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Charles Cantu, *Saint Mary's University of San Antonio*



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*Fattening Foods: Under Products Liability Litigation is the Big Mac Defective?*

Charles E. Cantu

1 J. FOOD L. & POL'Y 165 (2005).

Excessive consumption of fast food may produce negative results, but it does not render fast food products, like the McDonald's Big Mac, defective. While no product is technologically perfect, and any product can cause injury, American jurisprudence has always held purveyors of defective food liable. The question is whether fattening foods, such as the Big Mac, are defective under a strict products liability theory.

The cornerstone of this cause of action requires a product to be defective, which may stem from: (1) mis-manufacturing, where the product enters the stream of commerce in an unintended condition; (2) mis-marketing, where the risks are not obvious or commonly known, and the product's warnings or instructions are inadequate; or (3) mis-designing, where the ingredients, qualities, or features of the product have been consciously intended by the manufacturer, but are allegedly unsafe—the risks of the product outweigh its benefits.

The most likely question is whether fast food products should be considered mis-designed. The burden to prove that a product is mis-designed involves presenting feasible alternatives for the product. It is true that a leaner version of the Big Mac will be healthier, technologically feasible, cost efficient, and just as marketable and useful as the current version; but will it be safer? Just as tobacco can be harmful, but is not considered unsafe, excessive consumption of fast food may produce negative results, but also should not be considered unsafe. Fast food, however fattening, cannot be considered defective under products liability law.

Keywords: McDonald's, Big Mac, fast food, products liability law, diet, "Atkins," "Sugar Busters," Restatement (Second) of Torts § 402 (A) (1965), mis-manufacturing, mis-marketing, mis-designing, ingredients, qualities, features, technology, fattening, cost efficient, defective.