

Growing Food Addiction Evidence = More Big Fat Lawsuits // Cigarettes Provide Precedent

NYTimes food columnist Mark Bittman is only the latest expert to acknowledge the addictive nature of many fast foods, and to recommend political action -- not just education -- to counter the second biggest cause of unnecessary health care costs.

Sept. 30, 2011 - [PRLog](#) -- New York Times food columnist Mark Bittman is only the latest expert to acknowledge the addictive nature of many fast foods, and to recommend political action -- not just education and "will power" -- to counter the second biggest cause of unnecessary health care costs. http://www.nytimes.com/2011/09/25/opinion/sunday/is-junk-food-really-cheaper.html?_r=1 AND WASHINGTON POST: Ending Junk Food: The Harder Addiction to Quit http://www.washingtonpost.com/blogs/ezra-klein/post/ending-junk-food-the-harder-addiction-to-quit/2011/09/27/gIQAlbAh2K_blog.html

But he failed to note how addiction could also form the basis for law suits triggering even more political action, says the antismoking law professor who started the movement to use legal action against obesity as he had helped use it so effectively and successfully against smoking. ABC-TV NEWS GMA: "A major crusader against big tobacco and is now among those targeting the food industry" <http://banzhaf.net/docs/gma.html> AND SEATTLE TIMES: "A driving force behind the lawsuits that have cost tobacco companies billions of dollars" <http://community.seattletimes.nwsourc.com/archive/?date=...>

"Once the addition evidence is strong enough, fast food outlets could be held liable for failing to warn customers," says public interest law professor John Banzhaf, the man behind the ban on cigarette commercials and the fat-law-suit movement. Indeed, he notes, there's strong legal precedent for such an approach.

For example, the Supreme Court of Texas held that a smoker could sue a cigarette manufacturer for his health problems because it failed to warn him about the addictive nature of smoking, even though the general health dangers of smoking were well known. In another case, the U.S. Court of Appeals for the 10th Circuit upheld a multi-million dollar verdict against a tobacco company for failing to disclose that smoking can cause addiction, even though the general health dangers of smoking were well know.

Similarly, even though the health dangers of eating fattening fast food might be well known, customers are not aware of the ever-growing body of medical evidence that the food can have additive effects on the human brain. Thus, failure to disclose this unknown risk could make the companies liable.

Indeed, a federal judge has upheld a claim for legal liability against a fast food company based upon allegations that the company "failed to warn its customers that its products were addictive: . . . A claim that a product causes addiction and that reasonable consumers are unaware of that danger."

Although the judge required the plaintiff to plead the claim with greater specificity, he nevertheless would permit liability to be found because the failure to disclose claim "does not involve a danger that is so open and obvious, or so commonly well-known, that customers would be expected to know about it."

Plaintiffs in tobacco law suits, faced with the argument that they were contributory negligent and/or assumed the risk of smoking because the health dangers were well known, were nevertheless able to counter this defense by arguing that the addictive nature of nicotine meant that their smoking was not completely voluntary.

Similarly, plaintiffs suing fast food companies could counter the defense that the customer's own lack of willpower caused his health problems by arguing that the addictive nature of fast foods overcome their willpower, and that their actions were no longer strictly voluntary.

Finally, says Banzhaf, the growing recognition that certain foods can have addictive effects on the brain virtually identical to those of heroin, cocaine, nicotine, and alcohol (in alcoholics) may both encourage and provide public support for legislators to take stronger steps to help reduce the escalating epidemic of obesity, especially among young people whose added medical expenses will bedevil the health care system and balloon its costs over their entire lifetimes.

Several recent news reports highlight the ever-growing evidence that certain foods can cause addictive changes in the brain similar to those caused by known addictive drugs like heroin and cocaine.

NEWSONE: Scientists: Food Addiction Much Like Drug Addiction, <http://newsone.com/nation/thegrio1/food-addiction-much-li...> AND SAN FRANCISCO CHRONICLE: Can a Doughnut Be a Drug? <http://blog.sfgate.com/kalw/2011/09/20/can-a-doughnut-be-...>

However, notes Banzhaf, many scientists, scientific organizations, and responsible media outlets have been saying the same thing for many years. VEGSOURCE: More Evidence of Fatty Food Addiction <http://www.vegsources.com/news/2003/11/more-evidence-of-fatty-food-addition.html>

Not surprisingly, the fast food industry -- just like the tobacco industry before them -- continues to argue that the evidence linking fattening foods to addictive changes in the brain and in eating behaviors isn't absolutely conclusive, and that some scientists aren't yet convinced.

But Banzhaf, an expert in torts law, counters by noting that companies must provide consumers with any information a reasonably consumer might need to make an informed decision. "Many parents who take a child to a fast food outlet several times a week might well change their behavior if they knew of this evidence, even if it's wasn't absolutely conclusive," he argues.

Similarly, a doctor who prescribes a pill and fails to tell the patient that there are several studies showing that it can cause cancer is in very big legal trouble, even if there are a larger number of studies suggesting that it isn't carcinogenic. "Consumers, like patients, should be able to make up their own minds, and weigh for themselves the known or even suspected dangers against the possible benefits of any product," Banzhaf suggests.

Perhaps, says Banzhaf, as Fortune magazine predicted, fat is becoming the next tobacco, and we can do it by making use of the addiction issue, just as lawyers suing tobacco companies did. FORTUNE: Is Fat The Next Tobacco? http://money.cnn.com/magazines/fortune/fortune_archive/2003/02/03/336442/index.htm

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