

Litigious future for Big Sugar?

■ Cite as: *CMAJ* 2017 March 6;189:E378-9. doi: 10.1503/cmaj.1095388

Remember when salt was the “new tobacco”? Well, it seems that pretzel makers and other sodium peddlers can now rest easier, because that label, perhaps the least coveted in the food and beverage industry, has been inherited by sugar. Some health advocates say companies that sell food and drinks loaded with sugar have been misleading the public about the health impacts of their products. And if the [lawsuit recently filed against](#) The Coca-Cola Company and the American Beverage Association (ABA) is any indication, companies that trade in sugary goods would be wise to beef up their in-house counsel. Their future, much like Big Tobacco’s recent past, may be riddled with court battles.

“All indications are that pressure will increasingly mount on the manufacturers of sugar-sweetened beverages by way of litigation, tax measures and health warning obligations,” said Maia Kats, director of litigation for the Center for Science in the Public Interest (CSPI), a health advocacy group based in Washington, DC.

Kats is a member of the legal team that filed the Coca-Cola lawsuit in California on behalf of The Praxis Project, a non-profit organization with a mission to build healthy communities. The lawsuit alleges that Coca-Cola “deceives consumers” about the health impact of their sugar-sweetened beverages, sometimes with help from the ABA, a trade organization that represents the nonalcoholic beverage industry in the United States.

Although Coca-Cola and the ABA have “publicly pledged allegiance to objective scientific criteria, they have instead represented falsely that sugar-sweetened beverages are not scientifically linked to obesity, diabetes and cardiovascular disease, and have waged an aggressive campaign of disinformation about the health consequences of consuming sugar-sweetened beverages,” states the lawsuit.

The Praxis Project wants the court to compel the defendants to disclose their internal health research, post accurate health information on their websites and fund a public education campaign to reduce consumption of sugar-sweetened beverages. The lawsuit also calls for Coca-Cola to cease deceptive marketing and the promotion of their products to children under 12 years old.

The legal community appears to have taken notice of the lawsuit. It should serve as a warning for other food and beverage companies, [according to the legal publication *Inside Counsel*](#). When vetting marketing materials, lawyers who work for these companies should “scrub the content to make sure the company is not making false, misleading or unsupported messages, especially for health-related claims.”

An article on the [website of a Florida law firm](#) noted that Coca-Cola appears to be taking a page from the tobacco industry: “Does the legal language strike a bell? Sound familiar? Strike a chord? It should. The claims brought by The Praxis Project ... have been compared to those against the tobacco industry.”

Legal scholars have suggested that [even if the lawsuit isn’t ultimately successful](#), the internal communications between Coca Cola and the ABA disclosed during the discovery phase, if it contains evidence of plotting to deceive, might prove invaluable to health advocates in future battles with Big Sugar. It was, after all, the public airing of internal documents that, in large part, led to huge settlements in tobacco lawsuits and forced that industry to change its business practices.



Makers of sugary drinks have a long history of making unfounded health claims, say public health advocates.

The lawsuit itself makes several references to the tobacco industry, noting that Coca-Cola cultivated relationships with researchers who published studies that shifted the blame for obesity from poor nutrition to lack of physical activity, just like “the tobacco industry formed the Tobacco Industry Research Committee in 1953 to respond to scientific evidence linking smoking to lung cancer.” The plaintiffs also allege that, like tobacco companies, Coca-Cola needs to replenish its consumer base and “tries to recruit them young.”

The defendants in the lawsuit, however, both consider the allegations against them to be false. [Coca-Cola has](#)

[stated](#) that the lawsuit is “legally and factually meritless,” and said the company takes the health of their consumers seriously and wants to be “a more credible and helpful partner in helping consumers manage their sugar consumption.”

In a statement, the ABA said, “Unfounded accusations like these won’t do anything to address health concerns, but the actions we’re taking, particularly in areas where obesity rates are among the highest, can make a difference.” The association said it was working with communities and health groups to reduce the amount of sugar and calories that Americans get from beverages.

The Canadian counterpart to the ABA,

the Canadian Beverage Association, has a “[Balance Calories](#)” initiative with a goal of reducing the number of calories Canadians consume from nonalcoholic beverages by 20% by 2025. “Canadians consume 142 calories a day from all beverages combined, excluding hot beverages, dairy and alcohol. This is a 2014 number, and is a 20% reduction from 2014,” said Carolyn Fell, a senior communications director with the association, citing a [Conference Board of Canada report](#). “In the USA, the daily calorie consumption from the same group of beverages is 198 calories per day.”

Roger Collier, *CMAJ*