Fast Food Is Linked to Obesity and Other Serious Health Problems

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Despite the fact that nutritional information about fast food is readily available, many fast food chains are taking the blame for the rise in obesity and other health problems across the nation. Some lawyers are considering the possibility that fast food chains could be held accountable for the health consequences of eating their food. The chains could also be responsible for the effects of their potentially misleading advertising, especially to children. These advertising messages can lead people to overeat, which is one of the reasons behind the obesity problem.

For decades, Caesar Barber ate hamburgers four or five times a week at his favorite fast-food restaurants, visits that didn't end even after his first heart attack.

But his appetite for fast food didn't stop Mr. Barber, who is 5 foot 10 and weighs 272 pounds, from suing four chains last month, claiming they contributed to his health problems by serving fatty foods.

**Legal Matters**

Even the most charitable legal experts give Barber little chance of succeeding. But his suit is just the latest sign that the Big Mac may eventually rival Big Tobacco as public health enemy No. 1 in the nation's courts.

Lawyers who successfully challenged cigarette manufacturers have joined with nutritionists to explore whether the producers of all those supersize fries and triple cheeseburgers can be held liable for America's bulging waistlines.

Prompted by reports that the nation's obesity is getting worse, lawyers as well as nutrition, marketing, and industry economics experts will come together at a conference at Northeastern University in Boston to discuss possible legal strategies.

Obesity can be linked to some 300,000 deaths and $117 billion in health care costs a year.

They're looking at whether food industry marketing—particularly messages aimed at kids—may be misleading or downright deceptive under consumer protection laws, says Richard Daynard, a Northeastern law professor and chair of its Tobacco Products Liability Project. They'll also consider the more complex question of whether the producers of fatty foods—and even the public schools that sell them—should be held responsible for the health consequences of eating them.

**A Toxic Food Environment**

Medical professionals argue that too much unhealthy food is sold by using tempting messages that
encourage overeating. "People are exposed to a toxic food environment," says Kelly Brownell of Yale’s Center for Eating and Weight Disorders. "It really is an emergency."

The figures are certainly startling. Obesity can be linked to some 300,000 deaths and $117 billion in health care costs a year, a report by the Surgeon General found [in 2001].

Such numbers prompted President [George W.] Bush to launch his own war on fat this summer [in 2002], calling on all Americans to get 30 minutes of physical activity each day.

But fast-food industry representatives are quick to say, "Don't just blame us." Steven Anderson, president of the National Restaurant Association, a trade group, says attorneys who attempt to compare the health risk of tobacco with those of fast food are following a "tortuous and twisted" logic.

"All of these foods will fit into [the] diet of most Americans with proper moderation and balance," he says.

To be sure, there are big differences between tackling food and tobacco. Any amount of tobacco consumption is dangerous but everyone has to eat, Mr. Daynard says. And few if any foods are inherently toxic.

What's more, while there were only four or five tobacco manufacturers, there are thousands of food manufacturers and restaurants serving some 320,000 different products, says Marion Nestle, a professor of nutrition and food studies at New York University.

People usually smoke one brand of cigarette. They eat in many restaurants and eat the same foods at home. That makes it almost impossible to prove that a person's obesity or health problems are caused by a particular food or restaurant.

As a result, suits such as Barber's that attempt to pin the blame for weight-related problems on specific plaintiffs will run into difficulty in court, says Steven Sugarman, a law professor at the University of California, Berkeley. Suits by state attorneys general to try to recover the cost of treating obese patients, a tactic that's worked with tobacco, also could prove tough.

**Deceptive Advertising**

That's why lawyers are focusing on more modest suits aimed at advertising and marketing techniques, says John Banzhaf III, a George Washington University law professor who helped initiate the tobacco litigation three decades ago.

For example, students in one of Professor Banzhaf's courses helped sue McDonald's [in 2000] for advertising its french fries as vegetarian even though the company continued to use beef fat in their preparation. The company agreed to donate $10 million to Hindu and vegetarian groups as part of a settlement.
But only in the past few months has Banzhaf considered similar suits as part of a concerted strategy to sue the food industry for false or deceptive advertising as a way of fighting Americans' obesity.

State consumer-protection laws require sellers to disclose clearly all important facts about their products. Just as a sweater manufacturer should disclose that it may shrink in the wash, Banzhaf says fast-food companies might have an obligation to disclose that a meal has more fat than the recommended daily allowance.

Such class-action suits on behalf of people deceived by advertisements could recover the amounts customers spent on the food items but not money spent on related health costs.

As with tobacco, marketing aimed at kids will be a particular focus of Banzhaf and his coalition of lawyers and nutritionists.

"Everybody is looking at children as the vulnerable point in this," says Dr. Nestle. She says she's received "loads" of e-mails and calls from plaintiff lawyers interested in advice since publishing "Food Politics," a book critical of the food industry's marketing and its dominant role in shaping nutritional guidelines.

"While they know a quarter pounder is not a health food, a lot of people would be surprised to learn it uses up a whole day of calories for women."

At a meeting in Boston [August 2002], Banzhaf said attorneys talked about suing Massachusetts school districts that sell fast food in their cafeterias or stock soda in their vending machines. These suits would be based on the legal notion that schools have a higher "duty of care" than restaurants.

Fast-food restaurant chains, for their part, say they're not hiding what's in their food. At Burger King, for example, nutritional information is supposed to be posted in every dining room. And on its website, Wendy's lists 15 categories of information about its products, including total fat and calories for everything from the whole sandwich down to the pickles.

Nutritionists say that the information doesn't put the calories in a context people can understand.

"While they know a quarter pounder is not a health food, a lot of people would be surprised to learn it uses up a whole day of calories for women," says Margo Wootan of the Center for Science in the Public Interest in Washington.

Banzhaf acknowledges that litigation alone won't get Americans in better shape. He'd like nutritional information on the fast-food menu boards and wrappers or even health warnings similar to the ones now required on cigarettes.

Still, Banzhaf says litigation will put producers of fatty foods on notice. "When we first proposed smoker suits, people laughed too."

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