

**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.

CENTER FOR SCIENCE IN THE PUBLIC INTEREST v. THE COCA-COLA COMPANY et al

Doc. 112 Att. 3

The attached pages are a true and correct copy of the deposition testimony of Joel Steckel, Ph.D. that is cited in the Sur-Reply Brief in Opposition to Plaintiff's Motion for Class Certification. Page 43 of Exhibit 9 to that deposition is also attached.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 9th day of March, 2009 in Atlanta, Georgia.



Joshua L. Becker

Steckel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-----x
LINDA FRANULOVIC,
both individually and on behalf
of a Class of others similarly
situated,

Plaintiff,

v.

Civil Action No.
1:07-CV-00539-JRH-JS

COCA-COLA COMPANY,

Defendant.

-----x

JOEL H. STECKEL

New York, New York

Tuesday, January 13, 2009

Reported by: Steven Neil Cohen, RPR

Job No. 55309

1 Steckel

2 Q. Would you agree with me that one
3 of the purposes of copy testing advertising
4 is so you can make changes based on how
5 people perceive the advertising?

6 A. Sure.

7 Q. And would you agree with me that,
8 in fact, Coke did make changes in the way it
9 promoted the product based on these studies
10 that you referred to?

11 A. I have no idea.

12 Q. Because you don't know what the
13 ads were?

14 A. Well, you know, I don't know what
15 changes Coke made and if they were based on
16 these results.

17 The only thing I can tell you is
18 that the diversity of the ads and the
19 context in which these things were tested
20 really hammers home the conclusion.

21 Q. You will grant me that changing
22 one word in an ad can completely change the
23 consumer perception of that ad?

24 A. Sure, if that word is from "kill"
25 to "cure" or vice versa.

1 Steckel

2 Q. Do you think --

3 A. But not in this case, no, I won't
4 grant you that, sir, unless the change was
5 of the character that I just mentioned.

6 I will not grant you that because
7 of the consistency and results and the
8 diversity of contexts.

9 Q. In the ads that you don't know
10 whether or not they ever appeared, correct?

11 A. In the ads that are here.

12 Q. Do you know if Enviga was
13 developed in part to attract purchasers who
14 were concerned with weight?

15 A. I don't know.

16 Q. None of what you saw indicated one
17 way or the other, those four study
18 summaries?

19 A. Well, your complaint suggests it.

20 Q. Then let me limit it to the four
21 study summaries that you have used as the
22 basis for your opinion.

23 Anything in those that address
24 whether or not Enviga was developed at least
25 in part to be attractive to consumers who

1 Steckel

2 BY MR. GARDNER:

3 Q. I am listening.

4 A. The best way to get at the mind
5 set of people who purchase the product right
6 before the moment they purchase the product
7 is to get at people who haven't purchased
8 the product so the answer you are looking to
9 is correct.

10 Q. Your testimony is that the best
11 way to find out the reason somebody bought a
12 product is to ask people who didn't buy the
13 product?

14 A. No, no, that is not what I said.

15 Q. That is what I said.

16 Could you say it in a different
17 way please?

18 A. Sure.

19 The best way to get at the
20 perceptions of people about a product prior
21 to purchase, at the moment prior to
22 purchase, is to get at people who have not
23 yet purchased that product.

24 That is a fundamental principle of
25 marketing research that I espouse my classes

1 Steckel

2 and practice regularly because once you talk
3 to people and ask for their perceptions
4 after they have purchased the product about
5 what got them to purchase the product in the
6 first place, perceptions of advertising,
7 mind you, then you are going to get those
8 perceptions colored by the actual experience
9 of usage.

10 Q. The people who buy it once may buy
11 it again for a different reason?

12 A. Absolutely. Ivory Soap, Arm &
13 Hammer baking soda, Heinz ketchup, I can
14 give you a long list of products that were
15 successful not only because individual
16 people but because the mass market bought it
17 for reasons other than the product was
18 originally designed.

19 Q. Why did the mass market --

20 A. Viagra.

21 Q. Why did the mass market buy Ivory?

22 A. Because of purity.

23 Q. 100 percent of mass market?

24 A. That is what the original appeal
25 was.

1 Steckel

2 Enviga because and only because of this
3 belief that they derived from Coke's
4 marketing efforts.

5 What is the basis for that
6 statement?

7 A. I would -- the documentation, your
8 legal papers.

9 Q. You looked at them. What did you
10 rely on in forming your opinion that this is
11 part of our model?

12 A. Well, would you be kind as to give
13 them to me?

14 Q. Well, I can give you Exhibit 1
15 which is the third amended complaint.

16 The only copy I have of the brief
17 I have marked up but I believe Josh has
18 copies and you are welcome to look at our
19 brief.

20 Is there anything else you need to
21 see?

22 A. Let's start with those. I don't
23 think so.

24 Q. Okay. Unless -- if you need to
25 read anything from our brief we will have it

1 Steckel

2 marked. If you don't I don't need to put it
3 into the record.

4 A. Okay. Let me start with this.

5 Q. Number 1 is already there.

6 A. Well, let's start with this, okay?
7 I don't think we will need your other brief.

8 If I could refer you to paragraphs
9 54 and 58 of the third amended complaint, I
10 am happy to read them into the record if you
11 want.

12 Q. These are the two paragraphs that
13 you use to paraphrase the statement, that,
14 in other words, consumers purchased Enviga
15 because and only because of this belief that
16 they derived from Coke's marketing efforts?

17 A. These are two statements that were
18 input to my belief of that statement.
19 Whether they are the only ones, I am not
20 willing to state for sure based on the fact
21 that I haven't looked at the other brief and
22 I have just skimmed this very quickly right
23 here in the interest of time of the
24 deposition but I do believe those two
25 paragraphs support that statement pretty

Steckel

1
2 Q. Do you have any idea whether it is
3 identical with respect to all copy, front
4 and back?

5 A. I don't know.

6 Q. Look, while we are on that, at
7 page 34 of Exhibit 9, the naming study.

8 Am I correct in reading these
9 results to show that depending on the can
10 people were shown anywhere from 29 to
11 45 percent of the respondents did not like
12 the taste or flavor?

13 A. Or did not think they would like
14 the taste or flavor.

15 Q. Then they did not actually taste
16 this?

17 A. That's correct. That is my
18 understanding.

19 Q. So their perception of what they
20 would -- how it would taste is based on what
21 the can looked like?

22 A. Yes.

23 Q. So different presentations can
24 cause different beliefs as even to what
25 something would taste like; is that correct?

1 Steckel

2 A. I think that is fair.

3 Q. Look at page 43 please.

4 A. Of the same exhibit?

5 Q. Yes, sir.

6 In that the question is: Is this
7 product relevant or not relevant to you and
8 why?

9 I am paraphrasing. It is at the
10 bottom of that page.

11 Looking at the Enviga can 3,
12 71 percent of this type of can, said it was
13 relevant to them, correct?

14 A. Correct.

15 Q. Of those who said it was relevant
16 to them the largest percentage of response
17 was because of weight management; is that
18 correct?

19 A. More people said weight management
20 than anything else, yes.

21 Q. Do you know whether the
22 percentages under the Enviga 3, column C,
23 under 71 percent, are those 30 percent of
24 the entire sample or 30 percent of the
25 71 percent who thought it was relevant?

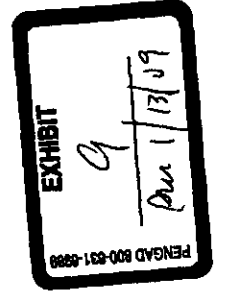
verage Partners

CONFIDENTIAL

Project Rocket Naming Study

FINAL REPORT

March 10, 2006



BuzzBack
MARKET RESEARCH

Average Partners

Why / Why Not Relevant

	n=	201	203	203	207	204
-RELEVANT-						
WEIGHT MANAGEMENT						
Boost metabolism		66%	72%	71%	70%	76%A
Calorie burner		38%BCe	26%	30%	38%Bce	29%
Weight management benefits		0%	0%	1%	8%ABC	8%ABC
TASTE AND FLAVORS						
Like flavor combination/green tea and grapefruit sound great together		19%DE	15%	17%	12%	11%
Like green tea/drink green tea		22%BCe	12%	14%	22%BC	16%
		14%	26%AD	20%a	16%	24%Ad
		0%	3%	2%	5%A	3%
		9%	13%D	13%D	6%	11%
BENEFITS OF ENVIQA						
Refreshing/thirst quenching		2%	2%	1%	2%	3%
Love tea/enjoy tea products		6%	9%D	7% ^d	2%	6% ^d
HEALTH BENEFITS						
Health conscious/healthy/good for you		10%	24%AD	22%AD	12%	24%AD
Alternative to other drinks/better than soda		7%	19%AD	17%A	11%	17%A
		2%	4%	7%AD	2%	8%AD

About 70% of respondents find the concept relevant, primarily because of the weight management and calorie burning aspects. More respondents viewing Enviga 1 and Enviga 4 mention weight management reasons as making the product relevant, while metabolism boosting qualities resonate more with Enviga 4 and Route 2 respondents

Health benefits are mentioned by about 20% of respondents for Enviga 2, Enviga 3 and Route 2, mirroring Likes for these concepts.

About three in ten respondents say the product is 'not relevant,' mostly due to flavors/taste and weight management benefits not being of interest.

n End: Why do you say this product is Relevant//Not Relevant to you? Shading indicates concepts scoring higher than 2 or more other concepts.