

THE TRUTH-IN-MENU LAW AND RESTAURANT CONSUMERS

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ABSTRACT

This study uses nutrition and descriptive claim information factors covered by the Nutrition Labeling and Education Act (NLEA), the "Truth-in-Menu" law, to have consumers identify which factors are most important when choosing restaurant menu items. The results show server knowledge of menu items is the most important factor for survey respondents followed by the visual presentation. Restaurateurs use the Truth-in-Menu law to ensure that the information provided about menu items is accurate and conforms to the federal regulations set forth by the NLEA.

INTRODUCTION

For many people, restaurant dining is no longer reserved for special occasions. It is a daily event. Consider the following possibilities: tableservice, fast food, dining in the car, in the office, in the air, Asian, Caribbean, Tex-Mex, seven days a week, twenty-four hours a day, casual neighborhood, sophisticated urban and down home country. In essence, the restaurant industry has become an embodiment of the American spirit - offering consumers the freedom to choose to eat whatever, whenever and wherever they want (National Restaurant Association 1998).

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Given this wide array of possibilities, nearly half of each food dollar is spent on food that is eaten away from home and almost half of all adults are restaurant patrons on a typical day (National Restaurant Association 1999). Whatever the setting, the first item that greets a customer or that is requested upon entering a restaurant is the menu. A decade ago, menus were epic lists with descriptions that stretched to “War and Peace” lengths. Today, menus are savvy marketing instruments aimed at attracting and retaining customers and ultimately answering the question “What would you like to order?” (Sietsema 2000).

In the 1980’s consumers demanded a variety of more nutritious offerings and nutrition information (Regan 1987). Thus health claims became a hot issue and marketing strategies on menus began to reflect the role of nutrition in promoting health. At that time, some of the claims used were misleading (Food and Drug Administration [FDA] 1998). In order to ensure that restaurant foods are accurately represented, menus are now governed by laws that regulate the claims that they can or cannot make. In 1995, a survey conducted by the FDA indicated that 25% of consumers were using health claims to make more informed food choices (FDA 1998). But do restaurant consumers, in this the new millennium, still see these laws as important to the menu choices that they make when dining out? Given this background, the object of this research is to exam how important the elements covered in the Truth-in-Menu law are to consumers.

BACKGROUND

Truth-in-Menu also known as “Accuracy-in-Menus” and “Truth-in-Dining” is a term used to describe regulations governing restaurant menus. Truth-in-Menu used to be the domain of state laws, which were based on federal regulations regarding advertising and packaging for food and beverage items. The Los Angeles, California courts were among the first to set forth the goal of the Truth-in-Menu law which is to guarantee that buyers of food and drink get what they have ordered (Goodwin and Gaston 1992). Earlier restaurant practices that encouraged states to enact Truth-in-Menu laws include adulteration of products, hamburgers not meeting specifications and imitation hamburgers being offered to customers as real hamburgers. These state guidelines were then replaced by the Federal Nutrition Labeling and Education Act (NLEA) of 1990 (Sherry 1994). States may, however, have stricter guidelines than the Federal law.

The 1938 Food, Drug and Cosmetic Act, an amendment of the 1906 Pure Food and Drug Act, is still the leading law in food and drug regulation and has been modified many times to reflect the needs of consumers and the changing food industry. This law required name, ingredient and weight labeling on processed and packaged foods. Since 1938, changes to the law include the passing of the Oleomargarine Act in 1950 which requires prominent labeling of colored oleomargarine to distinguish it from butter, and the 1966 Fair Packaging and

Labeling Act which requires all consumer products in interstate commerce to contain accurate information thus aiding consumers with value comparisons of food products (Kurtzweil 1993).

The 1969 White House Conference on Food, Nutrition and Health is recognized as the landmark event at which food regulatory emphasis first expanded from an exclusively economic focus to one that could address the information provided on food packages. This conference led to several food labeling initiatives undertaken in the years 1973 and 1974 by the FDA and the U.S. Department of Agriculture (USDA) to set standards for the voluntary provision of nutrition information on food labels (Ghani and Childs 1999).

In the 1980s, a change in the nutrition information claims on food labels emerged. Kellogg's promotion of All-Bran Cereal, in collaboration with the support of the National Cancer Institute, claimed that the high-fiber product was part of a diet that could reduce the risk of certain kinds of cancer. This information, corroborated by the National Academy of Sciences and encouraged by the Federal Trade Commission (FTC), led the FDA to alter its enforcement position on health claims on food labels. A host of nutrition and health claims emerged in the ensuing years, and over time, it generally was concluded that the FDA did not have an enforceable nutrition and health claim policy for food labels (Calfee and Pappalardo 1991; Hutt 1986; Keystone Center 1996; Porter and Earl 1990; Scarlett 1992).

In 1990, the most significant piece of food labeling legislation in recent history was passed amending the Food, Drug, and Cosmetics Act of 1938. The Nutrition Labeling and Education Act of 1990 (NLEA) (1990, 21 U.S.C. 301) establishes an extensive set of nutrition label requirements for the labels of virtually all consumer processed food products. The regulations cover nutrient labeling in detail, as well as other factors such as determining serving size, the number of servings in a package, geographic origin of foods, quantity, quality of the food product, method of preparation, representation of merchandising terms, misbranding, as well as adulteration and substitution of foods. The amount of calories, fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein must also be included on these labels. The information on nutrition requirements however, was not binding on the restaurant industry.

The FDA allowed restaurants leeway when making health or nutrient content claims on menus. However, the agency had to reverse that policy in light of the civil action suit of *Public Citizen Inc. et al. v. Donna Shalala* (1996). Public Citizen Inc. and the Center for Science in the Public Interest (CSPI) among other plaintiffs challenged the decision of the FDA to exempt restaurant menus from the NLEA of 1990. The plaintiffs argued that this decision actually violated the NLEA. The FDA reasoned that menus are subject to frequent change and that the requirements might deter restaurants, especially small ones, from providing useful nutrition related information on menus. Summary judgment made for the plaintiff. The judge found that exempting restaurants was contrary to the meaning of the

statute and ordered the FDA to amend the NLEA labeling requirements to cover restaurants. This amendment to the NLEA of 1990 to include nutrition and health claims made by restaurants was passed in 1997. The NLEA thus affects all eating establishments--whether it be a small-town corner tavern, big-city four-star restaurant, or a grocery store deli (Kurtzweil 1997).

The Law in its current revised form as of April 1, 2000 under Title 21--Food and Drugs, Subpart A-- General Provisions, Section 101.10 states that:

Nutrition labeling in accordance with Sec. 101.9 shall be provided upon request for any restaurant food or meal for which a nutrient content claim (as defined in Sec. 101.13 or in subpart D of this part) or a health claim (as defined in Sec. 101.14 and permitted by a regulation in subpart E of this part) is made, except that information on the nutrient amounts that are the basis for the claim (e.g., "low fat, this meal provides less than 10 grams of fat") may serve as the functional equivalent of complete nutrition information as described in Sec. 101.9. Nutrient levels may be determined by nutrient databases, cookbooks, or analyses or by other reasonable bases that provide assurance that the food or meal meets the nutrient requirements for the claim. Presentation of nutrition labeling may be in various forms, including those provided in Sec. 101.45 and other reasonable means (Food and Drug Administration 2000).

An example of a violation of the NLEA with respect to nutrition claims follows. In the *State of California v. High Tech Burritos* (1997), the aim of High Tech Burritos was to provide a healthier alternative to some burrito shops by serving lighter fare. The company failed to react swiftly to new amendments in the NLEA laws and was sued by state and local prosecutors who alleged that High Tech Burritos had exaggerated the health benefits of its foods. The company paid \$95,000 in fines and was required to drop all references to its food being heart healthy and meeting guidelines set by the American Heart Association (Coile 1997; Melendy 1997). In another example, Kentucky Fried Chicken (KFC) was forced to rename its "Lite and Crispy" chicken to "Skinfree Crispy" and pay a fine of \$25,000 because the number of calories in the product was virtually identical to the "Original Chicken" recipe (Cournoyer *et al.* 1999).

Various sections of the Law cover descriptive claims that are also referred to as nonnutrition or nonhealth claims. For example, Title 21--Food and Drugs, Part 101--Food Labeling, Subpart F describes specific requirements for descriptive claims that are neither nutrient content claims nor health claims. Sec. 101.95 details definition for terms such as "Fresh," and "Freshly Frozen". The Law currently states as of April 1, 2000:

... (a) The term "fresh," when used on the label or in labeling of a food in a manner that suggests or implies that the food is unprocessed, means that the food is in its raw state and has not been frozen or subjected to any form of

thermal processing or any other form of preservation, except as provided in paragraph (c) of this section (Food and Drug Administration 2000).

While Section 403 of the Food and Drug Act states:

... Under the provisions of section 403(c) of the Federal Food, Drug, and Cosmetic Act, a food shall be deemed to be misbranded if it is an imitation of another food unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(1) A food shall be deemed to be an imitation and thus subject to the requirements of section 403(c) of the act if it is a substitute for and resembles another food but is nutritionally inferior to that food... (Food and Drug Administration 2000).

In the 1978 case *California v. McDonald's* the potential liability or violations of these two aspects were shown when the City Attorney charged in his suit against the fast-food company that placemats advertised, first that "maple" syrup was served on the premises, and second, that "fresh" orange juice was served. The City Attorney claimed that the syrup served by McDonald's was in fact an imitation and not pure and that the orange juice was frozen rather than fresh (Jefferies 1995). The goal of the NLEA and its amendment is to make sure that restaurants provide accurate and complete information about the food provided to consumers.

RESTAURANT MENUS IN THE 21ST CENTURY

It has been a decade since the inception of the NLEA and four years since restaurants have been regulated with respect to the nutrient content and health claims that they can make. Restaurant consumers now may use the Truth-in-Menu law to ensure that restaurants prepare and serve top quality menu items based on the standards defined by the FDA. Wendy's in 1997 had to reevaluate its Garden Veggie Pita and its nutritional brochure which listed the product as vegetarian after complaints that the product contained gelatin, a beef by-product, and therefore was not vegetarian (Zuber 1999).

During this decade the restaurant industry has also firmly established itself as an integral part of the American lifestyle and is predicted to be the leading purveyor of food by the year 2010 (National Restaurant Association 1999). The percentage of consumers who are concerned about nutrition but who are taste-conscious when eating out has also risen (American Dietetic Association 1991; Cetron *et al.* 1996; Clay *et al.* 1995; Regan 1987; Sneed and Burkhalter 1991). As restaurant patrons become more savvy about nutrition, the restaurant industry has indeed responded (Lefebvre 1987; Wenzel *et al.* 1999). Consumers, however,

continue to blame restaurants for making them fat (Sheridan 2000). Food establishments thus have the challenge of securing an image of satisfying customer nutrition needs and providing new tastes to excite customers (Cetron *et al.* 1996; Grazen and Bahn 1988; Grazen and Olsen 1997; Perlmutter and Gregoire 1998). In the twenty-first century, it is predicted that a multitude of challenges will face the foodservice industry. Consumers will continue to be more demanding as they have less time and are too rushed to prepare meals (Knapp 1998). The Truth-in-Menu law is indeed extensive covering among factors: nutrition claims, health claims, serving size, the number of servings in a package, geographic origin of foods, quantity, quality of the food product, methods of preparation, representation of merchandising terms, misbranding, as well as adulteration and substitution of foods. Which of these factors covered by the Truth-in-Menu law do restaurant consumers view as the most important?

METHODOLOGY

In order to ascertain what aspects of the Truth-in-Menu law are important to consumers when choosing menu items, a survey instrument was developed, tested, refined and implemented. After evaluating the merits of web-based data collection, the survey was administered online. Online data collection has significant advantages over older methods such as mail data collection as it is less intrusive, cost effective, with faster turnaround times (Weible and Wallace 1998). These facts are also supported by The Bureau of Labor Statistics which has produced guidelines for conducting online research, and states that Electronic Mail (E-mail) and World Wide Web (WWW) survey methodology embodies all the strengths of telephone data collection while eliminating many of its weaknesses (Clayton and Werking 1995). According to Edworthy (1999) the WWW has grown extensively in the past decade and it is estimated that there will be over one billion individuals on the net by the year 2005, enabling a wider generalization from web-based data.

In selecting an online environment, the population for the research study consists of US restaurant consumers who are members of various listserv groups. This survey was conducted using the services of twenty-eight listserv groups, fourteen groups interested in food and restaurant dining and fourteen groups not related to issues in food and dining. The rationale for including groups that showed no interest in food and dining is to obtain a wide cross-section of individuals as most individuals whether interested in food or not dine out at restaurants at one time or another. The managers of the listservs responded by sending email messages containing the web address of the survey to their members who in turn completed the web survey.

The survey consisted of seven questions. The first question sought to identify how often consumers dined out for each meal period. The second question asked

participants to describe the type of restaurants they patronized while the third question asked participants to describe their average spending per meal period. Question four utilized a four point Likert type scale. The scale ranged from "Not Important" to "Extremely Important". Question four was divided into three sections. The first section asked participants to rate the importance of nutrition information on restaurant menus. Section two asked participants to rate the importance of information on other descriptive claims such as brand identification, quantity and quality of foods and points of origin. Section three asked respondents to also rate the importance of restaurant menus carrying information on harmful ingredients and server knowledge of menu items. In order to ensure that the study group consisted only of US participants a check question was also included which asked where the individuals currently resided. The remaining questions focused on the demographics of the participants.

FINDINGS

Of the 330 questionnaires returned, 278 were useable surveys from US residents. The 21-34 age group accounted for 30.9% of the participants; 28.5% were aged 45-54; 27.7% were aged 35-44; 8.8% were 55 and older; while 4.2% were under the age of 21. Sixty-two percent of the participants were female. The majority of the participants surveyed did not consume breakfast at a restaurant, but 90% ate out for lunch at least twice per week and 92.4% ate out for dinner at least twice per week.

When asked what type of restaurants they normally dined at, 71.2% indicated that they normally dined at quick service restaurants such as McDonald's and Taco Bell at least once per month. This is consistent with general restaurant sales figures and patronage where the fast-food segment is the restaurant industry largest and most dominant section (Parsa 1999). Kasdan (1996) estimates that the average American adult visits a quick-service restaurant six times per month.

Midscale restaurants such as On the Border Café, Denny's and TGI Friday's followed the fast-food segment with 59%. Fifty-three percent of the participants also indicated that they dined at bars and grills at least once per month. Thirty-seven percent of the participants indicated that they also liked to dine at other restaurants such as locally owned "mom and pop" style restaurants, ethnic restaurants, as well as cafeterias. Respondents were allowed to choose as many restaurants as they desired from the list.

Participants (63%) indicated that they spent an average of \$5.00-9.99 on lunch each time they eat out. Forty-seven percent indicated that they generally spent an average of \$10.00-19.99 for dinner.

Using a four point scale where "Not Important = 1", "Somewhat Important = 2", "Very Important = 3" and "Extremely Important = 4", the mean and standard deviation for the importance of nutrition information on restaurant menus is shown

in Table 1. The results show that the respondents were only marginally concerned with the availability of information on fat, cholesterol, and calorie content of foods on restaurant menus. Participants were even less concerned with information on sodium content being available on restaurant menus.

TABLE 1.
THE IMPORTANCE OF NUTRITION INFORMATION ON RESTAURANT MENUS

| Information on: | Mean | Standard Deviation |
|------------------------|-------------|---------------------------|
| Fat and Cholesterol | 2.14 | 1.07 |
| Calorie Content | 2.06 | 1.01 |
| Sodium | 1.92 | 1.00 |

Note: n = 278

Scale:

- 1 = Not Important
- 2 = Somewhat Important
- 3 = Very Important
- 4 = Extremely Important

With respect to descriptive claims or nonnutrition information, server knowledge of menu items emerged as the most important factor to respondents when deciding which menu items to choose. The mean for server knowledge is 3.18 with a standard deviation of 0.87. The second most important factor to respondents is accuracy with respect to visual presentation. The mean for visual presentation was 3.02 with a standard deviation of 0.89. This was followed by accuracy in representing food quantities with a mean of 2.86 and accuracy with respect to means of preservation with a mean of 2.85. Table 2 shows the mean and standard deviation for the importance of the availability of descriptive claims for restaurant menu items.

DISCUSSION

The results show that participants were only marginally concerned with nutrition related issues and did not seem concerned about the availability of sodium content information on restaurant menus. This is consistent with Sheridan's (1999) findings that the health panic that turned menus into nutrition score sheets has passed. This is also consistent with Kendall's (1997) study which contends that the Nutrition Education and Labeling Act of 1990 did not encourage healthier items

TABLE 2.
THE IMPORTANCE OF DESCRIPTIVE CLAIMS FOR RESTAURANT MENU ITEMS

| Information on: | Mean | Standard Deviation |
|---|-------------|---------------------------|
| Server Knowledge | 3.18 | 0.87 |
| Visual Presentation | 3.02 | 0.89 |
| Quantity of Foods | 2.86 | 0.93 |
| Means of Preservation (frozen or fresh) | 2.85 | 0.96 |
| Quality of Foods | 2.74 | 1.11 |
| Information on Harmful Foods | 2.63 | 1.26 |
| Cooking Methods | 2.58 | 1.07 |
| Ingredients Present in Menu Items | 2.50 | 1.07 |
| Points of Origin (Florida Orange Juice) | 2.03 | 0.94 |
| Specific Brand Names (Pepsi or Coke) | 1.88 | 0.97 |

Note: n = 278

Scale:

- 1 = Not Important
- 2 = Somewhat Important
- 3 = Very Important
- 4 = Extremely Important

on restaurant menus. In fact the trend among restaurant consumers has been away from lower fat foods. This is consistent with the failure of Taco Bell's line of "lite" food items and McDonald's failure with the McLean Deluxe. The trend especially in fast-food restaurants where most of the study participants dine has been towards "supersize" and "meal deal" items. Accuracy in nutrition information on restaurant menus was the main reason for amending the NLEA in 1997. It is apparent that restaurant consumers though they may "talk the talk, they don't walk the walk; that is, they demand information about the [light and lean] items on the menu, but don't buy them" (Kendall 1997).

Server knowledge of menu items emerged in this study as the most important factor to respondents when deciding which menu items to choose. The Nutrition Education and Labeling Act of 1990 requires that nutrition information for foods that make health and nutrition claims be available on restaurant menus or this information be provided by servers when requested by restaurant patrons. The increased need for restaurant servers to provide accurate information to restaurant consumers is clearly illustrated by food liability cases over the past decade in which restaurant servers and the dissemination of wrongful information are the major issue. For example, *Restaurants USA* in November of 1992 reported a typical case in which a customer at a Chinese restaurant in the Midwest explained to his server that he was severely allergic to peanuts. The server reassured the customer that the

egg rolls, which he wanted to order, were peanut free. Unfortunately, unknown to the server, the recipe had been changed to include peanut butter. The customer suffered anaphylactic shock, an allergic reaction that caused his throat to swell, cutting off his air supply. Conceding its negligence, the restaurant awarded the customer's survivors \$450,000 in damages (National Restaurant Association 1993). A more recent example is *Livingston v. Marie Callender's Inc.* (1999) where soup advertised as "made from the freshest ingredients, from scratch every day" contained Monosodium Glutamate (MSG). Livingston asked the server if the soup contained MSG. The waitress assured him that it did not. Livingston after consuming the soup became ill suffering MSG Symptom Complex which includes respiratory failure, cardiac arrest, and brain damage. The plaintiff sued alleging that the waitress was negligent in failing to warn him about the soup.

The second most important factor for respondents when deciding which menu item to choose was visual presentation. Restaurant menus with mouth-watering graphics sometimes create unrealistic expectations in consumers who may become disappointed when the resulting product that arrives at the table looks nothing like the glossy picture shown on the menu. Visual presentation on menus has a great impact on restaurant consumers as it stimulates the taste buds which influence menu selection and thus restaurant profits. These visual presentations represent the product. They give "information" about menu items. Menu items when brought to the table should appear the way they are depicted. Respondents indicated that this visual "information" from the menu is used heavily when making their choices.

Respondents are concerned about foods that may be harmful. This issue is not covered by the NLEA or Truth-in-Menu law but perhaps should be considered in future amendments of the Act. For example, FDA scientists have been concerned about the safety of eating large predator fishes such as swordfish and shark, which absorb methyl mercury from the water. This methyl mercury is not lost during cooking and may cause nervous system damage. The scientists recommended that these fishes are safe to eat provided that they are only consumed no more than once per week as part of a balanced diet (FDA Consumer 1994). Should restaurant menus reflect such concerns? The FDA now mandates that the Interstate Shellfish Sanitation Conference brochure be available without having to be requested and before patrons place orders at delis, raw-bars, and restaurants that serve raw or undercooked seafood and shellfish. These disclosures and reminders must also appear at least once on menu pages, table tents, and placards (Hume 2000).

It must be noted that though consumers who participated in this study rated the availability of information on points of origin or geographic origin of a food item and availability of information on brand names lower than the other descriptive variables examined, the scores received were not so low that they should be ignored. Brand names and geographic information have been used for years to sell menu items. Respondents indicated that this information is important when making menu choices.

CONCLUSION

The results of this study indicate that the factors covered in the Truth-in-Menu law are important to the restaurant consumers who participated in this study. Restaurant consumers in this study use this information about menu items to make choices, therefore, it is imperative that this information be accurate and complete. The restaurant consumers surveyed rated the information they receive from servers as the most important factor. Based on this finding, our initial recommendations are that restaurateurs train their servers to ensure that they are knowledgeable about all menu items and are able to relay this information to consumers. In addition, restaurateurs should ensure that chefs work closely with servers and communicate any changes they make to specials of the day and regular menus.

Care must be taken to visually present menu items accurately to consumers since menu pictures were extremely important to the study respondents when making dining decisions. Consumers may conclude that major variations are false and deceptive. The current research shows that the consumers surveyed do not rate nutrition claims as important as server knowledge and visual presentation of all menu items.

In conclusion, this study was limited to participants who were members of listservs. Future researchers of this topic may consider surveying offline individuals to see if the results would be similar to the ones obtained here. Restaurants have the legal requirement through the NLEA to provide accurate descriptive claim information for menu items. Restaurateurs owe it to consumers and to themselves, in order to limit liability, to make sure that the information their staff and menus provide are accurate at all times. The Truth-in-Menu law and its requirements provide the guidelines for restaurants.

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