

## **WEBSTER, CHAMBERLAIN & BEAN, LLP | NONPROFIT ALERT**

### **COCA-COLA AND THE AMERICAN BEVERAGE ASSOCIATION SUED FOR DECEPTIVE MARKETING PRACTICES.**

On January 4, 2017, the Center for Science in the Public Interest and the Public Health Advocacy Institute, on behalf of the nonprofit Praxis Project (together “the Plaintiffs”), sued the Coca-Cola Company and the American Beverage Association (“ABA”) in a California Federal district court, alleging that the two organizations are misleading consumers about the health risks posed by sugar drinks, among other things by claiming that there is no science linking sugar-sweetened beverages to obesity and related diseases.

The complaint states that the ABA has assisted Coca-Cola through statements it made that promotes these deceptive practices. The Plaintiffs seek injunctive relief as to the alleged deceptive advertising and have asked the court to require the two organizations to publicly disclose their files on the health implications of consuming sugar-sweetened beverages, and to fund a public education campaign to educate consumers about the link between sugar-sweetened beverage consumption and health complications.

The Plaintiffs contend that Coca-Cola used the ABA as a platform to market its research that there was no link between consuming its sugar drinks and health concerns such as obesity, Type 2 diabetes, and cardiovascular disease. To illustrate its claims, the Plaintiffs cite numerous examples from ABA press releases that undermine this link.

In addition to these claims, the Plaintiffs assert the ABA and Coca-Cola breached certain duties that they owed the public. The first is that the parties violated the California Business & Professional Code by failing to disclose material facts about a product to consumers when it had access to such facts and scientific consensus. Secondly, the complaint alleges that the two organizations owed the public a special duty when they actively misrepresented that the wellbeing of consumers was an industry priority and that the science they presented was objective, reliable, and demonstrated no link between sugar sweetened beverages and certain health risks.

The same California district court has had soda-related litigation in front of it before. In May 2016, the court upheld a San Francisco law requiring warning notices on certain soda advertisements in San Francisco to state, in part “WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay.” The court found that the warning was “factual and accurate.”

The types of claims in this case against the association are similar to recent claims made against the Personal Care Products Council in litigation involving alleged cancer risks from personal use of talcum powder. These cases illustrate that associations are not insulated from industry litigation. Association activities should be conducted with this in mind and associations are well advised to review their activities, insurance policies, and other risk mitigation practices in light of this potential legal exposure.

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