

McCARTER & ENGLISH, LLP

By: GITA F. ROTHSCHILD
 PETER J. BOYER

Four Gateway Center
 100 Mulberry Street
 Newark, NJ 07102
 (973) 639-5959
 (973) 297-3833 (fax)

ALSTON & BIRD, LLP

By: JANE F. THORPE (admitted *pro hac vice*)
 SCOTT A. ELDER (admitted *pro hac vice*)

1201 West Peachtree Street
 Atlanta, GA 30309-3424
 (404) 881-7000
 (404) 881-7777 (fax)

*Attorneys for Defendant
 The Coca-Cola Company*

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

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

**DEFENDANT’S ANSWER AND JURY TRIAL DEMAND IN RESPONSE TO
 PLAINTIFF’S THIRD AMENDED CLASS ACTION COMPLAINT**

Defendant The Coca-Cola Company (“TCCC”) hereby responds to Plaintiff’s Third Amended Class Action Complaint (“Complaint”) as set forth below.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint fails to state a claim in whole or in part upon which relief may be granted.

Second Affirmative Defense

Plaintiff's claims are preempted by federal law or regulation.

Third Affirmative Defense

Plaintiff has not suffered any injury or ascertainable loss compensable at law.

Fourth Affirmative Defense

Third persons not parties to this action may have been legally responsible or otherwise at fault for the damages alleged in the Complaint. TCCC, therefore, requests that in the event of a finding of any liability in favor of plaintiff an apportionment of fault be made among all responsible persons or entities.

Fifth Affirmative Defense

Any award that might be made is subject to limitation and/or preclusion under the New Jersey Punitive Damages Act.

Sixth Affirmative Defense

Lack of privity between Plaintiff and TCCC bars any claims based on contractual theories.

Seventh Affirmative Defense

Plaintiff lacks standing to pursue the claims in the Complaint.

Eighth Affirmative Defense

Plaintiff's claims are barred by the applicable statute of limitations.

Ninth Affirmative Defense

Plaintiff failed to timely notify TCCC of any claims alleged in the Complaint.

Tenth Affirmative Defense

Plaintiff's Complaint fails to allege fact sufficient to entitle Plaintiff to an award of exemplary, punitive or treble damages.

Eleventh Affirmative Defense

The representations made by TCCC relating to Enviga qualify as protected commercial speech under the First Amendment to the Federal Constitution.

Twelfth Affirmative Defense

Plaintiff's claims are barred by the intervening cause doctrine.

Thirteenth Affirmative Defense

Plaintiff has failed to establish a causal link between representations made by TCCC relating to Enviga and any alleged injury to the Plaintiff.

TCCC hereby gives notice that it intends to rely on any additional affirmative defenses which become available or apparent during discovery and thus reserves the right to amend this Answer to assert such defenses.

TCCC responds to the individually numbered paragraphs in Plaintiff's Complaint as follows:

Preliminary Statement

1. TCCC denies the allegations in paragraph 1.
2. TCCC denies the allegations in paragraph 2.

3. TCCC admits the allegations in paragraph 3.
4. TCCC admits that marketing Enviga is perfectly legal. Except as specifically admitted, TCCC denies the allegations in paragraph 4.
5. TCCC admits that some of the advertising for Enviga states that Enviga burns more calories than it provides. TCCC admits that some of the advertising for Enviga states that drinking Enviga results “negative calories.” TCCC admits that some of the advertising for Enviga states that drinking Enviga will gently boost metabolism. TCCC admits that the website www.enviga.com states that there is some calorie burning effect from a single can, but that the amount of the effect has not been quantified. Except as specifically admitted, TCCC denies the allegations in paragraph 5.
6. TCCC denies the allegations in paragraph 6.
7. TCCC admits that Enviga was sold in certain locations within New Jersey during 2006 and that Enviga was sold nationally beginning in early 2007. Except as specifically admitted, TCCC denies the allegations in paragraph 7.
8. This paragraph does not allege any facts as to TCCC and therefore does not require a response. To the extent the allegations in paragraph 8 require a response, TCCC denies the allegations in this paragraph.
9. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 and on that basis denies the allegations.

Parties

10. TCCC admits that it is registered in Delaware and has appeared in this lawsuit. Except as specifically admitted, TCCC denies the allegations in paragraph 10.
11. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and on that basis denies the allegations.

Jurisdiction and Venue

12. TCCC admits the allegations in paragraph 12.
13. TCCC admits that venue is proper in this Court. Except as specifically admitted, TCCC denies the allegations in paragraph 13.

Conditions Precedent

14. TCCC denies the allegations in paragraph 14.

Facts

15. TCCC denies the allegations in paragraph 15.
16. TCCC admits that Enviga was sold at some locations within New Jersey before it was sold nationally in 2007. TCCC denies that billboards containing extravagant Enviga claims were ubiquitous. TCCC is without knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 16 and on that basis denies the remaining allegations.
17. TCCC denies the allegations in paragraph 17.
18. TCCC denies the allegations in paragraph 18.
19. TCCC denies the allegations in paragraph 19.

20. TCCC states that the referenced press release speaks for itself. TCCC denies the allegations in paragraph 20 to the extent they differ from the actual press release in any respect.
21. TCCC states that the Principal Display Panel and the side panel speak for themselves. TCCC denies the allegations in paragraph 21 to the extent they differ from the actual Principal Display Panel and the side panel in any respect.
22. TCCC states that the website www.enviga.com and the outdoor advertising for Enviga speak for themselves. TCCC denies the allegations in paragraph 22 to the extent the allegations differ from the actual website or the outdoor advertising in any respect.
23. TCCC denies the allegations in paragraph 22.
24. TCCC admits that some of the 31 subjects experienced lower energy expenditure after consuming the treatment beverage. Except as specifically admitted, TCCC denies the allegations in paragraph 24.
25. TCCC admits that the study subjects had an average age of approximately 23, with a range of 18-35, and had an average BMI of approximately 22. TCCC denies that Enviga is marketed to all New Jersey consumers and denies that the Enviga marketing needs “qualification.” TCCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 25 and on that basis denies the allegations.
26. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 and on that basis denies the allegations.
27. TCCC denies the allegations in paragraph 27.
28. TCCC denies the allegations in paragraph 28.

29. TCCC denies the allegations in paragraph 29.
30. TCCC denies the allegations in paragraph 30.
31. TCCC admits that the study results showed that treatment increased 24-hour energy expenditure by 106 ± 31 kcal/24 hours. TCCC admits that a reduction of 3,500 calories is necessary to lose one pound. TCCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 31 and on that basis denies the allegations.
32. TCCC admits that the low end of the effect claimed on the Enviga can is 60 calories. TCCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 32 and on that basis denies the allegations.
33. TCCC denies the allegations in paragraph 33.
34. TCCC admits that the study results were presented at a conference sponsored by The Obesity Society. TCCC states that the NAASO press release speaks for itself and TCCC denies the allegations in paragraph 34 to the extent that they are inconsistent with the NAASO press release in any respect. Except as specifically admitted, TCCC denies the allegations in paragraph 34.
35. TCCC denies the allegations in paragraph 35.
36. TCCC denies the allegations in paragraph 36.
37. TCCC denies the allegations in paragraph 37.
38. TCCC admits that the quoted language in footnote 14 appeared on the Enviga website. Except as specifically admitted, TCCC denies the allegations in paragraph 38.
39. TCCC denies the allegations in paragraph 39.

40. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 and on that basis denies the allegations.

41. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 and on that basis denies the allegations.

42. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 and on that basis denies the allegations.

43. TCCC denies the allegations in paragraph 43.

Facts as to Franulovic

44. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 and on that basis denies the allegations.

45. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 and on that basis denies the allegations.

46. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 and on that basis denies the allegations.

47. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 and on that basis denies the allegations.

48. TCCC denies that it promised any weight-loss benefits. TCCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 48 and on that basis denies the allegations.

49. TCCC denies that the calorie burning benefit of Enviga is limited to a “discreet segment of the population.” TCCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 49 and on that basis denies the allegations.

50. TCCC denies that it made any weight loss claims regarding Enviga. TCCC denies that its advertising claims for Enviga lacked reasonable support. TCCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 50 and on that basis denies the allegations.
51. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and on that basis denies the allegations.
52. TCCC denies the allegations in paragraph 52.
53. To the extent any allegations in paragraph 53 are directed to TCCC, TCCC denies the allegations in this paragraph.
54. TCCC denies the allegations in paragraph 54 and denies that plaintiff has suffered any loss or damages of any kind.

Class Action Allegations

55. This paragraph does not allege any facts as to TCCC and therefore does not require a response. To the extent any allegations in paragraph 55 require a response, TCCC denies the allegations in this paragraph.
56. This paragraph does not allege any facts as to TCCC and therefore does not require a response. To the extent the allegations in paragraph 56 require a response, TCCC denies the allegations in this paragraph.
57. TCCC denies the allegations in paragraph 57.
58. TCCC denies the allegations in paragraph 58.
59. TCCC admits that thousands of cans of Enviga have been sold in New Jersey. Except as specifically admitted, TCCC denies the allegations in paragraph 59.

60. Paragraph 60 contains a legal conclusion to which no response is necessary. To the extent a response is required, TCCC denies the allegations in paragraph 60.

61. Paragraph 61 contains a legal conclusion to which no response is necessary. To the extent a response is required, TCCC denies the allegations in paragraph 61.

62. Paragraph 62 contains a legal conclusion to which no response is necessary. To the extent a response is required, TCCC denies the allegations in paragraph 62.

63. TCCC denies that this case is appropriate for class treatment. TCCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 63 and on that basis denies the allegations.

64. Paragraph 64 contains a legal conclusion to which no response is necessary. To the extent a response is required, TCCC denies the allegations in paragraph 64.

65. TCCC denies the allegations in paragraph 65.

Count

66. TCCC denies the allegations in paragraph 66.

67. TCCC denies the allegations in paragraph 67 including all subparts.

68. TCCC denies the allegations in paragraph 68.

69. TCCC denies the allegations in paragraph 69.

70. TCCC denies the allegations in paragraph 70.

71. TCCC denies the allegations in paragraph 71.

72. TCCC denies the allegations in paragraph 72.

To the extent any allegations in the Complaint remain unanswered or were not specifically admitted, TCCC denies such allegations. TCCC denies any allegations contained in Plaintiff's Prayer for Relief.

Jury Trial Demand

TCCC hereby demands a trial by jury.

This 12th day of May, 2008.

McCARTER & ENGLISH, LLP

/s/ Peter J. Boyer

GITA F. ROTHSCHILD
PETER J. BOYER
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
(973) 639-5959
(973) 297-3833 (fax)

JANE F. THORPE (admitted *pro hac vice*)
SCOTT A. ELDER (admitted *pro hac vice*)
ALSTON & BIRD, LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
(404) 881-7000
(404) 881-7777 (fax)

*Attorneys for Defendant
The Coca-Cola Company*