Can Litigation Improve Nutrition?

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Modern America

• Sedentary lifestyle
• Standard American diet
  – Copious amounts of
    • Salt
    • Sugar
    • Saturated Fat
    • Refined Grains
CDC Statistics

• 60% of adults age 20 years and over are overweight
• 35% of adults age 20 years and over are obese – 24% of adult Canadians are obese
• 18.4% of adolescents age 12-19 years are obese
• 18% of children age 6-11 years are obese
• 12% of children age 2-5 years are obese
Health Effects

• American adults age 20 years and over
  – 30% have high cholesterol or are taking statins
  – 32% have high blood pressure or are taking prescribed medication for high blood pressure
  – 11% have diabetes
  • 26% of Americans age 65 and older
At-home spending patterns of U.S. households are not in sync with USDA food plan recommendations

Expenditure shares in 1998-2006 (percent)

Source: USDA, Economic Research Service calculations using Nielsen Homescan data and USDA, Center for Nutrition Policy and Promotion’s Liberal food plan.
Between 1977-78 and 2005-08, food away from home, particularly fast food, provided an increasing share of calories in the U.S. diet.

Note: Totals do not sum to 100 due to rounding.

Daily Intake

**USDA Recommended Amounts**

- 1,600-3,000 Calories
  - Depending on age, sex, and activity level
- Less than 10% of calories in saturated fat
  - 17-33 g’s
- 2300 mg Sodium
- 25 g’s fiber
- 24-38 g’s sugar

**McDonald’s Sausage McMuffin with Egg**

- 450 Calories
- 10 g’s saturated fat
  - 20% of calories
- 860 mg sodium
- 4 g’s fiber
- 2 g’s sugar
Advertising Dollars

• In 2012, fast food restaurants spent $4.6 billion in total on all advertising

• The biggest advertiser, McDonald’s, spent 2.7 times as much to advertise its products ($972 million) as all fruit, vegetable, bottled water, and milk advertisers combined ($367 million)

• Six companies were responsible for more than 70% of all TV ads viewed by children and teens:
  – McDonald’s, Subway, Burger King, Domino’s, Yum! Brands (Taco Bell, Pizza Hut, KFC), and Wendy’s
Lobbying Dollars

• Firms or associations spending at least $1 million for lobbying in 2013

• Grocery Manufacturers Ass’n ($14 million), Nestle, General Mills, Kraft Foods, Tyson, Kellogg, Smithfield, Safeway, United Fresh Produce Ass’n, HEB Grocery
  – Total for just these ten: $29.8 million
    • Represents ¾ of total sector expenditures

• Coca-Cola ($5.9 million), PepsiCo, McDonald’s, Nat’l Restaurant Ass’n, Starbucks, Mars, Darden Restaurants, Am. Beverage Ass’n
  – Total for just these eight: $20.89 million
    • Represents 2/3 of total sector expenditures
Genetically Modified Food

• Estimated 60-70% of processed foods contain genetically modified ingredients
• True, humans have been genetically engineering plants for thousands of years
• But we have only recently, for example, modified corn to be resistant to one particular pesticide
  – May have negative side affects on detoxifying organs, such as the liver and kidneys
Who Ya Gonna Believe?

TIME
Eat Butter.
Scientists labeled fat the enemy. Why they were wrong
by Bryan Walsh
Product Liability

• Two adolescents, through their parents, sued McDonald’s claiming McDonald’s food caused them to become obese
McDonald’s Product Liability Claims

1. McDonald’s failed to adequately disclose the ingredients and/or health effects of ingesting certain of their food products with high levels of cholesterol, fat, salt and sugar; described their food as nutritious; and engaged in marketing to entice consumers to purchase “value meals” without disclosing the detrimental health effects thereof.

2. McDonald’s acted at least negligently in selling food products that are high in cholesterol, fat, salt and sugar when studies show that such foods cause obesity and detrimental health effects.
McDonald’s Product Liability Claims

3. McDonald’s failed to warn the consumers of its products of the ingredients, quantity, qualities and levels of cholesterol, fat, salt and sugar content and other ingredients in those products, and that a diet high in fat, salt, sugar and cholesterol could lead to obesity and health problems.

4. McDonald’s acted negligently in marketing food products that were physically and psychologically addictive.
Product Liability Rule of Law

• A retailer can be held liable for the sale of a defective product or for failure to warn only if it fails to detect a dangerous condition that it could have discovered during the course of a normal inspection while the product was in its possession.

• Everyone knows eating too much butter can be unhealthy
  – Butter adulterated with fish oil is different

• Everyone knows drinking too much whiskey can be unhealthy
  – Whiskey adulterated with motor oil is different
Product Liability Applied to McDonald’s

• The girls must allege either that the attributes of McDonalds’ products are so extraordinarily unhealthy that they are outside the reasonable contemplation of the consuming public or that the products are so extraordinarily unhealthy as to be dangerous in their intended use.

• It is well-known that fast food in general, and McDonalds’ products in particular, contain high levels of cholesterol, fat, salt, and sugar, and that such attributes are bad for one.

• As long as a consumer exercises free choice with appropriate knowledge, liability for negligence will not attach.
Free Choice

• If you smoke or drink, you know the risks
• Can the same be said about the food we eat?
• In order to exercise free choice . . .
  – Those choices must be available
  – Consumers need to be fully informed
Practical Choice?
Labeling

- “Added sugars exert deleterious health effects beyond empty calories”
  - Harvard Medical School nutrition and epidemiology researcher
- “There is no preponderance of evidence to justify an added sugar label”
  - Sugar Association president
Is a Calorie Just a Calorie?

• Total caloric availability is unrelated to diabetes prevalence
  – For every extra 150 calories per day, diabetes prevalence rose by only 0.1 percent.
  – But if those 150 calories per day happened to be a can of soda, diabetes prevalence rose 11-fold, by 1.1 percent
• Americans on average consume the added sugar equivalent of 2.5 cans of soda per day
POM Wonderful v. Coca-Cola

85% Pomegranate and 15% blueberry juices from concentrate, natural flavors.

CONTAINS APPLE, GRAPE AND POMEGRANATE JUICES FROM CONCENTRATE, FRUIT AND VEGETABLE JUICES (FOR COLOR), BLUEBERRY JUICE FROM CONCENTRATE, NATURAL FLAVORS, RASPBERRY JUICE FROM CONCENTRATE, MODIFIED GUM ACACIA, DHA ALGAL OIL, VITAMIN C (ASCORBIC ACID), CITRIC ACID (PROVIDES TARTNESS), CHOLINE BITARTRATE, VITAMIN E (ALPHA-TOCOPHERYL ACETATE), SOY LECITHIN, VITAMIN B12.
POM Wonderful v. Coca-Cola

• Coca-Cola’s Minute Maid juice is 0.3% pomegranate juice, 0.2% blueberry juice, and 99.5% other juices (mostly apple and grape juices)
• POM alleged both that Coke’s label is misleading and that the misleading label has hurt POM’s sales
• Supreme Court ruled that a private party can bring an unfair competition action based on an FDA-regulated label
• Dee Pridgen’s presentation on POM Wonderful – 1:35 this afternoon in the Family Room
Coke’s Nutrient Enhanced Water Beverage

• Coca-Cola recently settled a lawsuit challenging its Vitaminwater labeling
• Agreed to remove claims such as
  – “vitamins + water = all you need”
  – “made for the center for responsible hydration”
  – “specially formulated with nutrients that enable the body to exert physical power by contributing to structural integrity of the musculoskeletal system, and by supporting optimal generation and utilization of energy from food”
• Also agreed to specify calorie counts on the principal display panel of Vitaminwater products
• By the way, a 20 oz. bottle contains 31 grams of sugar
  • Recall that the USDS recommends between 24-32 grams per day depending on calorie intake
Vermont GE Labeling Law

Because genetic engineering, as regulated by this act, involves the direct injection of genes into cells, the fusion of cells, or the hybridization of genes that does not occur in nature, labeling foods produced with genetic engineering as “natural,” “naturally made,” “naturally grown,” “all natural,” or other similar descriptors is inherently misleading, poses a risk of confusing or deceiving consumers, and conflicts with the general perception that “natural” foods are not genetically engineered.
Vermont GE Labeling Law

- Passed earlier this year
- Grocery Manufacturers Association is challenging the law
  - Claims the law unconstitutionally compels businesses to disclose information they don't want to reveal, and restricts their commercial speech by prohibiting GE products from being labeled as “natural”
Questions/Comments