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September 17, 2007

The Honorable Joel Schneider, United States Magistrate Judge
U.S. Post Office & Courthouse
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**Re: *Franulovic v. The Coca-Cola Company*, Docket No. 1:07-cv-539:
Plaintiff's Letter Brief Concerning Discovery Disputes**

Dear Judge Schneider:

Plaintiff Linda Franulovic submits this Letter Brief pursuant to the Court's August 7, 2007 Order concerning discovery disputes. Franulovic timely served document requests on Defendant as directed by the Court. Defendant responded timely, but primarily with objection rather than response. Because the discovery sought in her case is almost completely the same as that sought in the *Melfi* and *Simmens* cases, Franulovic joins in the letter brief filed by counsel in those cases. In addition, Franulovic identifies two additional discovery disputes that the parties have been unable to resolve.

Request for electronic files

In response to the initial request for documents, Defendant served Franulovic with two DVD's containing thousands of separate images, the bulk of which appear to have been generated from PowerPoint presentations. Franulovic requested the actual electronic PowerPoint files, and defendant has not agreed to produce them, claiming that producing these discrete electronic files will "take time." This of course is not a valid basis for refusing to produce requested documents.

Franulovic needs the original files, and not just the images generated from them because it is difficult-to-impossible to determine from the as-produced images where one presentation starts and the other leaves off. In addition, the electronic files are searchable whereas the image files are not. Since defendant must have used the electronic files at one point in order to produce the image files, it cannot be burdensome to produce the source electronic materials.

Request for information on governmental investigation

In her request for production number 29, Franulovic requested:

All communications relating to Enviga with the Food and Drug Administration, the Federal Trade Commission, a state Attorney General, and any other federal, state, or local agency or law enforcement.

Defendant responded:

Defendant incorporates its general objections and further objects to this request to the extent that it seeks the production of documents protected by the attorney-client, work product or other applicable privilege and to the extent disclosure of such information is protected by 15 U.S.C. § 57(b), 16 C.F.R. 4.10 or any other applicable statute or regulation. Defendant also objects to the production of these documents, if any, at this time on the grounds that such documents are not relevant to class certification and this request is inconsistent with the guidelines for discovery provided by the Court at the August 6, 2007 scheduling conference.

Although Franulovic requested a privilege log, Defendant has failed to produce one. Therefore, it is impossible to assess the broad claim of “the attorney-client, work product or other applicable privilege.”

However, it is possible to address the claim that knowledge of governmental activity is irrelevant to class certification, because that is flatly incorrect. Governmental actions, factual allegations, and legal claims made against these same defendants may contain information relevant to the issues in this case, and to class certification issues.

Because of press reports, Franulovic knows that the Connecticut Attorney General is investigating defendant’s claims for Enviga. There is every probability that the Federal Trade Commission and additional state attorneys general are investigating as well. Just as it would be appropriate for plaintiffs’ counsel to coordinate with other known private cases (as counsel in the three cases before the Court have succeeded in doing), it is appropriate to insure coordination where possible with governmental entities that are also investigating.

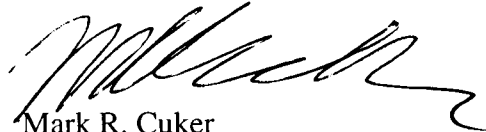
The Court has already recognized that the private lawsuits involving Enviga should be conducted in a coordinated manner, so Franulovic’s request is merely seeking a slight extension of that decision. Federal policy in favor of coordination is reflected in the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4, 7-8 (2005) (“CAFA”), codified at 28 U.S.C. § 1715. It furthers the goals of CAFA for plaintiffs’ counsel to be able to ensure coordination with governmental officials as the case proceeds as well. CAFA in fact would require notice to the U.S. Attorney General and state Attorneys General, or similar officials, if this case were to reach settlement. 28 U.S.C. § 1715. What Franulovic seeks is to insure that the Court is aware of pending federal or state investigations.

One specific concern arises because the primary relief sought for the class by Franulovic is injunctive in nature. Courts repeatedly have deferred to the FTC’s expertise in allegedly deceptive advertising cases. *Kraft, Inc. v. FTC*, 970 F.2d 311, 317, 320 (7th

Cir. 1992); *Stauffer Laboratories, Inc. v. FTC*, 343 F.2d 75, 78 (9th Cir. 1965). Thus, it is essential that Franulovic and the Court know of the possibility of duplicative actions.

For all these reasons, Franulovic requests that the Court direct defendant to supplement its responses as requested in this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Cuker', with a stylized, flowing script.

Mark R. Cuker
Counsel for Plaintiff and the Class

cc: Electronic Case Filing service list