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SCHOOL OF GLOBAL
PUBLIC HEALTH

Legal and Policy Challenges for Intervention

Food Forum, National Academies of Sciences,
Engineering, and Medicine, August 16, 2023

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Conflicts of interest

None

Themes

- Power of experimentation at the federal, state and local levels
- Regulatory agencies: important powers but also limitations to what they can accomplish + resource limitations
- Current food environment nudging us to unhealthy food choices
 - How can we make the default lead to healthy choices?
- Healthy food comes in many forms – can consumers identify them?
- Gaps remain to support all consumers

Food Environment Policies

- Online Food Retail
- In-Store Food Retail
- Food Labels

Online Food Purchasing

SNAP purchasing pilot now 49 states

Covid increased online purchasing

Importance of clear accurate information

Online Food Labeling Study 1

- 10 products; 9 retailers
- 4 Mandatory elements
 1. the Nutrition Facts label
 2. ingredients list
 3. common allergens (for foods typically with allergens)
 4. the percent juice for fruit drinks
- Present, conspicuous and legible for **36.5%** of products
- Voluntary health/nutrition-related claims
 - prominently and conspicuously displayed **63.5%** across products and retailers

Online Food Labeling Study 2

- 60 products; 10 retailers
- Same 4 Mandatory elements
- Voluntary
 - nutrient-content claims, health claims, structure/function claims, ingredient claims, additive claims, front of package nutrient profiling symbols, and other marketing claims.

Preliminary Results

- Mandatory elements were present, conspicuous and legible for ~35% of products
 - Highest for ingredients lists (~38%)
 - Lowest for nutrition facts panels (~32%).
- By Retailer:
 - Allergen information availability ~3% to ~98%
 - Percent juice from 0% to 100%
- Voluntary Elements:
 - Marketing claims were most present (~84% of all items)
 - Followed by nutrient content claims (~49%)

USDA

- SNAP 'retail food store' includes an 'online entity that sells food'
- Authority to identify factors for consideration and designate which stores are authorized to accept and redeem SNAP benefits.
- USDA SNAP retail regulations
- Congress can direct the USDA to act

FDA: “Labeling”

- Broader than product labels, shelf tags
- Supreme Court: Labeling requirements apply when it performs the same function as it would if it were on the container
- But no explicit direction
- Congress can direct FDA to act
 - Clearer framework needed

“Self-Regulation”

Other Considerations?

- Variation among retailers mandatory information from 4.6% – 87.4%
- Retailer fear of liability?
- Safe harbor labels/labeling database?

In-Store Food Retail Environment

Evaluation of current fees systems necessary (e.g., slotting fees, introductory fees) for food retailers

Healthy Defaults

- State and—to the extent authorized—Local Authority
- Regulate checkout aisles and endcap displays
- Goal: move healthier and affordable food or non-food items to these locations
- Move less healthy items to their respective aisles (e.g., the candy aisle)
- Must be based solely on nutrition criteria

Not Based on Commercial Speech

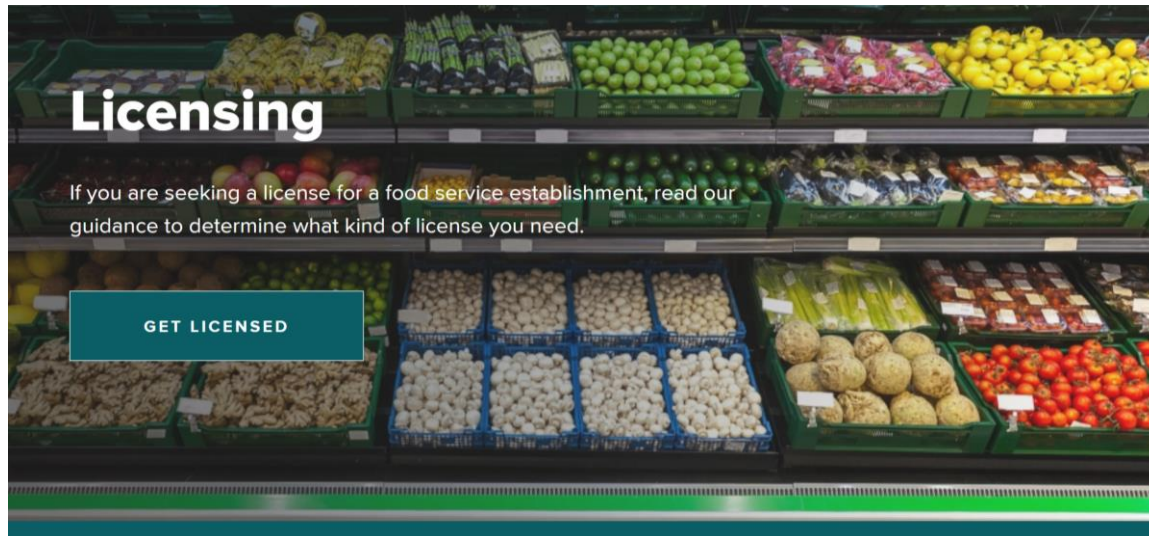


Checkout Aisles and Endcap Displays

- Conditional Licensing or Direct Regulation

Conditional Licensing: Retailers

- Minneapolis Ordinance – to receive grocery store license must stock certain amount of perishable foods.



Direct Regulation



The Mercury News



NEWS > HEALTH

Berkeley first in U.S. to ban junk food in checkout lane

Ordinance to encourage nutritious food at check-out lines

By **ANGELA RUGGIERO** | Bay Area News Group

PUBLISHED: September 22, 2020 at 11:19 p.m. | UPDATED: September 23, 2020 at 3:16 p.m.

BERKELEY — Berkeley may be the first city in the nation to pass a policy that will eliminate junk food and unhealthy items at grocery store checkout lines.

Berkeley Ordinance 9.82

HEALTHY CHECKOUT

- Large Retail Stores
 - total floor area >2,500 square feet; selling ≥ 25 linear feet of food
- All foods and beverages sold in Checkout Areas must meet nutrition standards
- In qualifying food and beverage categories:
 - chewing gum and mints with no added sugars, fruit, vegetables, nuts, seeds, legumes, yogurt, cheese, whole grains

Self-Regulation

- Raley's, supermarket chain
- 2015



Self-Regulation

The New York Times

CVS Stores Stop Selling All Tobacco Products



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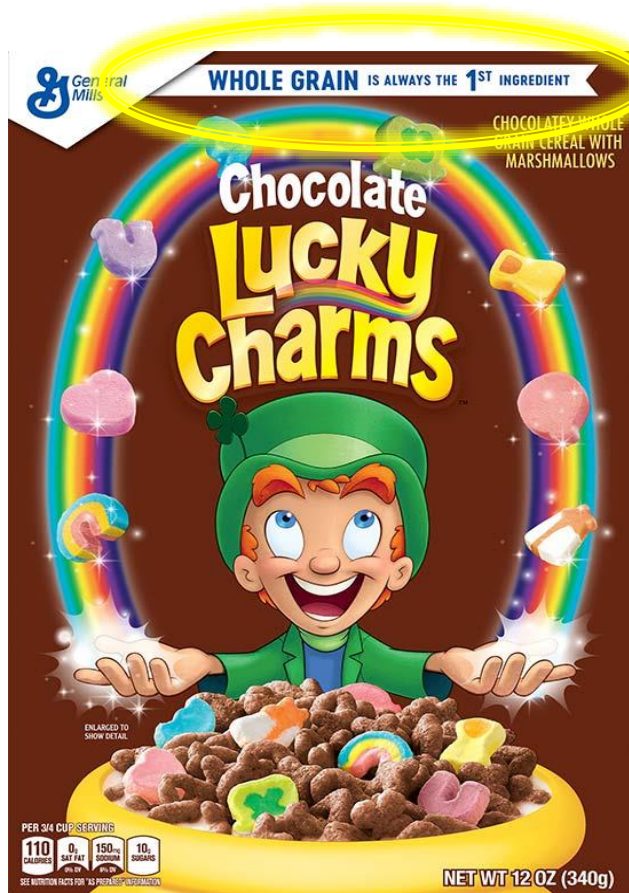


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Yet Can Consumers Identify Healthier Products?

Whole Grain Claims



Consumer Difficulty Identifying Healthier WG Products

- 1030 adults: cereal, crackers, bread
- Discrete choice experiment with mock-ups of products
 - 29–47 % of respondents incorrectly identified the less healthy product as healthier
- WG content comprehension assessment with actual product labels
 - 17–51 % of respondents found high WH content for products primarily composed of refined grains
- One product composed primarily of WG, 17 % of respondents understated the WG content.

Fruit Drink Issues



Fruit Drink Study

- The most common drink marketed for and consumed by young children in the U.S.
- 1603 parents of children 1-5 years old
- 8 most popular drinks– while viewing PDP and Information Facts Panel

Consumer Confusion

- Majority could not identify drinks with non-nutritive sweeteners (53%-58%)
 - Acesulfame potassium, sucralose
- Many incorrectly believed that:
 - sweetened flavored waters had no added sugar (24%-25%)
 - unsweetened juices contained added sugar (38%-43%)
 - and 100% juice contained less than 100% juice (37%)

Fruit Drink Issues



Toddler Drinks

The Washington Post
Democracy Dies in Darkness

Business

Sweet excess: How the baby food industry hooks toddlers on sugar, salt and fat



The 2019 consensus statement by leading U.S. health organizations, including AAP and Academy of Nutrition Dietetics, recommended against serving toddler milks.

Toddler Drinks, USA

Mead Johnson Enfagrow Toddler Transitions



Mead Johnson Enfamil Infant 1



Mead Johnson Enfagrow Toddler Transitions Gentlease



Mead Johnson Enfamil Gentlease



Mead Johnson Enfagrow Toddler Transitions Soy



Mead Johnson Enfamil ProSobee



Gerber Good Start 3 Soy



Gerber Good Start 1 Soy



Claims on Toddler Drinks



- “brain Nourishing DHA and iron to help support your toddler’s brain development”
- “DHA like that found in fish for brain”
- “DHA and iron to help support brain development”
- “Lutein like that found in spinach for eyes”
- “Vitamin E like that found in broccoli for development”
- “probiotics to help support digestive health”
- “prebiotics designed to help support digestive health”

No FDA Regulation for Structure Function Claims on Food



Consumer Confusion

- Survey 1,645 U.S. caregivers of infants/ toddlers
- For toddler caregivers, the odds of serving toddler milks increased by 59% with each point of agreement with common toddler milk marketing claim that it provides nutrition not found in food/drinks
- 11% of infant caregivers reported serving toddler milk to their infants
 - >50% of them believed they were serving infant formula
- 52% of caregivers of infants agreed that infant formula can be better for babies than breastmilk(!)

THANK YOU

Comments/Questions?

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