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Fat: The Next Tobacco

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For decades, John Banzhaf III was known as the only lawyer in the world willing to take on Big Tobacco. He won that one, engineering roughly 900 lawsuits that eventually persuaded juries to award billions of dollars in compensation.

Now he's going after fat. Using the same legal approach, he has sparked what is widely seen as a movement to force fast-food companies to cut the calories and fat content in their products -- and to tell consumers just what they're consuming.

"We've demonstrated that it can work and can be a very effective weapon," he said this week from his office in the law faculty at George Washington University in Washington, D.C. "If I can take the same concept and make it work, to me, that is wonderful feedback."

One sign that the Banzhaf anti-fat movement has the industry's attention is the announcement this week that Kraft Foods, the world's second-biggest food and beverage company, will make some changes in the way it operates. Its stated goal: to help cut rising obesity rates around the world.

The massive company's stock-in-trade includes such familiar products as Miracle Whip (introduced in 1933), Kraft dinner (1937), processed cheese slices (1950) Tang breakfast beverage crystals (1957), not to mention the modern school staple Lunchables (1988). It has pledged to try to make its products more nutritious, to cap sizes of single-portion packages, to stop marketing at schools and put nutrition labels on its products even where a country's law doesn't require it.

The Kraft announcement was not prompted by a lawsuit, but Mr. Banzhaf said that a flurry of suits against other food companies, and letters explaining that they may be partly responsible for the world's growing obesity epidemic, likely played a role.

In fact, because Kraft is such an influential company -- it says its products are in 99 per cent of U.S. homes and in millions of other households around the world -- the move this week is likely to spur the anti-fat movement. Mr. Banzhaf said Kraft's decision may help policy-makers and even other lawyers take the issue more seriously.

It's no coincidence, he said, that Kraft's parent company is the tobacco giant formerly known as Philip Morris Companies Inc. (the name became Altria Group, Inc. in January). The company was among the hardest hit by awards from tobacco litigation, and Mr. Banzhaf said he believes Kraft saw the fat lawsuits filed over the past several months and took pre-emptive steps.

Four of those lawsuits have already succeeded, including one filed against McDonald's. The burger bastion had failed to tell customers that it was flavouring its fries with beef tallow, a decade ago after announcing that it had begun to fry them in vegetable oil. The award calls for \$12.5 million (U.S.), largely to go to Hindu and vegetarian charities, and a written apology.

The lawyer in that case, Harish Bharti of Seattle, said in an interview with India Abroad that it's the first time in 100 years that a big corporation has "apologized, admitted wrongdoing, and agreed to disclose ingredients when they had been hiding for years. This is an unheard-of result in this country."

A second suit, filed by a journalist in New York City, won an award between \$3-million and \$4-million (U.S.) because Pirate's Booty, a calorie-reduced snack food, contained undisclosed fat and calories.

The third win was a suit in California that accused Kraft of putting undisclosed trans-fatty acids in its Oreo cookies. Within days, Kraft said it would take out the fats and the lawsuit was withdrawn.

A few days ago, a fourth suit succeeded when New York City schools pledged to follow the lead of Los Angeles and cut sugary drinks, candy and fatty snacks from vending machines.

What is behind Mr. Banzhaf's anti-fat zeal? A study by the U.S. Surgeon General in 2001 caught his attention when it stated, quite simply, that obesity had risen to become the second most serious public-health issue in the United States, killing 300,000 Americans every year. Tobacco use remains the first, killing 420,000.

Since 1980, obesity has doubled among American adults -- and tripled among adolescents. In Canada, 37 per cent of children between 2 and 11 are overweight and half of them are obese. Among adults, 32 per cent are overweight and 15 per cent are obese.

And the trend here toward obesity is growing, along with bad eating habits. The Ottawa-based National Institute of Nutrition found in a survey in 2001 that 21 per cent of

Canadians rated their eating habits as fair or poor, blaming it on a busy lifestyle and fast-food consumption.

Faced with such figures, Mr. Banzhaf felt compelled to take on fat. He started doing research and found that smoking cost the U.S. health system \$140-billion (U.S.) a year, but obesity was close behind at \$117-billion. What's more, one economic study has attributed roughly 65 per cent of obesity to eating at fast-food restaurants.

In February, a report in the respected international journal *New Scientist* revealed that some fast foods can act on the brain in the same way as nicotine and heroin; in other words, people can become addicted to them.

Then Mr. Banzhaf started to hear reports, still unproved, of fast-food practices that echoed some of what he had dealt with in the tobacco world. In tobacco, the allegations were that companies had spiked their products with extra-strength nicotine to make them less resistible. In court, they admitted to using ammonia to enhance the nicotine.

Mr. Banzhaf, fed information from fast-food insiders, heard that some companies might be changing the cooking temperature of products to increase the amount of fat they absorbed, adding sugar to foods such as french fries where the consumer wouldn't expect it, and spiking their foods with appetite stimulants.

It galvanized him. While he doesn't write the lawsuits or file them (or make money from them), he acts as their inspiration and sometimes figures out the legal wrinkles behind their wording. Last month, about 120 people interested in taking fat to court gathered in Boston to learn the ropes from him. He chuckled at the number. When the tobacco suits started, they were lucky to get 20 would-be litigants in a room, he said.

It hasn't all been clear sailing. As his anti-fat movement has grown and become more successful, so has the ridicule against him. The Center for Consumer Freedom, funded in part by the food industry, has started a national television ad campaign aimed at painting the lawyers filing the suits as money-hungry. One shows a lawyer in court arguing that "reckless cookie baking" has made his client fat and accusing her of making them "taste good on purpose." The defendant is a little girl in a scout's uniform.

A poster published by the agency shows a man's fat bare belly, hanging over his belt, with the caption: "Did you hear the one about the fat guy suing the restaurants?" In another poster, his belt is stuffed with money, reminiscent of a table-dancer. A third asks the consumer if he or she is too stupid to choose good foods.

Still, Mr. Banzhaf thinks the case against the fast-food industry is strong. He said the key similarity with the tobacco cases is that the law recognizes divided or joint responsibility when it comes to harm. So, yes, people decided to smoke, but the products had too few warnings and were addictive.

In the case of fast-food, people bear some responsibility for eating too much fast food, but the industry needs to do a better job of explaining what is in the food they choose. Kraft's concessions this week and those of several other prepared-foods companies are "tender little baby steps" compared with what needs to be done, he said.

For example, he wants fast-food chains such as Burger King, KFC, McDonald's, Taco Bell and Wendy's to tell customers exactly what the fat and calorie content of their food is, as the customer is choosing it. He'd like to see fat and calorie counts on menu boards along with prices.

As well, he wants to see appropriate warnings over how much of the food consumers should eat. In France, for example, McDonald's has put up signs explaining that its food should not be eaten more than once a week. Frito-Lay and Pepsi have promised to put warnings on their foods saying that the products are snacks and must not be eaten every day.

Finally, Mr. Banzhaf argues that the chains must provide healthier alternatives. In England, for example, McDonald's offers fruit instead of fries. And Burger Kings have started offering baked potatoes instead of fries.

The next frontier is the school. In many parts of North America, boards of education have been striking exclusive deals with soft-drink manufacturers to place their products, and no others, in vending machines. The boards receive a share of the profits, and the companies enjoy a captive audience.

This week the Seattle Times reported that more than 90 percent of middle and high schools sell soft drinks and that about 10 per cent have exclusive contracts with manufacturers to provide them. Mr. Banzhaf threatened to sue if the five-year contract with Coca-Cola is renewed, again citing the epidemic of obesity among children.

The board says it will decide what to do by July 17.