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Don't Let Plaintiffs Get Fat on Rising Food Addiction Complaints

DLA Piper's Chris Gismondi and Angela Agrusa say courts need to be careful with addiction suits, as doctors haven't agreed whether ultra-processed foods are addictive.

Courts face new challenges as they adjudicate cases about a wide range of "addictions" that go beyond drug or alcohol dependance. Including nicotine use and gambling, for example, already put a medical diagnostic term into the common vernacular to describe an individual's frequent and sometimes compulsive behaviors.

People now self-describe addiction—typically without diagnosis—to devices, hobbies, activities, and food. Ambitious plaintiff lawyers are seizing on this cultural moment by filing lawsuits seeking compensation for undiagnosed "addictions" and the negative consequences alleged to flow from them.

Addiction-related lawsuits are pending against social media companies, video game developers, and food manufacturers. In December 2024, plaintiffs sued 11 food makers, claiming they produce nutrient-dense, "ultra-processed foods" designed to be addictive and seriously injure addicted consumers. The complaint frames the issue as Tobacco 2.0, and attorney advertising and plaintiff screening tools seek to attract additional plaintiffs.

Courts must scrutinize these claims. An injury must actually exist, and the plaintiff must actually suffer that injury, for the claim to proceed. And while the plaintiffs' bar has declared ultra-processed foods addictive, the medical community hasn't.

"UPF addiction" is a proposed mental health condition based on the inference that ultra-processed foods (but not all foods) are addictive due to their effect on the body's reward system. The Yale Food Addiction Scale is the proposed diagnostic tool used to identify UPF addiction, which leverages the criteria used to diagnose substance use disorder such as alcoholism and drug addiction.

An individual is UPF addicted, according to the Yale scale, if they self-endorse at least two of 11 criteria, which include negative consequences, attempts to cut down consumption, withdrawal, belief of psychological injury, or interference with life.

The Yale scale and food addiction were rejected for inclusion in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, or DSM-5, the authoritative guide on mental health disorders. Federal and state assistance for mental health conditions often require a DSM diagnosis. The Reference Manual on Scientific Evidence for litigation states that the DSM embodies the "standard nomenclature and diagnostic criteria for mental disorders."

Despite this, some researchers claim rising obesity rates are evidence of—and a justification for—declaring UPFs addictive. This thinking is far too simplistic, as multiple factors may be attributing to the rise in obesity and diabetes.

For example, modern lifestyles, with lesser average physical workloads and greater time sitting, have been linked to weight gain and obesity. Advances in agriculture and food processing have made food more accessible and affordable. Global food availability between 1961 to 2013 has grown from 2200 kcal/cap/day to 2884 kcal/cap/day, according to the Intergovernmental Panel on Climate Change.

But researchers attempting to establish UPFs' addictiveness have adopted the "nicotine addiction" model. They argue that UPFs, like nicotine, can cause compulsive use, psychoactivity, reinforcing behavior, and cravings, citing binge eating, eating past satiation, and cravings as evidence. They also cite rodent studies demonstrating the reward system (dopamine release) is triggered in response to certain types of UPFs in a similar fashion to drugs and alcohol.

But this is another oversimplification. Other explanations for the behavioral phenomena of compulsive eating and cravings include that certain types of UPFs simply taste good, and the reward provided by the taste is being confused as addiction.

Dopamine release isn't unique to drugs and alcohol—the reward system is triggered by many events that bring us pleasure, including charitable donations. If dopamine release were all that was needed to diagnose addiction, then almost anything that brings pleasure could be deemed addictive.

To account for this, and to bolster the "addiction" argument, researchers and plaintiff lawyers must attach a behavioral response, typically in the form of negative consequences that are serious enough to trigger a need to for the average person to stop consuming UPFs.

While certain diseases from overconsumption, such as obesity and diabetes, might fit the mold of a negative consequence, the food addiction scale diagnoses many individuals who are normal weight and underweight with addictions.

This may be explained by issues with a scale that is based entirely on self-assessment, putting it at risk for bias, misdiagnosis, and overdiagnosis. Individuals who have complex relationships with food, such as those suffering from anorexia, often are misdiagnosed with food addiction based on the scale.

The few limited studies and journal articles that support the UPF addiction theory rely on research related to foods that are high in sugar and fat such as pastries, candy, packaged snacks, fast foods, and sugar-sweetened beverages. But UPF is a far broader classification of food that includes everything from chicken stock to veggie burgers to frozen foods.

There are plenty of UPFs that don't contain high levels of sugar and fat and are considered part of a healthy diet. To find that UPFs as a category, as opposed to certain ingredients in certain types of UPFs, are addictive is to conclude that chicken bouillon could cause addiction—a leap that's likely too far for even the most creative plaintiff attorney.

Threshold medical questions are unresolved as to whether UPFs, or even food, are capable of being addictive and, if so, how to objectively diagnose such a condition. The courts shouldn't open the door for protracted litigation while so many questions remain unanswered.

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