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BIG SODA FIRES BACK

BY ANDRÉA MARIA CECIL

American Beverage Association sues San Francisco over health-warning language on ads for sugar-sweetened beverages.





It's not the occasional 8-oz. soda that's worrisome. It's the fact that most people who drink soda guzzle much more than just one, noted Marion Nestle, professor of nutrition, food studies and public health at New York University.

On a typical day, 80 percent of children and adolescents and 63 percent of adults consumed sugar-sweetened beverages in 2010, according to the [U.S. Centers for Disease Control and Prevention](#). In 2012, 17.1 percent of adults drank soda at least once per day across 18 states, according to the agency's "[Morbidity and Mortality Weekly Report](#)" published Aug. 15, 2014.

Soft drinks contributed more energy to the American diet than any other single type of food or beverage, according to a 2010 University of California, Berkeley, study titled "[To What Extent Have Sweetened Beverages Contributed to the Obesity Epidemic?](#)" They also were the top source of liquid energy in the U.S. diet, the study stated. And soda, specifically, accounted for more than 60 percent of the calories Americans consumed as sweetened beverages, according to the report.

"Some studies find that even one 12-ounce soda a day is associated with an increased risk for type-2 diabetes," Nestle, author of the forthcoming book "Soda Politics: Taking on Big Soda (and Winning)," told the CrossFit Journal. She has no relation to the food company with the same name.

Dr. Barry Sears, creator of the Zone Diet, explained it plainly.

"No one's going to drink a half a can of Coke the same way you're not going to eat a half banana," he said. "Once you peel the banana, you're gonna eat it."

This is part of what motivated the City of San Francisco to pass two ordinances—both enacted last month—one of which requires a warning on advertisements for sugar-sweetened beverages:

"WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay. This is a message from the City and County of San Francisco."

The [American Beverage Association \(ABA\)](#) didn't take kindly to that.

Science has linked consumption of sugar to health problems, but the ABA hopes to avoid tobacco-style health-warning language on beverage advertising.



Scott Wiener, a member of the San Francisco Board of Supervisors, said he wasn't surprised by the ABA lawsuit.

On July 24 the ABA—the trade group that represents the country's nonalcoholic beverage industry—filed a lawsuit against the City and County of San Francisco, claiming the municipality's two ordinances violate the First and 14th Amendments. The suit was filed in the United States District Court, Northern District of California. Joining the civil action are the California Retailers Association and the California State Outdoor Advertising Association. The First Amendment to the U.S. Constitution guarantees multiple freedoms, including speech, while the 14th Amendment speaks to “equal protection of the laws.”

The first ordinance—an **amendment to the city's existing administrative code**—prohibits advertising of sugar-sweetened beverages on municipal property. The code already bans advertising of tobacco products and alcoholic beverages on city property. It also bars the name of any company producing, selling or distributing any of those products from “any promotion of any event or promotion of any product or beverage” on city-owned or controlled property.

The second—an **amendment to the city's health code**—requires ads for sugar-sweetened beverages to include the warning. The amendment also authorizes the Director of Health to impose penalties for those who don't comply.

San Francisco's Board of Supervisors passed both amendments on June 16. They were enacted in July.

Together, the ordinances “seek to replace the free marketplace of ideas with a single government-imposed viewpoint. Private speakers who disagree with this viewpoint must stop speaking, parrot the government's opinions, or pay a fine,” according to the ABA's suit.

“The City apparently mistrusts the people's competence to hear competing views about sugar-sweetened beverages and decide for themselves whether or how to consume them.”

Both ordinances should be “struck down,” the suit states. The plaintiffs also want injunctive relief to halt the city from enforcing or threatening to enforce any part of the ordinances against the plaintiffs and any of the plaintiffs' members.

The ABA is based in Washington, D.C., and its members include **The Coca-Cola Company** and **PepsiCo**.

“Our opposition to these ordinances is to preserve our rights to do business on a level and constitutional playing field. Our industry remains committed to providing clear, transparent information to help people make informed decisions about what beverages are

best for them and for their families,” reads a previously released written statement the ABA provided to the Journal through an outside spokeswoman.

Latham & Watkins, also based in Washington, D.C., is representing the ABA and declined to comment further through spokeswoman Jamie Elise Zuieback.

The ABA's suit came as little surprise to San Francisco, said **Scott Wiener**, a member of the city's **Board of Supervisors** and author of the health-warning language.

“We expected the soda industry to file suit against the health warning legislation. This legislation is groundbreaking—the first time any government has required health warnings in connection with sugary drinks. The soda industry has unlimited resources and has proven over and over again that it will do and spend whatever it takes to prevent communities from taking bold action to protect residents from the health consequences of consuming sugary drinks,” he wrote in an email.

Harold Goldstein, director of the California Center for Public Health Advocacy, also said he expected the ABA to challenge the ordinances.

“The last thing the beverage industry wants is the equivalent of skull and crossbones on all their ads or all their bottles,” said Goldstein, who holds a doctorate in public health.

The Davis-based organization has been going toe to toe with both Big Soda and Big Food since its inception in 1999.

“I'm interested in solving the obesity-and-diabetes epidemic,” Goldstein said.

The most effective and efficient step to lower the diabetes rate among Americans is to “dramatically reduce the drinking of sugar,” he added.

Both Goldstein and Wiener expressed confidence in San Francisco's being able to successfully defend against the ABA suit.

Government requires health warnings on cigarettes and alcohol ads, both men noted.

“And those warnings are legal,” Wiener said. “So are these warnings for soda ads.” ■

About the Author

Andréa Maria Cecil is assistant managing editor and head writer of the CrossFit Journal.



Harold Goldstein, director of the California Center for Public Health Advocacy, said drinking less sugar is a very effective way to reduce the incidence of diabetes.