Jose Div., order entered August 5, 2013).

While the plaintiff defined "misbranded food products" as pertaining to potato chips, pretzels and other foods labeled "0 grams Trans Fat," "No Cholesterol," "All Natural," "Fresh to Go," "guaranteed fresh," or "Fresh," as well as products "sold in oversized slack filled container," the court determined that he failed to "provide a clear and particular account of the allegedly fraudulent, deceptive, misrepresentative, or otherwise unlawful statements" and failed to "unambiguously specify the particular products that have violated particular labeling requirements, the allegedly unlawful representations that were on the products, and the particular statements Plaintiff allegedly relied on when making his purchases." According to the court, the term "Misbranded Food Products" used throughout the complaint refers only to ambiguous categories of food products rather than specific and particular products, leaving the defendant and court "to draw [their] own inferences about the particular misconduct that is alleged to constitute fraud, deception, or misrepresentation."

Claims Narrowed in VitaRain® Beverage Litigation

A federal court in Washington has dismissed without prejudice a number of claims in a putative class action alleging that the producer and seller of a vitamin water product misled consumers by failing to disclose that the product contains caffeine or its relative amount and falsely represents that the product is a "natural tonic" and contains "natural caffeine." *Maple v. Costco Wholesale Corp.*, No. 12-5166 (U.S. Dist. Ct., E.D. Wash., order entered August 1, 2013). While the court determined that the plaintiff had standing by rejecting Costco's contention that the labeling on one product unit was not visible through the packaging encasing the variety packs in which it is sold, it found that federal law preempts claims that the defendants were required to disclose the presence of caffeine or state its relative amount in the drink.

Among the claims that the court dismissed for insufficient pleading were (i) violation of the state's consumer protection act, because the plaintiff failed to alleged that he actually read the product label or relied on it in making his purchasing decision; (ii) fraudulent and negligent misrepresentation, because the plaintiff cannot state a claim for misrepresentation arising from the omission of information on a product label and because he failed to allege that he read or relied on the labels before making his purchase; (iii) negligence, because the plaintiff failed to plead the existence of a duty of care. Disagreeing with the defendants' argument that any amendment would be futile, the court gave the plaintiff 14 days to file a second amended complaint.

The court found that the plaintiff had adequately alleged misrepresentation claims arising from the "natural caffeine" and "natural tonic" statements on the label for "VitaRain Tropical Mango Vitamin Enhanced Water Beverage." According to the complaint, the product "is manufactured using gelatin capsules that contain caffeine in powdered form . . . [that] is synthetic and not natural," and "contains unnatural ingredients and ingredients derived

from synthetic and/or non-natural processes, including, but not limited to, synthetic caffeine, sucralose and acesulfame potassium."

Consultants Disqualified in Yogurt Litigation, Plaintiffs' Counsel Cautioned

A federal court in California has determined that EAS Consulting Group LLC and one of its employees, a former acting director in the Food and Drug Administration's Office of Food Labeling, must be barred from discussing issues with plaintiffs' counsel in litigation against Chobani, Inc. and are disqualified as experts in the case, finding that the regulatory consulting company improperly agreed to consult with plaintiffs' counsel in consumer fraud litigation against food companies after discussing confidential litigation strategy and issues with Chobani's defense counsel. *Kane v. Chobani, Inc.*, No. 12-2425 (U.S. Dist. Ct., N.D. Cal, San Jose Div., order entered August 2, 2013). Details about the litigation appear in Issue 491 of this *Update*. So ruling, the court denied Chobani's request to disqualify plaintiffs' counsel unless they communicate further with EAS about the issues in this putative class action without a waiver from Chobani.

According to the court, while confidential information about the *Chobani* litigation was not actually disclosed to plaintiffs' counsel—firms with some three-dozen consumer fraud cases pending against an array of food companies in the district—it was "deeply disappointed" that plaintiffs' counsel abdicated their ethical responsibilities to EAS Chair and CEO Ed Steele, a non-attorney, by erroneously relying on Steele's assurances that although EAS had consulted with defendant's counsel it would not appear adversely in any of the cases on a list provided by plaintiffs' counsel. The court stated, "both Chobani's counsel and Plaintiffs' Counsel's alleged surprise at EAS's conduct only underscores the fact that counsel cannot rely on non-attorney experts with pecuniary incentives to discharge an attorney's ethical duties."

Advocates Counter FDA Request for FSMA Rulemaking Deadline Extensions

The Center for Food Safety has filed its reply to the Food and Drug Administration's (FDA's) request that a federal court in California reconsider the Food Safety Modernization Act implementation rulemaking deadlines it established for the agency. *Ctr. for Food Safety v. Hamburg*, No. 12-4529 (U.S. Dist. Ct., N.D. Cal., Oakland Div., filed August 2, 2013). Additional information about FDA's motion appears in Issue 492 of this *Update*. While the center argues that FDA is attempting to re-litigate issues the court has already decided, it does not oppose a one-time, 60-day deadline extension for the food transportation rule.

Meanwhile, FDA has issued notices extending until November 15, 2013, the comment periods on its proposed "Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food"

and "Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption."

According to FDA, the extension will allow stakeholders to consider the interrelationships between these proposals, issued in January 2013, and the two proposals announced in July on foreign supplier verification and the accreditation of third-party auditors/certification bodies. *See Federal Register*, August 9, 2013.

NYC Files Appeal of Soda-Size Ruling to Highest State Court

New York City has filed an appeal from an intermediate appellate court ruling finding that the city Board of Health exceeded its authority by adopting a regulation restricting the size of sugar-sweetened soft drinks sold in certain venues. *N.Y. Statewide Coal. of Hispanic Chambers of Commerce v. NYC Dep't of Health & Mental Hygiene*, No. n/a (N.Y., appeal filed August 2, 2013). Details about the intermediate appellate court decision appear in Issue 492 of this *Update*.

According to the city's motion for leave to appeal, the Court of Appeals erred in (i) applying separation-of-powers doctrine to a local administrative agency; the city argues that municipalities determine their governmental structure and often create bodies with overlapping powers; (ii) ruling that the Board of Health lacks legislative powers when it derives its authority from charters explicitly recognizing those powers, and case law has defined the board as "the sole legislative authority within the City of New York in the field of health regulations"; (iii) interpreting *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987), by finding that all of its factors need not be present to invalidate a rule; according to the city, this was the first such interpretation of the case, and the high court "should clarify its decision"; and (iv) applying the *Boreali* factors. As to the latter, the city contends, among other matters, that the lower court erred in invalidating a regulation on the ground that the legislature had considered the same subject matter, arguing that the high court "has upheld regulations where the legislature has considered and rejected numerous bills on the same issue."

The city seeks an expedited appeal, if leave to appeal is granted, citing the American Medical Association's recent determination that obesity is a disease and a *New England Journal of Medicine* study on the irreversible health effects of obesity and Type 2 diabetes, "both of which are disproportionately linked to sugary drink consumption." The city further argues, "The Board must be able to act without any uncertainty, and with the full breadth of its critical powers, in order to address not only the public health crisis presented by the obesity epidemic, but also other public health concerns which may arise."

French President Vows to Continue Ban on GM Corn Crops

According to news sources, French President François Hollande has said that the country will maintain its prohibition on growing genetically modified (GM) corn sold by Monsanto, despite a Council of State court ruling reversing the moratorium on the ground that it had little legal basis. The ban on MON810 corn has been in effect in France since February 2008 and was extended in 2012. The July 29, 2013, court ruling was the second to overturn the ban—the first ruling, in 2011, was also ignored by former President Nicolas Sarkozy.

While Monsanto was not a party, it said in response to the verdict, "The decision by the Conseil d'État is welcome support for a science- and evidence-based approach to GM crop policy in France and the EU. The decision confirms that farmers throughout the EU should have the right to use seeds that European authorities have approved for use throughout the union." The European Commission apparently approved the corn for sale in 1998, and it is grown on a small scale in Spain and Portugal. *See Law360* and *phys.org/news*, August 1, 2013; *France 24*, August 8, 2013.

OTHER DEVELOPMENTS

Independent Investigation Claims GRAS Determinations Rife with Conflicts of Interest

A recent **study** published in *JAMA Internal Medicine* has faulted the Food and Drug Administration's (FDA's) process for declaring food additives "generally recognized as safe" (GRAS), citing alleged financial conflicts of interest among those chosen by companies to verify the safety of new additives. Thomas Neltner, et al., "Conflicts of Interest in Approvals of Additives to Food Determined to Be Generally Recognized as Safe: Out of Balance," *JAMA Internal Medicine,* August 2013. Led by Thomas Neltner, director of the Pew Health Group's Food Additive Project, researchers used the Institute of Medicine's conflict of interest criteria to analyze "451 GRAS notifications voluntarily submitted to FDA between 1997 and 2012." In particular, they sought to determine (i) "the likelihood that a decision by an individual making a [GRAS] determination would be unduly influenced by the financial interests of a manufacturer of an additive," and (ii) "the seriousness of possible harm if a GRAS determination was unduly influenced by the financial interests of a manufacturer of an additive, based on whether there was an FDA review and whether the notification to the agency was made public."

This review of GRAS notifications apparently showed that "22.4% were made by an employee of a manufacturer, 13.3% were made by an employee of

a consulting firm selected by a manufacturer, and 64.3% were made by an expert panel selected by the manufacturer or a firm that was a consultant to the manufacturer." In addition, the study noted that the expert panels making GRAS determinations often selected their members from a small number of consultants, with 10 individuals serving on 27 or more panels and one individual serving on 128 panels. "Over the 15-year period, at least 1 of these 10 individuals participated in 225 panels (77.6%), accounting for 43.1% (433 of 1,004) of the total number of seats on all 290 panels," stated the researchers, who questioned the financial ties of both employees and third-party panelists as well as the reliance on a small pool of experts to provide scientific input.

"Between 1997 and 2012, we found that financial conflicts of interest were ubiquitous in determinations that an additive to food was GRAS," the study concludes. "The lack of independent review in GRAS determinations raises concerns about the integrity of the process and whether it ensures the safety of the food supply, particularly in instances when the manufacturer does not notify the FDA of the determination… To minimize and manage conflicts of interest, an essential first step is for the FDA to require that it be notified of all GRAS determinations and the financial conflicts of interest of those who make these determinations."

Additional details about Neltner's work on food additive approvals appear in Issue **415** of this *Update*.

IOM Report Sets Framework for Evaluating Obesity Prevention Efforts

The Institute of Medicine (IOM) has **published** an August 2013 report that seeks to provide guidance to federal, state and local groups "for systematic and routine planning, implementation, and evaluation of the advancement of obesity prevention efforts." Titled *Evaluating Obesity Prevention Efforts: A Plan for Measuring Progress,* the latest effort complements the specific goals and strategies outlined in a 2012 report funded by the Michael & Susan Dell Foundation as part of IOM's Weight of the Nation™ campaign. To this end, it offers frameworks for national, state and community-level obesity evaluation plans that address "aspects of data collection and infrastructure systems, capacity for conducting evaluations, and feedback mechanisms for the data collected," among other things.

In particular, the report **identifies** 83 indicators for evaluation, including overarching indicators that "focus on obesity, overweight, and weight status for evaluating the combined effect of the full system of the goals and strategies outlined in the 2012 report." Taken together, these indicators of progress seek to measure "collective impact of obesity prevention efforts," as well as improvements to (i) the physical activity environment, (ii) the food and beverage environment, (iii) the messaging environment, (iv) healthcare and work sites, and (v) school and child care environments. In addition to

urging all federal, state and local agencies to use these indicators as a guide to "identify, coordinate, and maximize" data collection efforts, standardize their findings and facilitate access to the data collected, the report specifically calls on the Centers for Disease Control and Prevention, National Institutes of Health, U.S. Department of Agriculture, "and various nongovernmental and professional organizations," to increase "the capacity of diverse and interdisciplinary workforce engaged in conducting the assessments, surveillance, monitoring, and summative evaluation activities."

"The solution to the obesity crisis will depend on finding and assessing its causes. The recommendations made by the IOM committee focus on efforts to increase the likelihood that actions taken to prevent obesity will be evaluated, that their progress in accelerating the prevention of obesity will be monitored, and that the most promising practices will be widely disseminated," concludes the report. "Flexible and responsive evaluation plans at the national, state, and community level are central to providing informed, improved guidance." Additional details about IOM's 2012 Weight of the Nation™ strategy report appear in Issue **439** of this *Update*.

Health Organizations Urge USDA to Permit SNAP Experimentation

National and local health groups have sent an August 1, 2013, **letter** to U.S. Department of Agriculture (USDA) Secretary Tom Vilsack, urging the agency to allow demonstration projects "designed to promote healthier food and beverage purchases" under the Supplemental Nutrition Assistance Program (SNAP). Organizations such as the American Heart Association, American Medical Association and Center for Science in the Public Interest (CSPI) have asked USDA to approve SNAP pilot projects as part of an effort to provide the agency and Congress with the data needed "to make an informed decision concerning ways to improve the nutritional quality of purchases through the SNAP program." According to a concurrent CSPI press release, these projects "might include curbs on purchases of soda and other sugar drinks or unhealthful foods."

"Most Americans' diets, including the diets of low-income folks served by SNAP, are overflowing with soft drinks and woefully deficient in whole grains and produce," said CSPI Executive Director Michael Jacobson, who noted that SNAP funds cannot be spent on tobacco or alcohol. "It just doesn't make sense to have the federal government subsidize the purchase of a product that causes so much disease."

Meanwhile, a recent *Slate* article has noted that despite the efforts of consumer groups and legislators to limit the types of purchases permitted under SNAP, anti-hunger groups the Congressional Hunger Center (CHC), Food Research and Action Center and Share Our Strength have opposed these measures. Highlighting the rift between public health advocates and

anti-hunger groups on this issue, the article reports that organizations such as CHC have recently come under fire for accepting donations from corporations even when those contributions have no strings attached. "At the Congressional Hunger Center, we do not accept funds that have any restrictions on them," CHC Executive Director Ed Cooney was quoted as saying. *See Slate.com,* August 6, 2013.

UK Dairy Industry Seeks COOL

A coalition of U.K. dairy groups, including Dairy UK, the National Farmers Union and British Cheese Board, has published an August 1, 2013, **letter** in *The Daily Telegraph*, urging the European Commission (EC) to tighten regulations governing country-of-origin labeling (COOL). Stating that current regulations permit imported dairy products to be stamped with "UK marks," the coalition has requested that only dairy products made in "this country, from milk produced by Britain's dairy farmers should be labeled as British."

"Unlike other food products . . . country of origin labeling is not mandatory on dairy products and we think that it should be," said a spokesperson for the coalition. "Many consumers want to buy British dairy products and support British dairy farmers. The current labeling arrangements don't ensure that they have the information to be able to do that." According to news sources, of particular concern to the coalition are dairy products that are imported from Ireland and re-packaged with labels bearing the British flag. "There are a lot of people that want to support British farmers. This [labeling system] is misleading consumers. We want a clear and honest system," the spokesperson said.

Meanwhile, the European Dairy Association has asked the EC not to adopt the proposed mandatory origin labeling, reportedly citing concerns that doing so will be complicated and burdensome, will add additional costs for controls procedures leading to a more expensive product and will not provide additional useful information on food product quality.

Jim Begg, director general of the coalition, acknowledged that adopting COOL would indeed create obstacles for the dairy industry, but reportedly stated that his group believes that respecting consumer preferences is of greater importance. "We also believe that COOL represents an opportunity to generate additional value to the benefit of the entire supply chain, and farmers in particular, that shouldn't be passed up." *See Just-Food.com,* August 2, 2013; *Dairy Reporter,* August 8, 2013.

MEDIA COVERAGE

Slate Article Rebuts Media Item Linking Eosinophilic Disorder to GM Corn

An August 7, 2013, *Slate* article by Genetic Literacy Project Executive Director Jon Entine has criticized a recent magazine story allegedly linking eosinophilic disorder—"a multisystemic condition in which white blood cells overproduce in response to allergens"—to genetically modified (GM) corn, calling out *Elle* writer Caitlin Shetterly for stoking "conspiratorial fears that the government is covering up evidence that GMO foods can damage the public health." According to Entine, the article in question "was particularly appalling" insofar as it failed to produce any evidence or tests to confirm the "unusual diagnosis" that GMO foods caused Shetterly's autoimmune disorder. Instead, Entine argues, Shetterly relied on a "journalistic trick… to frame a settled issue in the scientific community as a mystery or a controversy."

"There has not been one study that links the genetically engineered corn or any approved genetically modified food on the market to allergies," University of California, Davis, plant geneticist Pamela Ronald told Entine. "The author, and apparently this doctor, is under the mistaken belief that the process of genetic modification can in itself create unique allergens that are not otherwise found in nature or are not easily identified and evaluated. That's just not accurate."

Washington Post Article Questions Whether Chemicals are Masking *Salmonella* in Poultry

In an August 3, 2013, *Washington Post* article, writer Kimberly Kindy suggested that some of the chemicals—notably cetylpyridinium chloride (CPC), a purportedly common finishing rinse—used in U.S. poultry processing plants may be masking the presence of *Salmonella* and other pathogens that remain on the birds that are sold to consumers. Titled "USDA Reviews Whether Bacteria-Killing Chemicals are Masking *Salmonella*," Kindy reports that academic researchers agree that "the chemicals could be overwhelming an antiquated testing process," and she states that several of the scientists have been enlisted by U.S. Department of Agriculture food safety experts to investigate the matter.

At issue, Kindy contends, is whether CPC, or other antimicrobials, might remain on the samples collected for pathogen testing at a high enough concentration to kill the bacteria on the way to the lab. If so, Food Safety and Inspection Service experts could perceive a false negative test result when the chicken may actually be contaminated. This could explain why government data show significant reductions in *Salmonella* rates in poultry plants while the number of people getting sick from *Salmonella* in poultry appears to have stayed the same.

Article Criticizes "Extreme Breeding" in Agricultural Production

A recent *Alternet.org* article titled "23 Gallons a Day from One Cow? Industrial Agriculture Engaged in Extreme Breeding" has questioned the long-standing practice of selectively breeding livestock to produce animals that are highly efficient and productive. While acknowledging that "breeding animals to exaggerate traits humans find useful is hardly new," author Jill Richardson claims that industrial agriculture has taken the practice to new extremes that compromise the ability of animals to live natural lives.

"Some of these changes are a result of growth hormones, lighting, feed, and (for dairy cows) more frequent milkings," she writes, "but a lot of it is breeding and industrial agriculture has taken it to an extreme… [A] look at the variety of chicken breeds kept by small farms, hobbyists, and backyard chicken owners shows just how much humans have successfully meddled in chicken genetics. You can find chickens adapted to living in hot weather or cold weather, chickens that make great mothers, chickens with exceptional egg-laying abilities, particularly meaty birds, or 'dual purpose' birds that provide plenty of meat but lay a decent amount of eggs as well. You can also find birds that satisfy more frivolous purposes, like being cute or funny-looking or laying blue eggs."

"It's actually well known by mainstream conventional agricultural scientists that when you focus on a single trait, there are problems with the other aspects of the animal because that's not how nature functions," said rancher and author Nicolette Hahn Niman. "I think we just pushed that so far that we've gone beyond the defensible level of that."

SCIENTIFIC/TECHNICAL ITEMS

Study Claims BPA Affects Human Egg Development

A recent study has reportedly claimed that bisphenol A (BPA) can disrupt the maturation of human oocytes *in vitro,* raising questions about the effect of the substance on human development and fertility. Ronit Machtinger, et al., "Bisphenol-A and human oocyte maturation *in vitro,*" *Human Reproduction,* August 2013. Researchers apparently analyzed the impact of both high (20 µg/ml) and lower concentrations (20 ng/ml and 200 ng/ml) of BPA on clinically-discarded oocytes obtained from patients undergoing fertility treatments at Brigham and Women's Hospital. According to a July 31, 2013, hospital press release, the results evidently showed that as BPA dose increased, there was (i) "a decrease in the percentage of eggs that matured," (ii) "an increase in the percentage of eggs that degenerated," and (iii) "an increase in the percentage of eggs that underwent spontaneous activation, the abnormal process when an egg acts as though it has been fertilized, even though it has not been."

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"To our knowledge, this is the first study investigating the effect of BPA on oocyte meiotic maturation, spindle morphology and chromosome alignment in human oocytes," wrote the study's authors. "Together with prior animal studies, the data support the negative influences of BPA on cell cycle progression, spindle architecture and chromosome organization during oocyte maturation. Furthermore, the increased rates of abnormal maturation in oocytes exposed to BPA may be relevant to our understanding of the decrease in fertility reported in the last decades."

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