Shook, Hardy & Bacon L.L.P.

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FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATIONS, REGULATIONS AND STANDARDS

House Proposal Would End Subsidy to Companies That Advertise "Junk Food" to Children

Rep. Dennis Kucinich (D-Ohio) has introduced a bill to deny federal tax deductions to companies marketing "junk food" to children. The Stop Subsidizing Childhood Obesity Act (H.R. 6599) would "amend the Internal Revenue Code of 1986 to protect children's health by denying any deduction for advertising and marketing directed at children to promote the consumption of food at fast food restaurants or of food of poor nutritional quality."

In a recent press release, Kucinich contends that Congress—with [citizens'] tax dollars—has subsidized the marketing efforts of fast food and junk food companies by as much as $19 billion over the past 10 years. "In 2004 alone, $10 billion was spent on food advertising directed at children. It is effective because a child's brain is unable to distinguish fact from fiction at a time they are developing life-long taste allegiance. If it didn't work, they wouldn't do it. According to *The Journal of Law and Economics*, eliminating this subsidy would reduce the rates of childhood obesity by 5–7 percent."

Kucinich argues that although partial blame does lie with a more sedentary lifestyle and a worsening diet, the influence of sophisticated, targeted marketing of junk food to kids has been largely ignored by the public, and the role of advertising and marketing in the childhood obesity epidemic, which now affects 1 in 3 children, is readily acknowledged by experts.

"According to the Institute of Medicine," he says, "Aggressive marketing of high-calorie foods to children and adolescents has been identified as one of the major contributors to childhood obesity. We can end this tax break, improve our kids' health and reduce our nation's debt all at the same time. It's time to stop subsidizing the childhood obesity epidemic."

FDA Responds to Senators' Energy Drink Concerns

In response to a series of letters from Senators Dick Durbin (D-Ill.) and Richard Blumenthal (D-Conn.), Food and Drug Administration (FDA) officials have confirmed that the agency is currently reviewing the safety of energy drinks

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containing caffeine and other ingredients that act as stimulants and may require regulatory action if evidence of a health risk is found. Since April, both senators have urged FDA to take action to regulate energy drinks and to investigate the safety of ingredients with stimulant properties in combination with caffeine in energy drinks, particularly as they affect young consumers.

In a recent press release, the senators note that "There is very clearly a lack of understanding about the health effects of energy drinks and their ingredients especially on children and adolescents," and although they are glad to see that FDA is undertaking a review, more needs to be done and quickly. "For instance, FDA can and should take action now to regulate energy drinks that are marketed as beverages, like Red Bull, which has more than the standard of 71 mg of caffeine per 12oz [the level to] which beverages like Coke and Pepsi are held. I will be calling Commissioner [Margaret] Hamburg for a meeting as soon as possible to review the FDA's plan," said Durbin.

In its most recent **letter** to Durbin and Blumenthal, FDA states that because energy drinks are new products that have raised safety concerns, they warrant investigation. "New products and patterns of use require us to remain vigilant, and we are working to strengthen our understanding of the nature of 'energy drinks' and any causal risks to health."

The specifics of FDA's review of energy drinks are not outlined in the letter, but according to FDA, the review includes examining adverse event reports and consulting with experts outside FDA to better understand risks posed by energy drinks, additives, and high levels of caffeine consumption in youth. If the review identifies safety concerns, FDA says it will consider regulatory action. Additional information about this topic appears in Issue **462** of this *Update*.

FDA Shutters Peanut Butter Plant Implicated in *Salmonella* Outbreak

The Food and Drug Administration (FDA) has suspended operations at nut and seed spread manufacturer Sunland Inc.'s New Mexico plant after investigators reportedly discovered *Salmonella*-tainted peanut butter linked to an outbreak that has allegedly sickened 41 people in 20 states this year. According to FDA, "the fact that peanut butter made by the company has been linked to an outbreak . . . coupled with Sunland's history of violations led [the agency] to make the decision to suspend the company's registration."

In a November 26, 2012, **letter** to Sunland's president, FDA Commissioner Margaret Hamburg said evidence the agency collected in response to the outbreak demonstrated that "[n]ut butter and nut products manufactured, processed, packed, and held by your facility are contaminated with salmonella, or are at risk for contamination with salmonella, based on the conditions in your facility. Your facility's testing records over the past 3 years include multiple positive salmonella results throughout your facility and in

finished product. Due to this contamination and/or risk for contamination, FDA has determined that these products have a reasonable probability of causing serious adverse health consequences or death to humans."

Further FDA review of Sunland's product testing records showed that "11 product lots of nut butter revealed the presence of salmonella between June 2009 and September 2012. Between March 2010 and September 2012, at least a portion of 8 product lots of nut butter that Sunland Inc.'s own testing program identified as containing Salmonella was distributed by the company to consumers." During September and October 2012 plant inspections, FDA also found *Salmonella* in 28 environmental samples (from surfaces in production or manufacturing areas) and in 13 nut butter product samples and one product sample of raw peanuts.

The suspension order offers the company an opportunity to request an informal hearing on certain issues. If, after providing this opportunity, FDA determines that the suspension remains necessary, it will require Sunland to submit a corrective action plan to address the immediate problems and to implement a sustainable solution to those problems in a sound scientific manner. The FDA will reinstate the company's registration only when the agency determines that the company has implemented procedures to produce safe products. *See Agri-Pulse* and *NBC News*, November 26, 2012.

HSUS Seeks Investigation of Pork Checkoff Expenditures

The Humane Society of the United States (HSUS) has filed a **complaint** with the U.S. Department of Agriculture's (USDA's) Inspector General requesting an investigation into the use of pork checkoff funds. HSUS contends that "federal pork checkoff program monies are being used to fund the NPPC's [National Pork Producers Council's] Pork Alliance program, which is the council's state and federal lobbying operation. Further, the NPPC publicly lists the [National] Pork Board on its website among the high donor 'partners' of its Alliance program, a public endorsement that would also violate the Pork Board's prohibition against involvement in lobbying activity."

The federal pork checkoff program apparently requires pork producers to pay into a fund overseen by the National Pork Board, which HSUS claims "is to use the funds for 'promotion, research, and consumer information plans and projects' or for the Board's own administrative expenses. However, both federal law and USDA regulations expressly prohibit the use of pork checkoff program funding for legislative activity." According to the complaint, NPPC's Pork Alliance program "is a voluntary scheme in which interested organizations from allied industries can pay dues to the NPPC in support of its legislative activities." HSUS alleges that NPPC "uses Alliance dues 'to fund outreach for critical legislative and regulatory industry priorities.'"

Details about the HSUS Federal Trade Commission complaint alleging that NPPC engaged in false advertising appear in Issue 436 of this *Update*. Details about an HSUS lawsuit against USDA Secretary Tom Vilsack alleging unlawful expenditures of pork checkoff funds appear in Issue 455 of this *Update*.

Organic Industry Condemns USDA Report

Organic growers and food safety advocates, including the National Organic Coalition (NOC), have condemned recommendations contained in the final report of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21), a group appointed by the U.S. Department of Agriculture (USDA) to address transgenic contamination of organic and non-genetically engineered (GE) crops. GE crops make up the majority of corn and soybeans produced in the United States.

According to news sources, of particular concern in the report is the recommendation that organic and non-GE conventional farmers pay to self-insure themselves against unwanted GE contamination. In a press release NOC stated that "This proposal allows USDA and the agricultural biotechnology industry to abdicate responsibility for preventing GE contamination while making the victims of GE pollution pay for damages resulting from transgenic contamination."

"The AC21 report takes responsibility for GE contamination prevention out of the hands of USDA and the biotech industry where it belongs and puts it squarely on the backs of organic and non-GE farmers," said NOC member Andrew Kimball, executive director of the Center for Food Safety. "This ill-conceived solution of penalizing the victim is fundamentally unjust and fails to address the root cause of the problem—transgenic contamination."

In August 2011, USDA charged AC21 with identifying compensation mechanisms to address GE contamination. The underlying assumption of USDA's work plan for the committee was that as long as farmers are adequately compensated, GE contamination is a permissible and acceptable cost of doing business for organic and non-GE farmers. NOC has rejected this assumption, as did several AC21 members.

According to NOC, an additional shortcoming of the report is the recommendation that GE and non-GE farmer neighbors develop "co-existence agreements" as a means of moderating relationships in light of inevitable contamination. "Floating the pie-in-the-sky idea of farmer co-existence agreements is an obvious diversion from the critical issues non-GE farmers routinely confront with respect to GE contamination," said NOC member Ed Maltby, executive director of Northeast Organic Dairy Producers Alliance. "We urgently need meaningful regulatory change that institutionalizes mandatory GE contamination prevention practices. USDA needs to stop dragging its heels, get serious and focus on making this happen."

EFSA Publishes Bee Research Inventory

The European Food Safety Authority (EFSA) has **published** an inventory of its activities on bees and bee health as part of a forthcoming report to the European Commission's Directorate-General for Research and Innovation. Spurred by a worldwide decline in the bee population, the agency created a task force with expertise in pesticides, animal health and welfare, genetically modified organisms (GMOs), and plant health "to provide risk managers with comprehensive advice in the area of bee health."

In compiling the inventory, the task force identified 355 bee-related scientific outputs that EFSA has already published or developed, with the majority of these outputs involving applications for regulatory products such as pesticides and GMOs. "With its mandate to improve EU food safety and to ensure a high level of consumer protection, EFSA has a responsibility to protect bees and the ecosystem services they provide to humans," stated the agency in a November 20, 2012, news release. "It is timely to carry out this work in a more integrated and multidisciplinary manner, given the significant work already carried out by the Authority in the area of bee risk assessment and monitoring; the consensus reached by scientists on the multiple causes of bee colony loss; and the new body of scientific evidence showing the way different factors may interact to affect bees."

Safe Food for Canadians Act Consolidates CFIA Oversight

Canadian Governor General David Johnson has approved through royal assent the **Safe Food for Canadians Act** (SFCA), which aims to improve food safety by focusing on unsafe practices, import surveillance and food traceability. Passed unanimously by the House of Commons, the act consolidates some of the Canadian Food Inspection Agency's (CFIA's) existing food commodity statutes—including the Fish Inspection Act, Meat Inspection Act, Canada Agricultural Products Act, and Consumer Packaging and Labeling Act—although the Food and Drug Act will continue to provide "overarching protection for consumers from any foods that are unsuitable for consumption, including those marketed exclusively within provinces."

In particular, SFCA expands CFIA's authority to address food safety risks, deter deceptive practices and develop regulations for tracing and recalling food. The act also gives CFIA the authority to certify all Canadian food commodities destined for export and reinforces import controls by "including powers to register or license importers," with mechanisms to hold importers accountable for product safety. By streamlining current food safety provisions, SFCA ultimately seeks to align inspection and enforcement powers, "making them consistent across all food commodities, enabling inspectors to be more efficient, and fostering even higher rate of compliance for industry." *See Safe Food for Canadians Act: An Overview,* November 19, 2012.

ASA Faults Beverage Marketing Claims

The U.K. Advertising Standards Authority (ASA) has **upheld** three challenges to marketing claims made by Santa Monica, California-based Neurobrands LLC about its line of "Neuro" beverages. Lodged in August 2011 before Commission Regulation (EU) No. 432/21012 established a list of permitted health claims for foods, the complainants argued that the claims appearing on Neurobrands' Website and posters were misleading, unsubstantiated and "misleadingly implied that a widespread vitamin D deficiency in women existed and that the product NeuroSun could treat that deficiency." Upholding the three complaints, ASA barred the advertisements and advised Neurobrands "to seek advice before making future health and nutritional claims for foods, given the transitional period following the Regulations coming into force."

According to ASA, Neurobrands defended the "mental performance" claim for its NeuroSonic beverage by citing the European Food Safety Authority's (EFSA's) "positive opinions" for caffeine and vitamin B12 with regard to "mental functions," while noting that the "vitamin D in every bottle" claim for NeuroSun "was an authorized nutritional claim" under European Commission (EC) regulations. The company further noted that it made no claims about vitamin D "deficiency" in its advertising, opting instead for the term "insufficiency" to describe "a state of suboptimal vitamin D status not indicative of deficiency." It also offered scientific evidence to support similar functional claims used for its other products.

ASA ultimately concluded, however, that EFSA's opinion linking caffeine to "increased alertness" and "increased attention" did not generally support NeuroSonic's "DRINK SMARTER" tagline nor its "mental performance" claim, which the authority dubbed "misleading." The ruling also considered the scientific evidence insufficient to support the claims made for NeuroBliss ("DRINK HAPPIER… mood enhancement"), NeuroSport ("DRINK STRONGER… replenishment in every bottle") and NeuroTrim ("DRINK LEANER… weight loss support").

Although ASA agreed that NeuroSun's "DRINK SUNNIER… vitamin D in every bottle" claims were not necessarily problematic, the ruling nevertheless found that Neurobrand's additional claims linking vitamin D to mood enhancement were misleading and that consumers could misinterpret the claim that "50% of women had insufficient vitamin D levels… to mean that there was a widespread vitamin D deficiency." As a result, ASA concluded that NeuroSun's advertisement breached Committee of Advertising Practice codes because the two Vitamin D claims that "appeared side by side could be seen as advocating the drink as a means of treating that deficiency."

LITIGATION

Appellate Court Affirms *E. Coli* Verdict Against Nebraska Meat Supplier

The First Circuit Court of Appeals has upheld a jury verdict tracing the source of *E. coli*-contaminated beef to Greater Omaha Packing Co. thus sustaining a third-party indemnification claim against it. ***Long v. Fairbank Reconstruction Corp. v. Greater Omaha Packing Co.*, No. 12-1412 (1st Cir., decided November 21, 2012)**.

Two Maine residents sickened in the outbreak settled for $500,000 with Fairbank Reconstruction, which had purchased the meat from Greater Omaha and further processed it for sale in retail-sized packages by grocery stores. Fairbank sought indemnification from Greater Omaha, and the trial focused for the most part "on the 'traceback' analyses that led Fairbank's experts to conclude that the contaminated meat could only have come from the [Greater Omaha] combos and not from another supplier's product." The court found that "ample evidence" supported the jury's conclusion that Greater Omaha was the source of the *E. coli* contamination that sickened the two women. The court also found that Greater Omaha could not show plain error as to the introduction of a video to which it had not objected during trial.

Claims Shaved from Consumer Fraud Suit Against Chocolate Company

A federal court in California recently granted in part and denied in part the Hershey Co.'s motion to dismiss putative class claims alleging that the chocolate maker violates consumer fraud laws by making unlawful nutrient content, "healthy" and antioxidant claims on product labels; failing to comply with chocolate product standards of identity or to use common names for ingredients; making unlawful sugar-free claims; and using improper serving sizes. ***Khasin v. The Hershey Co.*, No. 5:12-CV-01862 EJD (U.S. Dist. Ct., N.D. Cal., San Jose Div., order entered November 9, 2012)**.

Because the plaintiff's claims were based on parallel state laws that "mirror" relevant sections of the Food, Drug, and Cosmetic Act (FDCA) and the Nutrition Labeling and Education Act, the court determined that they were not preempted. In this regard, the court noted, "complying with the demand requested by Plaintiff in this cause of action would not require that Defendant undertake food labeling or representation different from the provisions of the FDCA or the rules and regulations promulgated by the [Food and Drug Administration]." The court also determined that the named plaintiff has Article III standing because he alleges that "he would not have purchased the products but for Defendants' allegedly misleading conduct [and] did not receive the full value for his purchases because he did not obtain the products as advertised and described by the labeling." The court also determined that the plaintiff adequately pleaded fraud or misrepresentation.

Agreeing with the defendant, the court dismissed breach of warranty claims brought under the California Song-Beverly Consumer Warranty Act, because the products at issue "fall under the definition of the exempted 'consumables.'" The court also dismissed breach of warranty claims filed under the federal Magnuson-Moss Warranty Act because it "cannot hear such claims brought as part of a class action if 'the number of named plaintiffs is less than one hundred.'" The court rejected the defendants' contention that the plaintiff's unjust enrichment claim was not cognizable under California law.

"Natural" Consumer Fraud Claims Against Arizona Beverages Trimmed

A federal court has agreed to certify a class of California consumers allegedly misled by representations that AriZona Iced Tea® is "Natural" because it contains the processed, man-made ingredients high-fructose corn syrup (HFCS) and citric acid. *Ries v. Arizona Beverages USA LLC*, No. 10-01139 RS (U.S. Dist. Ct., N.D. Cal., San Francisco Div., order entered November 27, 2012). But the court granted the certification motion "for the purpose of injunctive and declaratory relief only" thus foreclosing the recovery of "monetary damages, including restitution, refund, reimbursement and disgorgement."

The named plaintiffs had sought certification under Federal Rule of Civil Procedure 23(b)(2), which "does not authorize class certification when each class member would be entitled to an individualized award of monetary damages." According to the court, the claim for monetary relief predominates the complaint, and the plaintiffs "seek individualized awards of monetary restitution which would require individualized assessments of damages based on how many products the class member had bought," making the damages calculations "unmanageable under Rule 23(b)(2)."

The court also granted in part and denied in part the defendants' motion for summary judgment, finding that (i) the plaintiffs sufficiently pleaded economic injury under California's consumer fraud laws despite lacking receipts to document their losses, (ii) the plaintiffs' multiple reasons for buying the products did not abrogate their claim that they relied on the defendants' "all natural" product labeling to purchase the products, (iii) the plaintiffs have standing to pursue injunctive relief even if they now know that the products contain HFCS, and (iv) the named plaintiff who purchased the product in 2006 and threw it away after reading the ingredients list was time-barred from pursuing relief under the Consumers Legal Remedies Act and the False Advertising Law.

Spam Text Class Action Certified Against Papa John's

A federal court in California has certified a nationwide class and Washington subclass of individuals who received purportedly unsolicited text messages sent by OnTime4U to advertise Papa John's pizza products. ***Agne v. Papa***

John's Int'l, Inc., No. C10-1139-JCC (U.S. Dist. Ct., W.D. Wash., Seattle, decided November 9, 2012). An appeal was filed before the Ninth Circuit on November 26.

According to the court, "OnTime4U apparently told Papa John's franchisees that it was legal to send texts without express customer consent because there was an existing business relationship between the customers and the Papa John's restaurants. Certain Papa John's franchisees, including at least some of the Rain City Defendants, provided OnTime4U with lists of telephone numbers of individuals who had purchased pizza from them. Those lists were generated out of the PROFIT system, a proprietary database that Papa John's describes as a 'point of sale data entry system.' . . . OnTime4U removed landline numbers from the lists and sent text messages to the numbers associated with cell phones. The text messages OnTime4U sent on behalf of Papa John's franchisees solicited consumers to purchase Papa John's products. Each message provided the customer with the telephone number corresponding to a particular Papa John's restaurant along with a promotional code."

The named plaintiff allegedly received three such text messages and claimed that she never gave any Papa John's restaurant her express consent to do so. Preliminary discovery apparently supports her claim that while Papa John's International did not directly contract with OnTime4U, the parent company "directed, encouraged, and authorized its franchisees to use OnTime4U's services." The court determined that the plaintiff has Article III and statutory standing to bring the claims and that the class met the Rule 23 prerequisites to certification. Although the plaintiff cannot prosecute all of the national class members' potential state law claims, the court found that her adequacy to represent them was not undermined, stating, "[T]he court will not entertain any proposed settlement that purports to release on behalf of absent class member claims that Plaintiff does not share."

Partial Settlement Reached in FCA Action Brought Against Meat Packing Company

The owners of the California-based Hallmark Meat Packing Co. have reportedly settled claims that they committed fraud under the False Claims Act (FCA) by supplying ground beef to school lunch programs without meeting contractual commitments to treat their animals humanely. *The Humane Soc'y of the U.S. v. Hallmark Meat Packing Co.*, No. 5:08-cv-00221 (U.S. Dist. Ct., C.D. Cal., partial settlement announced November 16, 2012). The Humane Society of the United States (HSUS) brought the suit after it discovered and videotaped animal abuse at the meatpacking facility. Videotape of employees abusing non-ambulatory animals at the slaughterhouse resulted in the recall of 143 million pounds of beef in February 2008. The U.S. Department of Justice (DOJ) intervened in the litigation, which also involves the Westland Meat Company and other individual defendants.

According to HSUS, Donald Hallmark Sr. and Donald Hallmark Jr. have agreed to pay $304,000 from their personal assets and will make structured payments throughout the next five years totaling $312,802. They will also cooperate with DOJ and produce relevant documents. While a DOJ spokesperson has reportedly indicated that the remainder of the claims are still pending, HSUS stated that the Hallmarks agreed to the entry of a final judgment against their company in the amount of $497 million under FCA's treble damages provision. HSUS's complaint alleges that the companies knowingly kicked, beat or dragged disabled, or downer, cattle to force them into the kill box for slaughter. Additional details about the litigation appear in Issue **303** of this *Update. See HSUS News Release*, November 16, 2012.

Dole Targeted with "Greenwashing" Class Action

A putative class action alleging that Dole Food Co. misleads consumers by claiming it is an environmentally friendly and socially responsible company despite purportedly purchasing bananas from growers using pesticides in Guatemala has reportedly been filed in a California federal court. According to a Hagens Berman news release, the suit, filed on November 13, 2012, alleges that Dole's supplier destroyed wetlands and poisoned water sources. Steve Berman said, "Dole promised its customers it had an 'unwavering commitment' to environmental responsibility. Yet, it gave its business to a plantation that showed a complete disregard for the local environment." *See Hagens Berman Press Release*, November 13, 2012.

OTHER DEVELOPMENTS

Consumer Reports Identifies Bacteria, Drug Residue in Pork

Consumer Reports magazine has allegedly identified bacterial contamination as well as antibiotic-resistant bacteria and veterinary drug residues in pork chop and ground-pork samples purchased from U.S. grocery stores. According to an analysis in the January 2013 edition of the magazine, 69 percent of the 198 pork samples in question purportedly contained *Yersinia enterocolitica*; 11 percent contained *Enterococcus;* and 3 to 7 percent contained *Salmonella, Staphylococcus aureus,* or *Listeria monocytogenes.* In addition, the magazine reported that 13 of 14 *Staphylococcus* samples isolated from pork were resistant to antimicrobials, as were six of eight *Salmonella* samples, 12 of 19 *Enterococcus* samples, and 121 of 132 *Yersinia* samples.

Consumer Reports has also claimed that approximately one-fifth of 240 pork products analyzed in a separate test "harbored low levels of the drug ractopamine," a growth promoter used in U.S. pork production but banned in the European Union, China and Taiwan. Consumers Union, the policy arm of *Consumer Reports*, has apparently called for a ban on the drug, "citing insuf-

ficient evidence that it's safe," although all the samples used for the analysis "had less than 5 parts per billion," or "well below the [Food and Drug Administration's] limit of 50 ppb in muscle tissue and the international limit of 10 ppb adopted in July 2012 by the Codex Alimentarius Commission."

Meanwhile, the magazine has warned readers to "watch out for misleading labels. 'Natural' has nothing to do with antibiotic use or how an animal was raised," concludes the article. "Look for a clear statement regarding antibiotic use. 'No antibiotics used' claims with a [U.S. Department of Agriculture] Process Verified shield are more reliable than those without verification. Labels such as 'Animal Welfare Approved' or 'Certified Humane' indicate the prudent use of antibiotics to treat illness."

Petitioners Question Brominated Vegetable Oil in Gatorade

A Change.org petition started by a high school student urges PepsiCo Americas Beverages and Gatorade Canada to remove brominated vegetable oil (BVO) from their products, citing a December 12, 2012, *Scientific American* article allegedly linking the stabilizer to "impaired neurological development, reduced fertility, early onset of puberty and altered thyroid hormones." Garnering more than 180,000 signatures, the petition argues that BVO is banned in both the European Union and Japan, where Gatorade sports beverages do not contain the ingredient. "You put slick ads on TV encouraging people like me to buy your products, but it's shocking that you have a flame retardant chemical called 'brominated vegetable oil' in some flavors," opines the petitioner. "Please stop deceiving consumers and remove this chemical from your products."

In a related development, the U.K. Food Standards Agency (FSA) has **issued** a call for research on the occurrence of brominated flame retardants (BFRs) in food and feed. Defined by FSA as ubiquitous chemical compounds that are continually being replaced with newer formulations, BFRs "are everywhere in the environment and have entered the food chain," according to the agency. FSA has requested information about bromine compounds to determine (i) whether an assessment of overall BFR loading in foods is feasible and (ii) whether FSA should further investigate "novel and emerging BFRs" or continue to primarily monitor polybrominated diphenyl ethers (PBDEs) and hexabromocyclododecane (HBCDD) as directed by European Food Safety Authority recommendations.

"This is a challenging project in terms of analytical complexity," states FSA in its call for research. "[I]n a typical approach, approximately 400 samples of randomly-selected food and feed samples, mainly products of animal origin and those with high fat content although compound feeds and processed foods of other types may be included, would be screened for overall bromine

content." The agency has asked applicants "with experience of analyzing BFRs in food with a high level of precision" to submit their responses by January 10, 2013.

MEDIA COVERAGE

NYT Chronicles Push to Unionize Fast-Food Workers

A recent article in the *New York Times* has highlighted the efforts of Fast Food Forward, a campaign seeking to unionize fast-food workers in New York City. According to *Times* labor and workplace reporter Steven Greenhouse, the campaign has worked with 40 full-time organizers with the support of community and civil rights groups to recruit employees at fast-food restaurants across the city and coordinate a walkout in protest of low wages "and retaliation against several workers who have backed the unionization campaign."

In particular, Greenhouse notes the many challenges facing the nascent initiative, which has not yet decided on an overall strategy or mechanism for pursuing unionization. Labor experts and companies also emphasized that the high turnover in most fast-food positions makes organization difficult. "It's a fairly high-turnover position, so there's never been a successful union effort," said one spokesperson for Domino's Pizza. "People who are doing this part time, seasonally or as they work their way through college don't find much interest in membership."

As Cornell University Labor Relations Professor Richard Hurd elaborated, "[I]t's going to be a lot harder for them to win union recognition. It will be harder to unionize them than carwash workers because the parent companies will fight hard against it, because they worry if you unionize fast-food outlets in New York, that's going to have a lot of ramifications elsewhere."

SCIENTIFIC/TECHNICAL ITEMS

HFCS Allegedly Linked to Prevalence of Diabetes

A recent study has reportedly linked the availability of high-fructose corn syrup (HFCS) to an increase in the prevalence of type 2 diabetes across the world, raising questions about the sweetener's impact on global human health. Michael Goran, et al., "High fructose corn syrup and diabetes prevalence: A global perspective," *Global Public Health,* November 2012. Researchers with the University of Southern California's Keck School of Medicine and the University of Oxford apparently examined HFCS consumption in 42 countries, concluding that in countries like the United States, which had the highest per capita HFCS consumption of 55 pounds per year, the average prevalence of

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type 2 diabetes was 8 percent "compared to 6.7 percent in countries not using HFCS."

"The study reports that countries that use HFCS in their food supply had a 20 percent higher prevalence of diabetes than countries that did not use HFCS," according to a Keck School of Medicine press release. "The analysis also revealed that HFCS's association with the 'significantly increased prevalence of diabetes' occurred independent of total sugar intake and obesity levels."

The Corn Refiners Association has taken issue with the study, deeming its results "misleading." In her *Food Politics* blog and in *The New York Times*, New York University Nutrition Professor Marion Nestle questioned the study's validity as well. "I think it's a stretch to say the study shows [HFCS] has anything special to do with diabetes," she said. "Diabetes is a function of development. The more cars, more TVs, more cell phones, more sugar, more meat, more fat, more calories, more obesity, the more diabetes you have." *See The New York Times,* November 26, 2012; *Food Politics,* November 27, 2012.

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