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Legal Updates

New on the Menu: Class Actions Targeting Restaurants

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The trend among some states and municipalities to require restaurants to provide nutritional information on their menus has moved to the courts. A new flavor of class action lawsuits has recently been filed in California and Texas alleging that several nationwide restaurant chains misrepresented nutritional information on their menus.

In California, two virtually identical cases were filed claiming that a nationwide restaurant chain misrepresented the nutritional content of its healthy fare menu. The first case was filed in federal court in Los Angeles on June 3, 2008. In this case, plaintiff seeks to represent a nationwide class of all persons who ordered items from the restaurant's healthy fare menu, which is alleged to be "hundreds of thousands or millions of Defendants' customers throughout the United States..." Plaintiff asserts that independent laboratory analyses have shown that stated calorie, fat, and other nutritional information of the menu items are inaccurate, and are sometimes double or even triple the amount stated. Plaintiff alleges violations of the California Legal Remedies Act, the California Unfair Competition Law, and the California False Advertising Law. The complaint seeks restitution of all amounts paid by plaintiff and class members for their meals. Plaintiff also seeks to enjoin defendants from alleged wrongful conduct, including "misrepresenting the nutritional content of their menu items, facilitating the menu inaccuracies, and/or allowing the food to be prepared in a manner which changes the nutritional content without adequate disclosures..." Plaintiff also seeks an award of costs and attorneys' fees. The second and most recent California case was filed in California state court in Alameda County on June 10, 2008. This case is virtually identical to the California federal action with the notable exception that plaintiff seeks to limit the class to California residents who patronized the restaurant.

The Texas case was filed on June 5, 2008 in federal court in Dallas, Texas by the same plaintiff in the California federal action. In the Texas action, she makes similar claims as those in the California suits but against three different nationwide restaurant chains. She seeks to represent a nationwide class of all persons who ordered from the healthy fare menus from those restaurants.

These cases bring to the forefront several noteworthy issues that should be considered when providing nutritional and other information on restaurant menus. First, any such information should be factually accurate and based upon well-documented and competent analyses that can withstand scrutiny. Second, appropriate disclosures, disclaimers, and qualifications should be considered to avoid accusations that consumers have been misled by broad statements or omissions. Third, policies should be put in place to monitor the accuracy of the nutritional and other information appearing on menus, and ensure that items are being prepared in a manner consistent with the stated and implied representations on the menu.

Morrison & Foerster has defended numerous similar cases in state and federal courts, including cases alleging misrepresentation in nutrition labeling and cases involving prior substantiation of advertising claims. These new cases will likely be subject to various legal and factual defenses, including whether the plaintiffs have standing and can demonstrate causation and injury, and whether they are amenable to class action status due to, among other things, various individual issues: such as which meal was ordered, if there were any special orders, and whether the meal's nutritional value as ordered was within the nutritional disclosures. If you have any questions regarding this latest wave of class action litigation or would like assistance evaluating your exposure to these types of claims, or with constructing your menus with respect to avoiding these types of issues, please contact Roger Collanton or Todd Burlingame at Morrison & Foerster.