Shook, Hardy & Bacon L.L.P.

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FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

FDA, FTC Act on Alcoholic Energy Drinks

The Food and Drug Administration (FDA) has **issued** warning letters to four manufacturers of alcoholic energy drinks (AEDs), calling the caffeine added to these malt beverages an "unsafe food additive" and threatening further action against Charge Beverages Corp.; New Century Brewing Co., LLC; Phusion Projects, LLC; and United Brands Company Inc. FDA apparently released its decision after conducting a scientific review that encompassed peer-reviewed literature, expert consultations, information provided by manufactures, and its own independent laboratory analysis. The agency's findings evidently raised concerns "that caffeine can mask some of the sensory cues individuals might normally rely on to determine their level of intoxication," leading to "hazardous and life-threatening situations."

As FDA Principal Deputy Commissioner Joshua Sharfstein summarized in a November 17, 2010, press release, "FDA does not find support for the claim that the addition of caffeine to these alcoholic beverages is 'generally recognized as safe [GRAS],' which is the legal standard. To the contrary, there is evidence that the combinations of caffeine and alcohol in these products pose a public health concern."

In its **letter** to Phusion Projects, the agency specifically claims that a caffeinated malt beverage known as Four Loko "is adulterated under section 402(a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. § 342(a)(2)(C)]." Rejecting the company's GRAS submission for this product, FDA notes that no regulations or prior sanctions currently authorize "the use of caffeine as a direct addition to alcoholic beverages." It also cites "publicly available literature" suggesting, among other things, that "caffeine alters the perception of alcohol intoxication" and may result "in higher amounts of alcohol consumed per drinking occasion, a situation that is particularly dangerous for naive drinkers."

"It is FDA's view that the caffeine content of your beverage could result in central nervous system effects if a consumer drank one or more containers

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of your product," concludes the letter to Phusion Projects. "You should take prompt action to correct this violation and prevent its recurrence. Failure to do so may result in enforcement action without further notice. The Act authorizes the seizure of illegal products and injunctions and prosecutions against manufacturers and distributors of those products."

Meanwhile, the Federal Trade Commission (FTC) has also **issued** letters to the same AED companies, warning "that marketing of such beverages may constitute an unfair or deceptive practice that violates the FTC Act." The commission has thus instructed the letter recipients "to notify the agency within 15 days of the actions they have taken" to rectify the situation. "Even in the absence of express safety claims, the very act of offering goods for sale creates an implied representation that the goods are reasonably fit for their intended uses and free of gross safety hazards," states one **letter**. "In addition, the non-disclosure of rare but serious safety risks may constitute an unfair practice." *See The Associated Press,* November 17, 2010.

Both agencies announced the rulings following pressure from state attorneys general as well as local and federal lawmakers, all of whom have cited reports linking AEDs to college student hospitalizations. Their concerns had already led several liquor control authorities, including those in Michigan, New York, Pennsylvania, and Washington, to ban the products from store shelves. Additional details about these developments appear in Issues **370**, **371** and **372** of this *Update*.

Highlighting one case in which a young adult allegedly went into cardiac arrest after combining AEDs and a diet pill, U.S. Senator Charles Schumer (D-N.Y.) has since described FDA's action as "the nail in the coffin of these dangerous and toxic drinks." Other media sources have also reported a lawsuit claiming that a Florida State University sophomore accidently shot himself while intoxicated on Four Loko. The Center for Science in the Public Interest (CSPI), however, has expressed some doubt that the required product reformulations will address such incidents. "Four Loko and Joose might no longer have caffeine, but they still contain three to four beers' worth of alcohol in 23-ounce, single-serving cans," opines CSPI Executive Director Michael Jacobson in a November 17 statement. "That these drinks are made with kid-friendly flavors like watermelon, blue raspberry, and lemonade says all one needs to know about their target audience." *See DeLauro Press Release, Law360* and *The New York Times,* November 15, 2010; *Advertising Age* and *Schumer Press Release,* November 16, 2010; *Huffington Post* and *NBC New York,* November 17, 2010.

In response to these allegations, Phusion Projects has committed to removing caffeine, guarana and taurine from its products. But at least two of the other AED manufacturers have voiced some disappointment over the FDA's review process. "It's not clear how they came to their decision," New Century CEO

Rhonda Kallman was quoted as saying. "Moonshoot beer is an all-craft-brewed beer, 4 percent or 5 percent alcohol with 69 milligrams of caffeine, much less than a cup of coffee. It's a little caffeine dumped in a craft beer, and somehow they've lumped it in with these neon-colored, 12 percent alcohol, fruit juice things in a single-serve can–that's not what I do." *See Phusion Projects Press Release* and *United Brands Company, Inc. Press Release,* November 16, 2010; *Law360,* November 17, 2010.

Schumer Asks Agencies to Investigate Lead in Reusable Grocery Bags

U.S. Senator Charles Schumer (D-N.Y.) has asked the Food and Drug Administration, Environmental Protection Agency and Consumer Product Safety Commission (CPSC) "to investigate and ban reusable shopping bags that contain higher than acceptable levels of lead." According to a November 18, 2010, press release, Schumer issued **letters** to the agencies after third-party testing purportedly revealed "higher than acceptable levels of lead" in reusable grocery bags manufactured in China. The senator has expressed concern that "food products come into direct contact with these bags and long-term exposure can pose serious health and environmental risks."

Schumer's announcement also cited "several reports" claiming that "a significant number of reusable shopping bags contained over 100 parts per million (PPM) in heavy metals. In some cases, bags contained as many as 5 times the allowable limits." These reports evidently suggested that "the paint on lead-filled bags has the ability to peal and flake off, coming into direct contact with exposed groceries, like fruits and vegetables," and affecting both human and environmental health.

"When our families go to the grocery store looking for safe and healthy foods to feed their kids, the last thing they should have to worry about are toxic bags. We cannot allow manufacturers, in China or elsewhere, to sell reusable bags to grocery stores that bring our food into contact with high levels of lead," stated Schumer. He also hailed the quick actions of Rochester-based Wegmans Food Markets Inc., which replaced 725,000 bags after the Empire State Consumer Project "found that the green bags contained lead at 799 parts per million – more than double the amount allowed in children's products by the CPSC." *See The New York Times,* November 14, 2010.

FDA Finds Low Lead Levels in Canned Fruit, Juices

The Food and Drug Administration (FDA) has reportedly "completed its most recent check of amounts of lead in some commercial juice and food products that contain fruit," finding no cause for consumer concern. FDA **tested** apple juice, grape juice, peach slices, pears, mixed fruit, and fruit cocktail in response to a 2009 study by the Environmental Law Foundation, which sent notices "to numerous manufacturers of juice and packaged fruit products alleging the

companies were not in compliance with the California Safe Drinking Water and Toxic Enforcement Act of 1986, also known as California Proposition 65, because the manufacturers failed to disclose that the products contained lead."

According to the most recent results, "Almost all the products FDA tested contained a small amount of lead, but in each case the level found would not pose an unacceptable risk to health." The agency has further explained that lead in soil "can be deposited on or absorbed by plants, including plants grown for food," and thus "many food products would be expected to contain very small amounts of the element – in the range of parts per billion (ppb)." *See FDA Statement,* November 10, 2010.

FDA Responds to Media Report about Imported Toxic Seafood

A recent investigation by NBC's *Today* show has apparently revealed that some imported seafood "may contain toxic chemicals that can cause serious health problems." Testing conducted by Alabama, Georgia, Mississippi, and Oklahoma authorities has reportedly found contamination in shrimp, catfish, crabmeat, and tilapia imported from China, Indonesia Malaysia, Taiwan, and Vietnam.

"Footage taken by a U.S. advocacy group of seafood being raised in Vietnam, for example, showed fish in dirty sewage water, pumped with toxic antibiotics and banned drugs just to keep them alive, boosting production and driving down costs," states the *Today* report, which claims that the Food and Drug Administration (FDA) tests less than 2 percent of all seafood from overseas. Those test results allegedly indicated that in 2010, 8 percent of the sampled seafood from China and 16 percent from Taiwan was tainted with chemicals and drugs prohibited in the U.S. food supply.

In response, FDA released a **statement** explaining, in part, that approximately 5 to 7 percent of all imported seafood samples reviewed each year under the agency's testing program have been "found to be contaminated with unapproved drug residues." The agency said it targets repeat offenders and rejects the products until they comply with FDA regulations.

Noting that "the vast majority of seafood coming in does not exhibit any kind of problems," a spokesperson from a trade group representing the imported seafood industry told *Today* that most importers comply with regulations. "Unfortunately, there are bad actors in every industry," he said. *See MSNBC.com*, November 17, 2010.

FTC Finalizes Agreement with Former POM Wonderful Executive

The Federal Trade Commission (FTC) has **announced** the unanimous approval of a final order settling charges that a former POM Wonderful LLC executive made false and unsubstantiated claims that the company's pomegranate

products prevent or treat heart disease and prostate cancer.

Under the agreement, Mark Dreher, a former POM Wonderful vice president, does not admit to violations of the law, but will cooperate in FTC's investigation and action against his former company. He also agreed to abide by the conditions prescribed for making any health-related claims for a food or drug product in the future and to give present and future employees copies of the order.

According to a news source, FTC has scheduled a May 24, 2011, hearing before an administrative law judge for POM Wonderful to respond to charges that it has made allegedly false health-related product claims. Dreher has agreed to participate in interviews with the agency in the matter; provide documents, declarations, affidavits, and testimony; as well as testify at any trial, deposition, or other proceeding. *See The BLT: The Blog of Legal Times*, November 16, 2010.

EPA Adds Chemicals in Pesticides and Plastics to Endocrine Disruptor Screening List

The Environmental Protection Agency (EPA) has **announced** the addition of 134 chemicals to its second Tier 1 screening list under the Endocrine Disruptor Screening Program (EDSP). Among those chemicals listed are DBCP, 1,4-dioxane, acetaldehyde, acrolein, acrylamide, benzene, benzo(a)pyrene, chlordane, HCFC-22, perchlorate, PFOS, PFOA, and polychlorinated biphenyls. Comments are requested by December 17, 2010.

According to EPA, "[t]he list includes chemicals that have been identified as priorities under the Safe Drinking Water Act (SDWA) and may be found in sources of drinking water where a substantial number of people may be exposed. The list also includes pesticide active ingredients that are being evaluated under EPA's registration review program to ensure they meet current scientific and regulatory standards." Following public comment and review, "EPA will issue test orders to pesticide registrants and the manufacturers of these chemicals to compel them to generate data to determine whether their chemicals may disrupt the estrogen, androgen and thyroid pathways of the endocrine system." The agency anticipates beginning to issue test orders in 2011.

EPA cautions that the non-inclusion of a chemical on this list should not be interpreted as meaning that the chemical may not be subject to screening in the future and that "the public should not presume that the listing of a chemical or substance indicates in any way that EPA currently suspects that such chemical or substance interferes with the endocrine systems of humans or other species simply because it has been listed for screening under the EDSP." *See EPA Press Release*, November 16, 2010; *Federal Register*, November 17, 2010.

EU Holds High Level Forum for Food Supply Chain

The EU High Level Forum for a Better Functioning Food Supply Chain recently held its first meeting in Brussels, Belgium, where it reportedly discussed a work plan "to boost competitiveness and to promote best contractual practices in the European food sector." Led by Internal Market and Services Commissioner Michel Barnier, Health and Consumer Policy Commissioner John Dalli, and Agricultural and Rural Development Commissioner Dacian Cioloş, the initiative involves 45 representatives from member states, companies "dealing with food production, processing or distribution," and nongovernmental public interest groups.

These participants are charged with following the recommendations of the High Level Group on the Competitiveness of the Agro-Food Industry and implementing the European Commission's **communication** titled "A better functioning food supply chain in Europe" (COM (2009) 591). The forum will also feature several expert platforms focused on (i) "business to business contractual practices in the food supply chain," (ii) "food price monitoring," (iii) "competitiveness in the agro-food industry," and (iv) "agro-logistics." Expected to convene annually, the forum will conclude on December 31, 2012, when it will approve its final report. *See Europa Press Release,* November 16, 2010.

Australian Senators Introduce Legislation on GM Labeling

According to a news source, senators representing the Independent and Australian Greens parties have introduced legislation that would require food products to be labeled if they contain genetically modified (GM) material, regardless of amount or how it came to be incorporated in the product. The "Food Standards Amendment (Truth in Labelling—Genetically Modified Material) Bill 2010" would require Food Standards Australia New Zealand to develop labeling standards and establish due diligence guidelines for products claiming to be GM free. Debate on the proposal was adjourned.

Senator Nick Xenophon (I) said on introducing the bill, "Not enough Australians seem to realize the implications that the rapid introduction of genetically modified materials may have on our health and potentially on our ability to produce safe foods and foods free from GM contamination. Truth in labeling is vital to enable Australian consumers to have an informed choice about the food they eat and the products they consume. Otherwise, we are literally shopping in the dark." Joining him in introducing the bill was Senator Rachel Siewert (AG). She noted, "The bill requires producers, manufacturers and distributors of food to label all products containing genetically modified organisms or ingredients." *See AAP*, November 17, 2010.

San Francisco Mayor Vetoes Restaurant Toy Ban

San Francisco Mayor Gavin Newsom (D) has reportedly vetoed an ordinance that would have prohibited restaurants from offering toy giveaways in children's meals deemed too high in calories, salt or fat. Approved in an 8-to-3 vote on November 2, 2010, by the city's Board of Supervisors, the ordinance has the minimum amount of support needed to override the veto, an action which apparently has not yet been scheduled. The ordinance was discussed in Issue 371 of this *Update*.

Announcing the veto on November 12, Newsome called the legislation an "intrusive and ineffective approach" to combat childhood obesity. "Parents, not politicians, should decide what their children eat, especially when it comes to spending their own money," he said in a statement. "Despite its good intentions, I cannot support this unwise and unprecedented government intrusion into parental responsibilities and private choices."

According to the California Restaurant Association, the legislation may face a legal challenge if it becomes law. "The legality of this ordinance is an open question, but a final decision has not yet been made regarding a lawsuit," an association spokesperson told a news source. *See Mayor Gavin Newsome Press Release,* November 12, 2010; *The San Francisco Chronicle*, November 13, 2010.

LITIGATION

Federal Court Denies Motion to Settle *Trans* Fat Margarine Litigation

A federal court in California, presiding over two putative class actions alleging that I Can't Believe It's Not Butter!®, Country Crock® and other cholesterol-free margarines were falsely advertised as nutritious, has denied a joint motion for preliminary approval of a class settlement. *Red v. Unilever PLC*, No. 10-00387 (U.S. Dist. Ct., N.D. Cal., San Jose Div., order filed November 16, 2010). The court was concerned about "the waiver of certain damages claims and need for opt-out in a Federal Rule of Civil Procedure 23(b)(2) injunctive class where the proposed class received no monetary relief."

Scheduling a settlement hearing for the parties with a special master on or before December 13, 2010, the court allowed the parties to continue negotiating and expanded the special master's authority "to negotiate a revised settlement to address the Court's concerns."

The cases, filed in 2009, involve claims that butter-substitute makers have violated consumer protection laws by promoting their products as "healthy" and "nutritious" when they contain purportedly dangerous levels of *trans* fats. Further details about one of the cases appear in Issue 307 of this *Update*. According to a news source, the proposed settlement would require the

company to reduce or eliminate the use of partially hydrogenated vegetable oils in its margarine sticks by the end of 2011. The defendant was apparently prepared to spend $10 million to remove *trans* fat from its spread and commit $500,000 to research aimed at finding an alternative ingredient that would allow margarine sticks to remain firm. The proposed settlement would also apparently have required the court to certify a nationwide class of those who purchased the products since January 2000. *See Product Liability Law 360,* November 17, 2010.

FTC Seeks Dismissal of POM Wonderful Challenge to Health-Claim Standards

The Federal Trade Commission (FTC) has filed a motion to dismiss a complaint charging the agency with exceeding its authority in requiring Food and Drug Administration (FDA) pre-approval for health-related claims on food products, violating advertisers' constitutional rights by requiring compliance with these standards and failing to comply with notice-and-comment rulemaking procedures in establishing the standards. *POM Wonderful LLC v. FTC*, No. 10-1539 (U.S. Dist. Ct., D.D.C., motion filed November 16, 2010). Additional information about POM Wonderful's complaint appears in **Issue 364** of this *Update*.

FTC contends that the court lacks jurisdiction to consider the matter because the complaint is moot, the company lacks standing, the company is attempting to preclude an enforcement action, and the complaint does not challenge final agency action.

Specifically, FTC claims (i) the agency merely created a possible *remedy* of FDA pre-approval in consent agreements with food producers making health-related claims and not an enforceable *rule*; (ii) it has proceeded against POM Wonderful without relying on any "rule" or "standard" other than the FTC Act, thus making POM Wonderful's allegation that FTC would seek to enforce the new "rule" against it moot; (iii) FTC has caused no injury to POM Wonderful; (iv) POM Wonderful has raised the same issues in its defense to the administrative action FTC filed against it and will have the opportunity in that proceeding to litigate whether the condition of FDA pre-approval should be imposed; (v) the remedy POM Wonderful seeks would likely interfere with FTC's enforcement action; and (vi) the complaint fails to state a claim on which relief can be granted in that the language purportedly creating the new standard was agreed on by FTC and other parties and does not constitute final agency action under the Administrative Procedure Act.

In its motion, FTC claims that POM Wonderful was aware, when the company filed its challenge on September 13, 2010, that FTC was poised to issue a complaint against it, and, on September 27, FTC did so. FTC's complaint alleges that POM Wonderful's promotions for pomegranate juice and pills were unfair or deceptive acts and false advertising in violation of the FTC Act. FTC also alleged that POM Wonderful misrepresented the results of

purported clinical studies. The proposed order that FTC filed with its complaint would forbid any health-related claims "unless those representations are non-misleading and substantiated by competent and reliable scientific evidence." According to FTC, POM Wonderful's responses to the complaint raise all the same issues advanced in the company's litigation against the agency.

It remains to be seen whether the parties' "race to the courthouse" will affect how the court addresses these issues.

False Immunity Claims Raised Against Maker of Acai Mixed Berry Red Tea

A California resident has filed a putative class action against Dr. Pepper Snapple Group, Inc., in federal court, alleging that the company has violated consumer protection laws in labeling and promoting its "Snapple® Acai Mixed Berry Red Tea Immunity" product because "no known clinical study . . . adequately supports Snapple's claims." *Meaunrit v. Dr. Pepper Snapple Group, LLC*, No. 10-5153 (U.S. Dist. Ct., N.D. Cal., filed November 12, 2010). Seeking to certify a class of all product purchasers, the named plaintiff alleges violations of California's Unfair Competition Law, False Advertising Law and Consumer Legal Remedies Act, as well as breach of express warranty. She asks for restitution, disgorgement, damages, and attorney's fees and costs in excess of $5 million.

Plaintiff Julia Meaunrit and her counsel, Florida-licensed Howard Rubinstein, previously filed an unsuccessful class-action lawsuit in California against a food company alleging inadequate cooking instructions for its frozen pot pies. Details about that case appear in **Issue 321** of this *Update*.

Exploding Escargot, "Friggin' Rudeness" and Hot Garlic Butter Lead to Small Claims Court

Two California businessmen have reportedly filed a complaint in small claims court against a Marin County restaurateur, alleging that they were sprayed with hot garlic butter from an exploding snail. Chadwick St.-O'Harra, a former law student, and Steve Righetti were apparently celebrating Righetti's birthday at a seafood restaurant, when the escargot purportedly exploded, dousing their faces and polo shirts.

The men reportedly claim that the incident caused both "humiliation" and "a sense of genuine outrage" and that the restaurateur allegedly responded with "indifference" and "friggin' rudeness." The two were dining on a filet-and-lobster combo and a seafood medley and did not reportedly seek immediate medical treatment, choosing instead to finish their meals.

According to the restaurant owner, the incident never happened and escargot does not explode. Still, some in the industry have characterized "escargot explosion" as a "rare but periodic phenomenon" that can be attributed to air bubbles trapped inside the shells during preparation. Trial is scheduled for December 3,

2010. *See USA Today*, November 15, 2010.

OTHER DEVELOPMENTS

SPLC Reports on Conditions Immigrant Women Face in U.S. Food Industry

The Southern Poverty Law Center (SPLC) has issued a **report** titled "Injustice on Our Plates: Immigrant Women in the U.S. Food Industry." Based on interviews in early 2010 with 150 undocumented immigrant women working in the U.S. food industry in Arkansas, California, Florida, Iowa, New York, and North Carolina, the report highlights the dangerous conditions under which they often work and the sexual harassment and violence to which they are subject.

According to SPLC, "Undocumented women are among the most vulnerable workers in our society today. They fill the lowest paying jobs in our economy and provided the backbreaking labor that helps bring food to our tables. Yet they are routinely cheated out of wages and subjected to an array of other abuses in the workplace. They are generally powerless to enforce their rights or protect themselves." SPLC contends that laws protecting these workers are "grossly inadequate," and workers' ability to enforce the few protections that are in place "is generally nonexistent."

SPLC also claims that shifting U.S. immigration policies, which have placed the country "at war with the immigrant hands that feed us," will drive undocumented workers "further underground and make them even more exploitable by the businesses that employ them and the criminals who prey on them." The organization suggests that deporting the 11 million undocumented immigrants estimated to be in this country "would leave a $2.6 trillion hole in the U.S. economy over the next decade. That does not include the billions of dollars that would be required to enforce such a policy. And it does not take into account the massive human rights violations that would inevitably occur." SPLC calls for Congress to address the crisis in "a way that recognizes the contributions of these immigrants to our country and our fundamental values of fairness and dignity."

Among other matters, SPLC recommends immigration reforms that "provide a path to earned legalization for undocumented immigrants," an end to "special exemptions from labor rules for agricultural employees" and increased vigilance by federal agencies, such as the Department of Homeland Security, Occupational Safety and Health Administration, U.S. Department of Labor, and Equal Employment Opportunity Commission. Located in Alabama, SPLC was founded as a nonprofit civil rights law center in 1971 and is known for tracking and exposing the activities of hate groups.

Agriculture Groups Form Alliance to Bolster Image of U.S. Farm Production Methods

A coalition of 24 farmer- and rancher-led organizations has reportedly formed an alliance to "develop and implement a well-funded, long-term, and coordinated public trust campaign for American agriculture." The U.S. Farmers & Ranchers Alliance (USFRA) includes organizations from virtually all aspects of agriculture that share the goal of bolstering the image of farm production methods.

According to a November 11, 2010, USFRA press release, the alliance's initial focus will be to (i) "increase consumer, consumer influencer and thought leader trust and confidence in today's agriculture"; (ii) "serve as a resource to food companies on the benefits of today's agricultural production"; (iii) "work with leading health, environmental and dietary organizations to demonstrate the benefits of today's agricultural production"; and (iv) "increase the role of U.S. farmers and ranchers as the voice of animal and crop agriculture on local, state and national food issues."

Convening earlier this year to discuss media reports, books and films critical of U.S. agriculture, representatives of the largest groups—corn growers, cattlemen, soybean producers, and the egg and poultry industry—reportedly decided to reach out to smaller organizations to form the alliance, which has yet to select a home base. "The sun rises today on a new, collaborative and coordinated effort by many segments of production agriculture to tell our great story as never before," newly-elected USFRA Chair Bob Stallman said in a statement. "It represents the first time all of production agriculture has come together for a common purpose." *See USFRA Press Release*, November 11, 2010; *National Journal Daily,* November 12, 2010.

MEDIA COVERAGE

Guardian Report Criticizes Industry Involvement in UK Health Policy

The *Guardian* has published an exclusive exposé claiming that fast-food companies and other industry interests helped write U.K. health policy at the behest of the secretary of state for health. According to the November 12, 2010, article, "In an overhaul of public health, said by campaign groups to be the equivalent of handing smoking policy over to the tobacco industry, health secretary Andrew Lansley has set up five 'responsibility deal' networks with business, co-chaired by ministers, to come up with policies." The newspaper has anticipated that these policies will feature in "the public health white paper due in the next month."

Although it acknowledges the involvement of consumer groups such as Which?, Cancer Research UK and the Faculty of Public Health, the article

alleges that these responsibility deal networks are "dominated by food and alcohol industry members," including trade associations, food manufacturers, beverage companies, and fast-food restaurants. Lansley has also reportedly assured businesses "that he wants to explore voluntary not regulatory approaches, and to support them in removing obstacles," such as contentious EU legislation.

Meanwhile, liver specialist Sir Ian Gilmore has publicly criticized the proceedings, telling the *Guardian* that "he doubted whether there could be 'a meaningful convergence between the interests of industry and public health since the priority of the drinks industry was to make money for shareholders while public health demanded a cut in consumption.'" A member of the alcohol responsibility deal network, Gilmore also noted that, "On food labeling we have listened too much to the supermarkets rather than going for traffic lights [warnings] which health experts recommend."

The article further criticizes Lansley for allowing "the food, alcohol, advertising and retail industries" to control an oversight board charged with monitoring the responsibility deal networks. "This is the equivalent of putting the tobacco industry in charge of smoke-free spaces," a spokesperson for the food campaign group Sustain is quoted as saying. "We know this 'let's all get round the table approach' doesn't work, because we've all tried it before, including the last Conservative government. This isn't 'big society', it's big business."

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FOOD & BEVERAGE LITIGATION UPDATE

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

SHB attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.

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