

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHNNY L. JOHNSON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 09 C 3417
)	
SNAPPLE BEVERAGE CORP., etc.,)	
et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Snapple Beverage Corp. and American Bottling Company have filed their Answer and Affirmative Defenses ("ADs") to the Second Amended Complaint ("SAC") brought against them by Johnny Johnson and Clarence Whitfield. This memorandum order is issued sua sponte because of a problematic aspect of that responsive pleading.¹

All of the Answer's paragraphs that contain appropriate disclaimers under Fed. R. Civ. P. ("Rule") 8(b)(5) (Answer ¶¶9, 11, 20, 33, 35, 39, 41, 43 and 46) follow those disclaimers with a denial of the same allegations in the SAC ("and therefore, deny them"). That is of course oxymoronic--how can a party that asserts (presumably in good faith) that it lacks even enough information to form a belief as to the truth of an allegation then proceed to deny it in accordance with Rule 11(b)?

¹ No comment is made here as to the sufficiency of the ADs that follow the Answer. Any challenges in that respect will be left to plaintiffs' counsel.

Accordingly the quoted phrase is stricken sua sponte from each of those paragraphs of the Answer. That obviates the need for defense counsel to replead properly.

A handwritten signature in black ink, reading "Milton I. Shadur". The signature is written in a cursive style with a large initial "M".

Milton I. Shadur
Senior United States District Judge

Date: July 14, 2009