

Hello again!

I didn't think I'd be writing again so soon but just after I sent off Update #8 I learned that yesterday New York federal judge Robert Sweet (great name for a judge deciding an obesity case!) again dismissed the overweight teenagers' case against McDonald's. Just two weeks ago I reported (in Update #7) that despite a January dismissal "the plaintiffs filed an amended complaint and the case is still very much alive." I guess I'll have to eat those words!

In his latest ruling Judge Sweet pointed out that in his January dismissal ruling he gave the plaintiffs guidance on the type of misleading advertising allegations needed to state a valid claim. The plaintiffs in fact attempted to follow this guidance in their amended complaint by focusing on advertising rather than the content of the food itself. Judge Sweet, however, found the amended complaint defective in two respects: (1) "[in]sufficient information about themselves to be able to draw a causal connection between the alleged deceptive practices and the plaintiffs' obesity and related diseases" and (2) "the plaintiffs have not alleged that those advertisements [about the food content of french fries and hash browns] were objectively misleading." As to (1), Judge Sweet posed a series of "unanswered questions.....What else did the plaintiffs eat? How much did they exercise? Is there a family history of the diseases which are alleged to be caused by McDonald's?"

Judge Sweet specifically prohibited any further amendment attempts so this case is over unless an appeal is filed within 30 days. At the risk of having to eat my words again, I expect that there will be an appeal and further rulings in this case.

Although the teenagers' lawyer has yet to comment, other plaintiffs' lawyers have vowed to fight on despite this setback. Analogizing to the tobacco "wars," John Banzhaf, a George Washington University Law School professor, commented, "It took us 30 years to get a smoking case to court and over 700 dismissals.... There are still many theories that have not been tested."

Hope this is helpful. As always, let me know if you have questions or comments.

Best regards.

Remy

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