

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

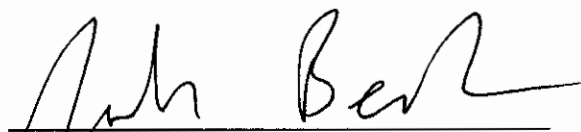
LINDA FRANULOVIC, individually and on behalf of a class of persons,)	CIVIL NO. 1:07-cv-00539-RMB-JS
)	
Plaintiff,)	CLASS ACTION
)	
v.)	
)	Document Electronically Filed
THE COCA-COLA COMPANY,)	
)	
Defendant.)	

DECLARATION OF JOSHUA L. BECKER

I, Joshua L. Becker, declare and say that I am counsel for The Coca-Cola Company in the above-referenced litigation. I make this declaration based on my personal knowledge.

The attached pages are a true and correct copy of the deposition testimony of Linda Franulovic that is cited in the Brief in Support of The Coca-Cola Company's Motion for Summary Judgment

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 28th day of January, 2009 in Atlanta, Georgia.



Joshua L. Becker

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

LINDA FRANULOVIC, individually and
on behalf of a class of persons,

Plaintiff,

CIVIL NO. :
1:07-cv-00539-RMB-JS

v.

CLASS ACTION

THE COCA-COLA COMPANY,

Defendant.

DEPOSITION OF

LINDA FRANULOVIC

TAKEN ON BEHALF OF THE DEFENDANT

September 30, 2008

9:05 a.m.

1100 Southeast 17th Street

Room 1120

Fort Lauderdale, Florida

Terri J. Flicek, Shorthand Reporter

APPEARANCES OF COUNSEL

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Also Present:

SHANI C. THOME, The Coca-Cola Company
NABINA J. SINHA, Nestle, U.S.A.

1 A. No.

2 Q. In February of 2007 how often did you exercise?

3 A. Four times a week.

4 Q. And what did you do for exercise?

5 A. Tae Bo and running.

6 Q. Were you a member of a gym?

7 A. No.

8 Q. So in February of 2007 these habits that we've
9 talked about, your eating and your exercise, were those
10 new habits for you or things that you had been doing for
11 awhile?

12 A. Things that I had been doing for awhile.

13 Q. Okay. And how much did you weigh in February of
14 2007?

15 A. I don't know, approximately, I don't weigh
16 myself.

17 Q. And between November of 2006 and May of 2007 how
18 did your weight change, if at all?

19 A. I gained five pounds.

20 Q. Is there a particular reason that you remember
21 that?

22 A. Because I was trying to lose five pounds.

23 Q. But you don't know what you weighed in February
24 of '07?

25 A. No, I just know my clothes were tight.

1 Q. You talked about Mike and Ike's candy, did you eat
2 any other candy, anything else, anything like that, this
3 is in February of 2007?

4 MR. GARDNER: Object to the form of the question,
5 can you get a little more descriptive on anything like
6 that? I think you're saying junk food, will you do that?

7 Q. Junk food is a good description, we'll go with
8 junk food.

9 A. No junk food. For some reason I only eat candy
10 at night right before I go to bed.

11 Q. Don't eat ice cream?

12 A. No.

13 Q. Chocolate chip cookies?

14 A. No.

15 Q. Snack Wells, anything like that?

16 A. Maybe something homemade if my mom and grandma
17 made it, maybe.

18 Q. How often did you eat out in February of 2007?

19 A. Once a month.

20 Q. Ms. Franulovic, would you agree that in February
21 of 2007 you were aware that whether you gain or lose
22 weight is a function of how many calories you take in
23 versus how many calories you expend or use up?

24 A. Is a function? Can you rephrase that?

25 Q. Okay. Would you agree that in February of 2007

1 you understood, you knew, that whether or not your weight
2 went up or down, you gained or lost weight, was a function
3 of how many calories you took in versus how many calories
4 you used up?

5 A. Yes?

6 MR. GARDNER: Object to the form of the question,
7 could you define function?

8 MR. ELDER: The question has been asked and
9 answered, Steve.

10 MR. GARDNER: I have objected to it, I gave you
11 the opportunity to fix it.

12 MR. ELDER: You can object to form, it's a proper
13 question.

14 Q. (By Mr. Elder) Is it fair to say that while you
15 were drinking Inviga you don't know how many calories you
16 were taking in on a daily basis?

17 A. Yes.

18 Q. Tell me about the first time you purchased a can
19 of Inviga.

20 A. What led up to it?

21 Q. Yes, just tell me about buying it.

22 A. I went into the Wa Wa and I saw it in the aisle,
23 and I picked it up and took it to the counter and paid for
24 it.

25 Q. Did you see any, when you say you saw it in the

1 A. I don't know.

2 Q. When you say you don't know, do you mean that
3 while you were drinking Inviga in 2007 you didn't know how
4 many calories you thought that it would burn?

5 A. Yes.

6 Q. You said that eventually you started drinking it
7 every day, so I want to piece in between buying that first
8 can and drinking in every day. Give me an idea of the
9 time frame there, and you know, did you, after that first
10 can did you buy more cans immediately, you know, was it a
11 little while later? Do you understand what I'm asking?
12 I'm just trying to understand how your purchases developed
13 over time. So after that first can, tell me in as much
14 detail what you remember happened next.

15 MR. GARDNER: Object to form. For form reasons,
16 do you mind a brief statement, just object, form?

17 MR. ELDER: I think the rules require it.

18 MR. GARDNER: Instead of object to the form of
19 the question, can I say object, form?

20 MR. ELDER: I got you

21 MR. GARDNER: I need a yes.

22 MR. ELDER: Yes.

23 Q. (By Mr. Elder) You can answer.

24 A. I bought one can and I continued to buy one can
25 every day.

1 Q. Is there any particular amount of weight that you
2 believed you were going to lose by drinking Inviga?

3 A. No.

4 Q. Did you know, you commented earlier about, I
5 think you said it was 3,200 calories, the number of
6 calories that make up a pound, do you recall that earlier?

7 A. Yes.

8 Q. Were you aware in 2007 when you were drinking
9 Inviga how many calories you have to take out of your
10 diet, eliminate, in order to lose one pound?

11 A. No.

12 Q. Ms. Franulovic, I have marked as Exhibit 1 to
13 your deposition a copy of the second amended class action
14 complaint in this case, have you seen that document before
15 today?

16 (Defendant's Exhibit 1 was marked for
17 identification.)

18 A. Yes.

19 Q. When did you see it first?

20 A. I don't remember, I don't remember which one this
21 is.

22 Q. Have you seen several of these over --

23 A. Yes.

24 Q. -- since you've been involved in this litigation?

25 A. Yes.

1 caloric consumption results in losing weight, do you
2 believe that to be true?

3 A. Yes.

4 Q. To your understanding, you know, in your mind, to
5 your knowledge, is there a difference between burning
6 calories and reducing caloric consumption?

7 A. Yes.

8 Q. What's the difference?

9 A. When you burn calories, when I burn calories I
10 should say, I'm working out, and if you're working out,
11 specifically weight training, it helps you to burn
12 calories even while standing still, so that Inviga was
13 supposed to increase that, if you're just reducing
14 calories you could put yourself in a state of starvation,
15 which actually reduces your metabolism, which you could
16 gain weight and not lose weight at all.

17 Q. Do you believe that reducing caloric consumption
18 can result in losing weight?

19 A. It can, yes.

20 Q. And that's commonly referred to as dieting?

21 A. Yes.

22 Q. You understand and understood in February of 2007
23 that one thing people do to lose weight is reduce caloric
24 consumption?

25 A. Yes.

1 Q. And have you ever done that yourself?

2 A. Yes.

3 Q. Were you doing that in February of 2007?

4 A. Yes.

5 Q. And how were you trying to reduce your caloric
6 consumption?

7 A. Cutting out the Mike and Ike's.

8 Q. Anything else?

9 A. No.

10 Q. Your diet generally that you've described for me,
11 do you consider that a way of reducing caloric
12 consumption?

13 A. Yes. Wait, I'm sorry, say that again.

14 Q. Your diet that you generally described for me is
15 -- Let me put this way. In February of 2007 were you
16 trying to eat healthy?

17 A. Yes.

18 Q. Were you trying to eat foods that you believed
19 had a lower caloric content than alternative foods, than
20 foods you weren't eating?

21 A. No. It --

22 Q. Go ahead.

23 A. I don't care about calories, I care more about
24 fat and protein.

25 Q. So in your personal diet, the way you believe you

1 either lose weight or don't gain weight is to control the
2 amount of fat and protein you're taking in?

3 A. Yes.

4 Q. The end of this sentence where it says, Or at
5 least offsetting weight gain from other calories, what
6 does that mean?

7 A. Offsetting weight gain, it means to tip the
8 scales.

9 Q. I'm sorry?

10 A. To tip the scales, to work in the opposite
11 direction. You're asking me to define a portion of a
12 sentence?

13 Q. I'm asking you what that means to you in terms of
14 this, this is an allegation in your complaint, in terms of
15 this lawsuit.

16 A. I don't understand how else it can be explained
17 except the way it's written.

18 Q. Okay. Was it your interpretation of the Inviga
19 advertising that you could eat or drink whatever you
20 wanted and as long as you were also drinking Inviga you
21 would lose weight?

22 A. No.

23 Q. Why not?

24 A. Because that doesn't make sense. You're saying I
25 can drink a milkshake and Inviga and still lose weight,

1 right, that's what you're trying to say?

2 Q. Right.

3 A. That's wrong.

4 Q. And you understood that that was wrong --

5 A. Yes.

6 Q. Let me finish my question.

7 You understood that was wrong the entire time you
8 were drinking Inviga?

9 A. Yes.

10 Q. And the reason that's wrong is because you
11 understood that even while you were drinking Inviga, if
12 the other calories you were taking in put you in this
13 state of taking in too many calories over the whole day,
14 you would still gain weight?

15 A. Yes.

16 Q. From your description of your diet, to me it
17 sounds to me like you pay a fair amount of attention to
18 what you eat, would that be a fair characterization?

19 A. Yes.

20 Q. Let me turn with you to Paragraph 19, Paragraph
21 19, the part I want to ask you about is in the second
22 sentence there, I'm not going to read the whole thing, but
23 it says, basically it says drinking three cans of Inviga
24 every day over a lengthy period of time. And it's the
25 over a lengthy period of time that I want to ask you

1 A. I don't think so.

2 (Defendant's Exhibit 12 was marked for
3 identification.)

4 Q. And the last one here is Exhibit 12, do you know
5 whether or not you've seen Exhibit 12 before?

6 A. I don't know.

7 Q. For how long did you drink three cans of Inviga
8 per day?

9 A. Maybe two and-a-half months.

10 Q. How many times did you weigh yourself during that
11 time period?

12 A. Zero.

13 Q. Do you ever drink diet soda?

14 A. No.

15 Q. Bottled water?

16 A. Yes.

17 Q. And do you ever drink bottled water instead of
18 drinking other things that have calories in it like juice
19 or tea or soda?

20 A. Yes.

21 Q. Okay. Will drinking bottled water make you lose
22 weight?

23 A. No.

24 Q. Why not?

25 A. Because your body needs water, you have to drink

1 water, it's not designed to make you lose weight, there's
2 nothing in it.

3 Q. If you drank bottled water instead of drinking
4 orange juice, do you believe it would make you lose
5 weight?

6 A. If you drank orange juice all the time, your
7 entire life, and then stopped drinking it and then drank
8 water? Yes.

9 Q. Because water has fewer calories?

10 A. Yes.

11 Q. Would making that change in your diet, do you
12 believe, be a guarantee of weight loss?

13 A. No. Oh, yes, I'm sorry.

14 Q. You believe that would be a guarantee of weight
15 loss?

16 A. Is that the one thing you're going to change?

17 Q. If you change that one thing, do you believe it
18 would be a guarantee of weight loss?

19 A. Yes.

20 Q. No matter what else you did?

21 A. No.

22 Q. So it would depend on what else you were eating
23 and drinking?

24 A. Yes.

25 Q. By the same token, you would agree that you never

1 thought that drinking Inviga was a guarantee of weight
2 loss; is that fair?

3 A. Yes.

4 Q. I'm going to mark as a composite exhibit a
5 printout, and some of this is hard to read so I apologize
6 for that, but a printout of the Inviga website as Exhibit
7 13.

8 (Defendant's Exhibit 13 was marked for
9 identification.)

10 Q. Have you ever been to the Inviga website?

11 A. No.

12 Q. You've never logged on to Inviga.com?

13 A. No.

14 Q. Ever?

15 A. No.

16 Q. Let me ask you to flip to what's marked, you see
17 the little numbers at the bottom of the page, those are
18 called Bates Numbers, it's Bates Number 1740.

19 A. I'm there.

20 Q. This is just a picture of the back of the can
21 that happens to come from the website, but you have seen
22 the back of the can before, correct?

23 A. Yes.

24 Q. The top line there begins, Inviga is a delicious
25 and refreshing sparkling green tea that invigorates your

1 Individual results may vary. Below that it says, Drinking
2 more than three cans per day will not have an additional
3 effect.

4 All of that that I just read, beginning with
5 three cans and ending with additional effect, you read at
6 some point while you were drinking Inviga, correct?

7 A. Uh-huh, yes.

8 Q. Was it your understanding that the calorie
9 burning effect of drinking Inviga would be in the range of
10 60 to 100 calories while you were drinking Inviga in 2007?

11 A. Yes.

12 Q. Do you know whether or not on any given day in
13 2007 that you drank Inviga you, in fact, reduced your
14 total caloric intake for that day by 100 calories?

15 A. No.

16 Q. And I believe you told me earlier that you don't
17 know, and again we're talking about in 2007, you don't
18 know how many calories you were taking in or trying to
19 take in on a daily basis, right?

20 A. Right.

21 Q. Without counting your calories how would you know
22 whether or not Inviga was burning calories?

23 A. Well, I was looking to increase my metabolism, so
24 I was just going by that, and I know I wanted to lose a
25 few pounds, five pounds, whatever, and it was right after

1 anything?

2 MR. ELDER: I mean eating anything.

3 MR. GARDNER: So if she had something that day
4 that wasn't Inviga --

5 A. -- that also contained calorie burning
6 qualities? No.

7 Q. No.

8 A. Say it again.

9 Q. On any given day that you drank Inviga, how would
10 you know that you didn't eat or drink something that
11 otherwise put you, for the day, for the total day, in a
12 situation where you weren't reducing your overall
13 calories?

14 A. I don't know.

15 Q. If you could turn with me to Page 1745, and this
16 is in very small print, a picture of the Inviga website as
17 of April 4, 2007, and under, Another simple positive
18 choice, and you've never read this before because you
19 never went to the website, right?

20 A. Right.

21 Q. And that sentence says, It's a fact that
22 incorporating balanced nutrition and more activity into
23 your lifestyle is the best way to stay healthy and much
24 smarter than following fads, quick fixes and crash diets.
25 Do you agree with that sentence?

1 A. Yes.

2 Q. Do you find it misleading in any way?

3 A. No.

4 Q. It goes on to say, That's why Inviga isn't
5 designed to be a magic bullet. What does that mean to
6 you?

7 A. Exactly what it says, that you can't just drink
8 Inviga and drop weight.

9 Q. If you could flip with me to Page 1762, this is
10 the section under frequently asked questions, and one of
11 the questions says, Is Inviga recommended as part of a
12 diet or weight loss program? Inviga is one of many
13 helpful things that can be incorporated into an overall
14 balanced lifestyle. Inviga is designed to compliment not
15 replace regular exercise, a good diet and other healthy
16 choices you make throughout the day --

17 (Discussion off the record.)

18 Q. The question and answer that I just read to you,
19 do you believe that that question and answer is misleading
20 in any way?

21 A. No.

22 Q. You mentioned in your interrogatory responses
23 that you, let me turn to the response, Paragraph 9, if
24 you'll flip back --

25 A. Which one, 1, 2?