If you sell anything that has a label, makes a claim or contains ingredients other than the pure and unadulterated driven snow (or its equivalent), you'll want to check out Stephanie Strom's story about the glut of lawsuits filed against big food companies in the last four months. It was posted online Saturday, ran on the front page of the *New York Times*' Sunday edition, and is attracting the predictable range of comments -- which is to say that most are on polar opposite sides of the issue.

"More than a dozen lawyers who took on the tobacco companies have filed 25 cases against industry players like ConAgra Foods, PepsiCo, Heinz, General Mills and Chobani that stock pantry shelves and refrigerators across America," Strom reports. The suits "assert that food makers are misleading consumers and violating federal regulations by wrongly labeling products and ingredients."

The story suggests that the lawyers behind the suits are the same ones who finally won multimillion-dollar settlements against Big Tobacco after years of futile attempts. Juries tended to agree with tobacco company lawyers that smoking was a matter of "personal choice" when suits were brought by individuals. Everything shifted when plaintiffs sued on behalf of states that had shelled out hundred of millions of dollars caring for people who had illnesses resulting from smoking. The lawyers evidently think they see a similar opening by arguing "that food companies are violating specific rules about ingredients and labels.

Walter Olson, a senior fellow at the libertarian Cato Institute and founder of the "Overlawyered" blog, posts that the story "reads somewhat like a press release for the lawyers involved" and says that it only involves a handful of the attorneys who participated in what he dubs "The Great Tobacco Robbery

of 1998." He suggests -– as do sources in the original article -- that the slew of litigation is no more than an attempt by "the plaintiff's bar" to hit another payday but says that there have been many "false starts and fizzles" in recent years to identify a potentially lucrative cause.

Olson points out that the *Times* article references California's Proposition 37, "The Right To Know Genetically Engineered Food Act," which would require that GMO foods be labeled as such. Polls indicate overwhelming consumer support for the legislation, which Olson says "could open up a basis for rich new suits based on failure to correctly affix labeling tracking the sometimes-fine distinctions between genetically modified foodstuffs and all others."

Monsanto recently contributed $4.2 million to defeat the proposition, purportedly the largest contribution by food and biotech firms who have accelerated their campaign recently, according to California Right To Know, an activist group supporting the legislation.

"Total contributions to defeat Proposition 37 amount to $25 million, and nearly $23 million during the last week," it claimed in a release Wednesday, pulling the information from campaign finance reports. Among the other major recent contributors are E. I. Dupont de Nemours ($1,273,600), Dow Agrosciences ($1,184,800) and PepsiCo ($1,126,079).

Last week, a woman filed a false advertising lawsuit against ConAgra Foods in federal court in Omaha, Neb., accusing it of intentionally misrepresenting Parkay Spray as fat-free and calorie-free when it allegedly contains 832 calories and 93 grams of fat per 8-ounce bottle, according to the AP's Margery A. Beck in a story posted on *Bloomberg Businessweek* Friday. The action also claims Parkay Spray's nutrition information label "uses artificially small serving sizes of one to five sprays to understate the amount of fat and calories in the product."

A ConAgra spokesperson says the company will "vigorously defend the litigation" and "has a long-established commitment to marketing our food responsibly."

The plaintiff's attorney is seeking class action status for the suit but that doesn't mean they'll get it. Citing, among other reasons and cases, a similar false advertising claim made against ConAgra's Orville Redenbacher popcorn, attorney Theodora McCormick writes in *The Metropolitan*

Corporate Counsel that **“**courts have frequently rejected class certification on typicality and predominance grounds**.”** I think that boils down to this: Even though I may not understand what “typicality and predominance” means, it’s hard to make the case that everybody has the same problem.

This I do understand: Whether or not the recent litigation prevails in the courts, what appears to be happening at the ballot box in California seems indicative of where consumer sentiment is trending. They want labels that are clear, informative and forthright.