Shook, Hardy & Bacon L.L.P.

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FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

FTC Forum to Address Food Marketing to Children

The Federal Trade Commission (FTC) has announced a December 15, 2009, public forum titled "Sizing Up Food Marketing and Childhood Obesity," which will include panels of industry representatives, federal regulators, consumer groups, scientific researchers, and legal scholars. The forum will address (i) the progress of self-regulatory initiatives, particularly the food and entertainment industries' responses to the 2008 FTC report, "**Marketing Foods to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation**"; (ii) current research on the impact of food advertising on children; and (iii) the statutory and constitutional issues surrounding governmental regulation of food marketing. In addition, representatives from FTC, the Food and Drug Administration, Centers for Disease Control and Prevention, and the Department of Agriculture will report on the status of recommended nutritional standards for foods marketed to children. *See FTC Press Release,* September 29, 2009.

FDA Launches Inquiry into Legality of Caffeinated Alcoholic Beverages

Responding to a **request** from a coalition of state attorneys general, the Food and Drug Administration (FDA) has called on the makers of alcoholic energy drinks to provide information and data showing their use of caffeine in alcoholic beverages is permissible under the law. The **letter**, sent to nearly 30 companies, explains what the law requires in terms of food additives: the additives must meet generally recognized as safe (GRAS) standards or be given pre-market approval by the agency. According to FDA, caffeine is GRAS only when used in cola-type beverages.

The letters were issued on November 13, 2009, and the companies were given 30 days to provide the requested information. In late September, the co-chairs of the National Association of Attorneys General Youth Access to Alcohol Committee called for the agency to pull the products from the market, contending that "the combination of caffeine and alcohol in AEDs [alcoholic energy drinks] has not been demonstrated to be safe, but rather poses a serious public health risk."

Attached to their letter was a **statement** by scientists, academics and those who deal with alcohol abuse detailing the scientific evidence which purportedly

shows that more than one in four college students consume such beverages, and that their consumption "is associated with significantly increased heavy episodic drinking and episodes of weekly drunkenness." Among the potential risks cited are "increased risk of serious injury to oneself and to others, as the result of driving while intoxicated, sexual assault, and other dangerous behaviors."

Excluded from the list of companies that received the FDA letters were Anheuser-Busch InBev NV. and MillerCoors LLC, which agreed in 2008 to stop manufacturing and selling all of their alcoholic energy drinks to settle claims brought by the attorneys general and the San Francisco City Attorney. Several alcohol watchdog groups reportedly praised the FDA's action; an agency spokesperson acknowledged the serious concerns that have been expressed about the beverages, but said that the agency "has not reached a conclusion" about their safety. According to a news source, spokespersons for Constellation Brands Inc. and Diageo North American indicated that they had already ceased producing the beverages. *See FDA News Release,* November 13, 2009; *The Wall Street Journal,* November 14, 2009; *Los Angeles Times*, November 15, 2009.

FDA Delays Raw Oyster Ban Pending Further Study

The Food and Drug Administration (FDA) has announced its intention to delay a 2011 ban on raw oysters harvested from the Gulf of Mexico during warm weather months. FDA heard from "Gulf Coast oyster harvesters, state officials, and elected representatives from across the region about the feasibility of implementing post-harvest processing or other equivalent controls" designed to reduce illnesses from bacteria like *Vibrio vulnificus*. "It is clear to FDA from our discussions to date that there is a need to further examine both the process and timing for large and small oyster harvesters to gain access to processing facilities or equivalent controls in order to address this important public health goal," stated the agency, which will conduct an independent study to assess how bacteria controls can be "feasibly implemented in the fastest, safest and most economical way."

FDA specifically noted that it will (i) continue to collaborate with the Interstate Shellfish Sanitation Conference to address *Vibrio vulnificus* in the region; (ii) work with the National Marine Fisheries Service to offer "technical assistance to facilitate the implementation of post-harvest processing or equally effective alternatives"; (iii) work with other federal agencies, such as the U.S. Department of Agriculture and National Oceanic and Atmospheric Administration, to "review what types of grants and other forms of economic assistance may be available to support establishment of processing cooperatives or other mechanisms to ensure widespread access to post-harvesting processing facilities"; and (iv) provide "public health and science data to support the safest of these products for human consumption in the U.S. and abroad." *See FDA News Release,* November 13, 2009.

Meanwhile, the Center for Science in the Public Interest (CSPI) has criticized FDA for apparently capitulating to "a small but vocal industry," which "should not have a free pass from FDA to sell adulterated and potentially deadly oysters to

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the public." As the watchdog opined, "Unfortunately this political victory for the Gulf Coast oyster industry is a health tragedy for their customers, and the action condemns scores of consumers to serious illness and death from this potent pathogen." *See CSPI Press Release,* November 13, 2009.

FDA Releases Report that Recommends Enhanced Food-Tracing Guidelines

The Food and Drug Administration's (FDA) Center for Food Safety and Applied Nutrition (CFSAN) has released a **report** that recommends guidelines for establishing a comprehensive food-tracing system along the entire supply chain to reduce foodborne illness. CSFAN commissioned the Institute of Food Technologists (IFT) report in 2008, and will apparently consider its findings when determining how government and industry can more quickly identify products associated with disease and remove risky products from the market.

IFT, a nonprofit scientific society focused on the science of food, reportedly examined the tracing methods of 58 diverse food companies to prepare the study, which recommends (i) creating a standard list of key data to be collected at each stage of the food chain, from farm to retailer or restaurant; (ii) developing more thorough, standardized recordkeeping methods; (iii) keeping records in electronic format; (iv) requiring a third-party audit of a company's tracking system; and (iv) providing training guidance on food-tracing systems.

The report concludes that "setting clear objectives for those in the food supply chain, and leveraging existing industry systems to meet those objectives, is the most appropriate approach to effective product tracing. The product tracing system should be simple, user-friendly and globally accepted." *See FDA News Release,* November 13, 2009; *FoodNavigator-USA.com,* November 16, 2009.

FDA Extends Comment Period on Acrylamide in Food

The Food and Drug Administration (FDA) has **extended** the period for comments and scientific data and information on acrylamide in food as it considers industry guidance on this issue. In response to a request for a 60-day extension, FDA will accept written comments and scientific data until January 25, 2010.

In its original request for comments and data published in the August 26, 2009, *Federal Register*, FDA described acrylamide as "a chemical that can form in some foods during certain types of high-temperature cooking," and sought information from manufacturers on how to measure and reduce acrylamide levels in food. The agency asked responders to provide detailed feedback about: (i) techniques for acrylamide mitigation; (ii) best monitoring practices; (iii) standard practices for the delivery, storage, temperature control, reconditioning, and screening of potatoes; (iv) changes to food packaging instructions and other measures that can reduce acrylamide levels during a product's final preparation by consumers; (v) food types for which the agency could recommend target acrylamide levels; and (vi) achievable acrylamide levels for french fries, potato chips, breakfast cereals, coffee, cookies, and other baked goods and corn-based snacks. *See Federal Register,* November 18, 2009.

AMS Proposes Amendments to Food Container Regulations

The U.S. Department of Agriculture's Agriculture Marketing Service (AMS) has **proposed** amending regulations that govern the U.S. Standards for Condition of Food Containers. According to AMS, these revisions are necessary to "reflect current industry practices" and include "simplifying sampling plans, updating the acceptable quality levels to incorporate new defects, and updating current defects to include new packaging technologies and interior can defects." These amendments "could potentially affect more than 26,000 food manufacturing establishments that may request to have their product containers inspected under the provisions of the U.S. Standards for Condition of Food Containers." The agency will accept comments on the proposal until January 19, 2010. *See Federal Register* and *AMS Press Release,* November 19, 2009.

EU to Drop Duties on Bananas and Other Tropical Fruit Products

An end to the world's longest-running trade dispute is reportedly drawing near. The European Union (EU), which purportedly started the "banana wars" by imposing higher duties on tropical fruits from Latin America in the early 1990s to favor former British and French colonies in Africa, the Caribbean and Pacific regions, is apparently poised to enter an agreement that would reduce its banana tariffs over the next seven years thus putting growers around the world on an equal footing. The United States is also apparently expected to adopt the same terms, so shoppers could soon be facing lower prices for tropical fruits and for dozens of other tropical products if the proposed settlement provides a boost to the upcoming Doha round of world trade negotiations. *See The New York Times*, November 17, 2009.

Australian Agency Seeks Comment on Proposal to Regulate Industrial Nanomaterials; Scientific Studies Continue to Generate Debate over Potential Health Effects

The National Industrial Chemicals Notification and Assessment Scheme of Australia's Department of Health and Ageing has released for public comment a **plan** to (i) eliminate a regulatory review exemption for the production of small quantities of new nanoscale materials; and (ii) establish a voluntary reporting system for manufacturers producing nanoscale chemicals. Comments must be provided no later than December 23, 2009. U.S. observers have reportedly indicated that the Australian proposal is presented in a manner that may make it a model for other countries also grappling with safety issues involving nanomaterials. *See BNA Daily Environment Report*, November 17, 2009.

Meanwhile, new reports on purported health and environmental effects of nanoscale materials continue to be released. The November 16 issue of *Cancer Research* contains a study suggesting that titanium dioxide nanoparticles, found in toothpaste, food colorants, cosmetics, sunscreens, paints, and vitamins, caused genetic damage in mice. According to senior author Robert Schiestl, "This is the first comprehensive study of titanium dioxide nanoparticle-induced genotoxicity, possibly caused by a secondary mechanism associated with inflammation and/or oxidative stress. Given the growing use of these nanoparticles, these findings raise

concern about potential health hazards associated with exposure." *See ScienceDaily*, November 17, 2009.

Some scientists reportedly contend that the use of cellular tests can lead to any result for researchers studying nanomaterial toxicity. During a recent **workshop** sponsored by the Nanoscale Science, Engineering, and Technology Subcommittee of the White House's National Science and Technology Council, the chair of a pharmaceutical chemistry department at the University of Utah apparently said that the science of using in vitro tests to predict nanomaterial toxicity is in its infancy. According to David Grainger, researchers do not fully understand the physical and chemical properties of the materials they are testing. He claimed that some researchers are using "ridiculously" high doses bearing no relationship to real-world exposures. Another issue not yet fully understood in this field of research is what happens to nanoparticles when they enter the body. Some may clump together and others could undergo biological reactions changing them into entirely different substances. *See BNA Daily Environment Report,* November 18, 2009.

In a related development, the UK Advisory Committee on Hazardous Waste has published a **report** that concludes, "there is now evidence that there is likely to be wide exposure to low concentrations of nanosilver in the environment." The report indicates that more research is needed, noting that "The nature of the environmental risk associated with the widespread use of nanosilver products is poorly characterized due to lack of knowledge." The report calls for immediate government funding of research leading to "a workshop which brings together relevant stakeholders. The workshop should focus in knowledge exchange between stakeholders, development of a coherent and integrated research strategy and medium term horizon scanning (developments in the next 5-10 years)."

A number of scientists are apparently concerned about the widespread distribution of nanosilver in the environment. Used in more than 200 consumer products and washed down drains, nanosilver has been shown to have an effect on fish embryos and is not being removed by sewage treatment systems. A University of Utah researcher was quoted as saying, "I think we jumped the gun" by creating large volumes of such materials. "We should take more time and really look at these new nano-systems before we start to throw them into personal products and shoot them into these ecosystems." Nanosilver is apparently being used in an array of consumer products because of its anti-microbial properties. According to a news source, the nanotechnology sector is expected to be a trillion dollar industry by 2015. *See Environmental Health News*, November 17, 2009.

Cereal Makers Testify Before Canadian Health Committee

The Canadian House of Commons' Standing Committee on Health (HESA) recently heard testimony from Nestlé S.A. and Kellogg Co. representatives about dietary salt reduction. The representatives reportedly backed recent efforts to reduce salt levels in popular products, noting that breakfast cereals account for only 3 percent of the salt in the Canadian diets. Nestlé Director of Corporate Affairs Catherine O'Brien also stated that the company currently complies with the Heart and Stroke Foundation's Health Check™ program, which has worked to remove 500,000 kilograms of salt

from the food supply in the past 4 years. "We must balance the push of science with the pull of the market—consumers will simply not compromise on taste, therefore it must be a priority alongside improved health," O'Brien was quoted as saying.

According to media sources, some HESA members have expressed frustration with forthcoming federal salt reduction targets because they are not mandatory. "I frankly don't understand why we're still here talking about a voluntary approach, why we're buying the line that the industry is going to just do it," MP Judy Wasylycia-Leis (NDP - Winnipeg North) apparently told the cereal makers. "This salt sells your products." *See The Vancouver Sun,* November 16, 2009; *FoodNavigator-USA.com,* November 18, 2009.

OEHHA Seeks Comment on Safe Level for Corn-Based Snack Chemical and Notice-Rule Amendment Under Prop. 65

California's Office of Environmental Health Hazard Assessment (OEHHA) is requesting written comments on two proposals. One would establish a "no significant risk level" for **fumonisin B1**, a chemical present in many corn-based food products, at a value that is apparently significantly lower than safe levels set by other regulators and could expose many companies to the risk of litigation under Proposition 65 (Prop. 65). Comments are due by November 23, 2009.

According to an industry spokesperson, the proposed level of 1.5 micrograms per day is "very, very low," particularly when compared with Food and Drug Administration standards and the standards of international regulatory bodies. A snack food company requested in 2008 that OEHHA establish a "safe use determination" for fumonisin B1, which would mean that products containing this naturally occurring chemical do not pose a health risk. The request is still pending. *See Inside Cal/EPA*, November 13, 2009.

Meanwhile, OEHHA has also **announced** that it plans to amend its regulations to "allow 60-day notices of violation to be sent to certain state and local prosecutors via electronic mail, if the prosecutor has consented to such service." According to the agency, the Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop. 65) requires those bringing an action in the public interest for a Prop. 65 violation to first provide notice to the alleged violator, the attorney general, district attorney, city attorney, or prosecutor in whose jurisdiction the purported violation occurred. Under current rules, the "60-Day Notices" are served via the U.S. mail, which OEHHA says "can be expensive and time-consuming" as well as "inefficient." Comments must be filed no later than January 4, 2010.

LITIGATION

Federal Courts Remand Two Class Actions Against Applebee's to State Court

Federal courts in Ohio and Kentucky have remanded putative class claims alleging that Applebee's International, Inc., DineEquity, Inc. and Weight Watchers International, Inc. misrepresented the calorie and nutritional information on the Weight Watchers menu items available in Applebee's restaurants. *Curry v. Applebee's Int'l,*

Inc., No. 1?09CV505 (U.S. Dist. Ct., S.D. Ohio, W. Div., filed November 17, 2009); *Kramer v. Applebee's Int'l, Inc.*, No. 2009-131 (U.S. Dist. Ct., E.D. Ky., N.D. at Covington, filed November 17, 2009).

Each plaintiff filed her complaint in state court and sought to certify a class of statewide residents. In July 2009, more than ten months after the complaints had been filed and after some discovery and an unsuccessful mediation had occurred, the defendants removed the cases to their respective federal courts. Writing for both courts, the Ohio district court determined that the defendants had filed for removal too late under the Class Action Fairness Act, which requires that a notice of removal be filed within 30 days of receipt of any paper "from which it may first be ascertained that the case is one which is or has become removable." According to the court, defendants knew in January 2009, on the basis of plaintiff's settlement offer, that the amount in controversy in each case would exceed $5 million, which is the jurisdictional minimum for removal.

Additional cases with similar claims are pending in state and federal courts in California, Illinois, Kansas, and Washington.

Additional Litigation Filed over *E. Coli* in Ground Beef

Plaintiffs' lawyer William Marler has apparently filed a second lawsuit against New York-based Fairbank Farms for injury allegedly caused by consumption of *E. coli*-tainted ground beef. According to Marler, the suit has been filed in a Maine state court on behalf of a woman who was hospitalized for six days after consuming meat produced by Fairbank Farms. Her cultures allegedly tested positive for the same *E. coli* strain found in the company's recalled meat. *See Food Poison Journal*, November 17, 2009.

Meanwhile, Representative Rosa DeLauro (D-Conn.) has called on the U.S. Department of Agriculture's Office of Inspector General to investigate the method that meat processors and the agency use to verify that ground beef is free of the bacterium. In her November 12 **letter**, DeLauro discusses the Fairbank Farms outbreak and notes that the company's facility sampled its products every 10 to 20 minutes. She states, "However, despite these precautions, it was not enough to prevent contamination." DeLauro specifically expresses concern about the "N-60 testing protocol" and limits her focus to "the statistical validity of the test; the sample collection and analysis; and the application of test results."

OTHER DEVELOPMENTS

CSPI Report Critical of Movie Theater Concessions

The Center for Science in the Public Interest (CSPI) has published a **report** criticizing movie chain concessions for their nutritional content, comparing some medium popcorn and soda combos to "three McDonald's Quarter Pounders with 12 pats of butter." CSPI purportedly analyzed concessions from the three largest theater chains—AMC Entertainment Inc., Cinemark USA, Inc., and Regal Entertainment Group. Faulting both AMC and Regal for popping popcorn in coconut oil, the

consumer watchdog alleged that a large Regal popcorn contains 1,200 calories and 60 grams of fat, and a large AMC popcorn contains 1,030 calories and 57 grams of fat. CSPI also reported that although Cinemark uses "heart-healthy" canola oil, its large popcorn is "almost as high in calories and has the most sodium—about twice as much as Regal or AMC." In addition, the group purportedly found that other movie snacks, including candies sold in 4 to 5 ounce servings, can have "between 400 and 500 calories and at least a half day's worth of saturated fat."

"Regal and AMC are our nominees for Best Supporting Actor in the Obesity Epidemic," stated a CSPI spokesperson in a November 18, 2009, press release. "Who expects about 1,500 calories and three days' worth of heart-stopping fat in a popcorn and soda combo? That's the saturated fat of a stick of butter and the calories of two sticks of butter. You might think you're getting Bambi, but you're really getting Godzilla."

The National Association of Theatre Owners (NATO), however, has reportedly noted that past attempts to offer patrons additional choices, such as air-popped popcorn, met with failure. "After very little time, movie patrons in droves made their voices heard—they wanted the traditional popcorn back," said NATO. "Many of our patrons enjoy the traditional taste and aroma of theater popcorn." *See USAToday* and *Los Angeles Times,* November 19, 2009.

Environmental Groups Claim Rising Use of Pesticides on GE Crops

The Organic Center, Union for Concerned Scientists and Center for Food Safety have issued a **report** claiming that U.S. Department of Agriculture data show that the use of weed-killing herbicides on genetically engineered (GE) corn, soybeans and cotton has increased by 383 pounds over a 13-year period ending in 2008.

According to the preface to the report, titled "Impacts of Genetically Engineered Crops on Pesticide Use: The First Thirteen Years," this finding will be "news to the public at large, which still harbors the illusion, fed by misleading industry claims and advertising, that biotechnology crops are reducing pesticide use. Such a claim was valid for the first few years of commercial use of GE corn, soybeans, and cotton. But, as this report shows, it is no longer."

The report contends that widespread adoption of glyphosate-resistant crops "has vastly increased the use of glyphosate herbicide," which "has spawned a growing epidemic of glyphosate-resistant weeds, just as overuse of antibiotics can trigger the proliferation of antibiotic-resistant bacteria." Farmers apparently have a number of options for responding to resistant weeds in their fields, and the report suggests that the most common "increase[] the pounds of herbicides applied." Authored by The Organic Center's chief scientist, Charles Benbrook, the report claims that these practices will heighten the "risk of birth defects and other reproductive problems" and have other "severe impacts" on the environment.

The organizations responsible for the report are calling for "new government and academic assessments of the performance, costs, and risks associated with today's GE crops."

Testing Lab Finds Problems with Probiotic Products

According to ConsumerLab.com, many of the probiotic supplements it tested contained far less of the amount of viable organisms advertised, due, primarily, to the death of the purportedly beneficial organisms after manufacture. Some companies apparently qualify their claims of cell amounts by stating "at the time of manufacture" on product labels. ConsumerLab's president was quoted as saying, "It's shocking how many products really don't have what they claim on their labels. The buyer has to be careful." Those promoting probiotics reportedly claim that 1 billion organisms will provide some benefit for digestion and some infections, so those products starting with tens of billions of live cells likely have the minimum amount deemed necessary by the time of consumption.

At least one company responded to the study by claiming that its marketing, which includes the qualifier, is not deceptive. According to the company that makes Nature's Secret Ultimate Probiotics®, which was found to contain just 13 percent of the live organisms claimed, a large percentage of live cultures begins to die in the first six months of shelf life. A company spokesperson suggested that the significant die off that ConsumerLab found might be attributable to shipping and storage conditions. *See PRWeb* and *Newsweek*, November 16, 2009.

MEDIA COVERAGE

Hillary Brenhouse, "Raw Milk Sales Could Reinvigorate U.S. Dairy Farms," *The New York Times,* November 17, 2009

This *New York Times* special report chronicles a growing movement among organic dairy farmers to overturn state bans on the sale of unpasteurized milk. According to the report, 28 states currently allow sales of raw milk "in some form," but the Food and Drug Administration (FDA) has deemed the product "inherently dangerous" and banned its interstate sale. Yet one advocacy group has reportedly claimed that farmers could receive $5 to $7 per gallon for raw milk sold directly to consumers. "Now, the weak market for pasteurized milk and its effect on dairy farmers is motivating some states to reconsider their ban," maintains the article, which cites raw milk proponents who "say that pasteurization kills enzymes and bacteria that are nutritionally beneficial and aid in digestion and diminishes vitamin content."

FDA officials, however, have apparently refuted these touted health benefits. The *Times* observes that the agency is currently reviewing its 60-day aging requirement for raw milk cheeses because the technique is "no longer thought to be effective" in destroying pathogens. In addition, the report notes, one farmer who testified earlier this year before New Jersey's Agriculture and National Resources Committee "was concerned that the slightest case of illness from raw milk could be disastrous for the entire dairy industry." As the *Times* reports, a 2008 listeria outbreak in Quebec led the Canadian government to recall 60,000 pounds of unpasteurized cheese and to require rigorous facility inspections, much to the chagrin of the Artisanal Cheese Maker's Association of Quebec. "Right now the government is killing the raw-milk cheese sector in Quebec," an association spokesperson was quoted as saying.

"Quebec's severe rules regarding, in particular, levels of *E. coli,* make it so that many of our cheeses can't be commercialized. But according to standards in Europe, they are perfectly fine."

Meanwhile, the International Dairy Foods Association (IDFA) and the National Milk Producers Federation (NMPF) have **asked** Congress to include raw milk facilities in food safety regulations when marking up the Food Safety Modernization Act (H.R. 875). "These facilities also remain exempt from existing regulations enforced by all states, which are known as the Pasteurized Milk Ordinance (PMO)," stated a November 13, 2009, joint press release. IDFA and NMPF have called on Senators Tom Harkin (D-Iowa) and Michael Enzi (R-Wyo.) to require "all facilities producing raw or unpasteurized milk products for direct human consumption to register with FDA and adhere to the tried-and-true food safety requirements that are followed by all other facilities producing milk products."

The industry groups concluded that, "Raw milk products intended for human consumption have been associated with a much higher incidence of food-related illnesses. But these products and facilities producing them are not required to comply with the food safety plans, record keeping and access, and other regulations that are triggered by registration with FDA." *See FoodNavigator-USA.com,* November 18, 2009.

Raffi Khatchadourian, "The Taste Makers," *The New Yorker,* November 23, 2009

"Flavor chemicals often make up less than one percent of the ingredients in processed foods, and many flavorists regard the terms 'natural' and 'artificial' as largely meaningless—an indulgence for consumers who happen to believe that one is more likely to be toxic than another, even if the perception is not necessarily true," writes *The New Yorker's* Raffi Khatchadourian in this article examining the history of the food flavoring industry. Shadowing a flavorist who works for the Swiss company Givaudan, Khatchadourian reports that this $20 billion per year sector has evolved from "simple and direct" applications of natural additives or essential oils to a precise molecular science. "Once you begin to consider the natural world at a molecular level, the boundaries that separate one fruit from another begin to seem like artifice," he notes, adding that both the technology and the secretive business culture present unique regulatory challenges.

"The flavor industry has long resisted the public disclosure of its formulas, and so monitoring the safety of the chemicals in them is complex," according to Khatchadourian, who explains that the Food and Drug Administration first created its generally recognized as safe (GRAS) list so that flavoring houses were not obligated to reveal specific compounds. Khatchadourian claims that because "flavor additives are generally safe, and make up a tiny percentage of any given product's ingredients, companies like Givaudan are in an unusual position when one considers how their work affects our health." While some flavorings are reportedly used to "mask an absence, making cheap, nutritionally negligible ingredients seem delicious," these same additives can likewise "mask a reduction in sugar or salt or *trans* fats—things that, in excess, are harmful." As the Givaudan flavorist told Khatchadourian, "Think about unflavored rice cakes. They would sit on the shelves,

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because they taste like ceiling tiles. Now, add a maple-syrup flavor or a cheddar-cheese flavor to those rice cakes. People would choose them as a snack. It's not practical or economical to use 'real' food to add flavor. There are lots of problems with this: the availability, the stability, the over-all intensity of such things."

SCIENTIFIC/TECHNICAL ITEMS

Study Recommends Prohibiting Alcohol Advertising in Boston's Public Transit System

Concluding that alcohol ads are viewed more than 18,000 times by public school student transit passengers during an average weekday, a new study recommends that Boston's public transit system be prohibited from displaying alcohol advertisements. Justin Nyborn, et. al, "Alcohol Advertising on Boston's Massachusetts Bay Transportation Authority (MBTA) Transit System: An Assessment of Youths' and Adults' Exposure," *American Journal of Public Health* (November 2009). Some 9,600 students aged 11-18 use the transit system daily.

Michael Siegel, a professor at Boston University School of Public Health who co-authored the study, said, "By allowing alcohol advertising on the T, the state is not only allowing alcohol companies to bombard our kids with enticing advertisements, it is also allowing these companies to successfully recruit new drinkers among underage youths in the Commonwealth." Siegel's primary research interest is in tobacco control. *See BU School of Public Health: The Insider,* November 4, 2009.

In a related development, earlier this year Massachusetts State Representative Martin Walsh (D-Dorchester) introduced legislation (H-1113) that would eliminate alcohol advertising on all state property. The bill is pending before the Joint Committee on State Administration and Regulatory Oversight.

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