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Legal Action from Parents over Fast Food in Schools ‘Not Far Off’

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When the Seattle School Board met last Thursday to decide whether to renew a lucrative yet controversial contract with Coca-Cola for the running of drinks machines in its schools it was forced to take account of more than the usual pressures from health campaigners and parents.

Less than a month earlier every member of the board personally received a statement from one of the US's most effective anti-tobacco attorneys, John Banzhaf, professor at George Washington University School of Law, setting out the case for legal action if they approved the deal with the fizzy drinks giant.

The threat could not be taken lightly. Since Banzhaf extended his pursuit of the tobacco industry to “big food” the public interest lawyer can boast of significant victories.

A class action put together by his law students charged McDonald's with failing to reveal that its chips contained beef fat. Although McDonald's originally branded the lawsuit as frivolous, the fast-food giant was eventually forced to settle by paying \$12.5 million (£7.8m).

In a narrow 4-3 vote the Seattle School Board approved the \$345,000 (£216,600) contract but agreed to significant concessions.

In middle schools the Coke machines will be switched off until after the end of the school day. In high schools the machines will be switched off until the afternoon – which means pupils will not be able to drink Coke over the lunch hour. In addition, the

board directed administrators to press Coke to fill a third or more of each machine with bottled water or 100% pure fruit juice.

Suing schools for making children obese by selling them sugar-filled fizzy drinks might seem like the latest extreme of American litigation culture but, according to a leading Scottish law firm, the action is not only justified but likely to be brought to a UK court soon.

Glasgow firm Ross Harper, which also represents smokers suing the tobacco industry, has already been contacted by parents seeking redress for the junk food and fizzy drink their children are given in schools. And partner Jim Price believes a test case will be brought in the UK shortly.

When 20-stone Caesar Barber, a 56-year-old American, tried to sue fast-food chains for his obesity, diabetes, high blood pressure and two heart attacks, claiming he did not know burgers could cause this harm, the case was widely dismissed as ridiculous.

But a second obesity lawsuit soon reached the courtroom. Two teenage girls, weighing a total of 31 stones, tried to sue McDonald's, claiming the fastfood giant made them fat. The girls were carefully chosen by New York attorney Samuel Hirsch – they both came from the Bronx, a symbol of American urban deprivation and, as children, it was easier for them to claim that they did not know the dangers or were less able to make informed choices about their diet.

Although the case was initially rejected by a judge it has been resubmitted in an amended form.

And earlier this month Kraft, one of the world's biggest processed-food firms, announced that is to reduce the amount of harmful hydrogenated fats in its products following a lawsuit filed against it by Stephen Joseph, a British lawyer now based in San Francisco.

Joseph sued Kraft for not disclosing the trans fat content in its Oreo cookies. He dropped the case days later after it received international media attention and Kraft said it would address the issue.

Lawyers say school boards and education departments will be the next targets of obesity lawsuits. They believe it will be easier to win a damages case against an education authority than a fast-food company because schools have a greater duty of care to their pupils.

In a letter to members of the Seattle School Board, Banzhaf, explaining the basis of his case, says: "Schools and school board members have a much higher and more encompassing legal duty to their students than fast-food restaurants and other merchants do.

“Merchants owe everyone a duty of ‘reasonable care’. But, the law suggests, school boards owe a higher and more exacting legal duty to children – in the nature of a fiduciary duty.

“Students (as well as their parents) trust that when a school suggests or even facilitates a student engaging in an activity that the school has determined that it is reasonably safe and in the best interest of the student to do so.

“In the instant situation it is very hard to argue that consuming sugary soft drinks, especially during school hours, is healthy or in the student’s best interests. Therefore, that alone could create potential liability. ”

It adds: “Two additional factors add to the strength of the legal argument. The first is that the school often receives money from the contract in the form of commission, bonus, or incentive. Second, students are often a captive audience.”

Price, a partner at law firm Ross Harper, says it is just a matter of time before a similar action is launched in the UK. His firm, which has several branches in central Scotland, has already been contacted by parents worried about the food and drink their children consume at school.

“If a particular food or drink is promoted to them and a vending machine is in the school children will be led by that. They will think ‘the school has put that there, therefore this cannot be bad for me’.

“The principle is exactly the same here as in the US. If a school is filling children with food and drinks that they know are bad for them then the case is the same.

“Such an action is not far away. We have already had calls from parents about this. It will not be long before this is tested.

“We have had calls in relation to meals within schools and other products sold within schools. People are not happy with the choice and are asking for this to be expanded. They are looking for a legal solution.

“They have tried going through the schools and the local authorities but are told that it is not their decision or that they have a restricted budget. They come to us because they have not found a solution.”

He added: “A parent doesn’t have a choice about sending a child to school – you cannot not send a youngster to school and a normal child will eat at some point.

“Children are captive consumers and certain foods are being promoted to them. It is not a big step for parents to think ‘if this food is not to quality then who should be liable – perhaps the local authority, perhaps the school?’

“What we are dealing with is people saying ‘hold on, my child goes to that school, and the food and drink sold there is of detriment to my child.’

“What members of the public say is the litmus test for us. They call us and say ‘my child is hyperactive because he’s been drinking cola at school all day’.

“What we would be asking a school is ‘did you have water as an option or just Irn-Bru, Lilt and Coke – or other types of sugary, fizzy drinks? Are you promoting drinks that could be proven to be detrimental?’”

The sponsoring of school canteens by fast-food companies is rapidly going out of fashion in Scotland. Glasgow City Council “debranded” its canteens after a leading health expert claimed the deals were a scandal. While McCain’s and Pepsi advertisements can still be seen in some Scottish schools, the Scottish Executive has advised local authorities against accepting such sponsorship.

Schools are more reluctant to get rid of fizzy drinks machines, however, with manufacturers willing to offer lucrative profit-sharing deals. Large secondary schools can make up to £12,000 a year from a single vending machine.

A survey carried out by the Sunday Herald found that while some local authority areas are introducing unbranded vending machines, others have no plans to end their deals with the soft drinks giants.

Martyn Day, who leads Leigh Day and Co’s award-winning litigation team, also believes schools could be at risk of obesity claims.

“A school has a much stronger duty toward a pupil than does a food manufacturer. However, the question is what could be claimed?”

“If you had a child going to boarding school, the child goes in a reasonable size, the school provides the child with a terrible diet of fatty foods, sugary drinks, etc, and the child turns out to be obese – one could imagine a good chance of claiming.

“It would be possible to contemplate a judicial review of the decision by the school to have these sorts of food. But I would be very surprised if a school had a policy of only supplying rubbish food. What is far more likely is that the school provides an element of choice which includes the fatty foods and sugary drinks.”

Persuading a court that what the child ate at school, and not at home, caused the obesity, would be difficult, he added.

But Price argues that, even if the first obesity case in the UK fails, the next one will learn from the ruling and form a stronger argument.

“This will be tested at the point when we get members of the public with the correct set of circumstances. America may be quicker than us but, irrespective of where they live, parents will go to any length to protect their children.”