

Mark Cuker, Esquire
WILLIAMS CUKER BEREZOFSKY
 Woodland Falls Corporate Center
 210 Lake Shore Drive East
 Suite 101
 Cherry Hill NJ 08002-1163
 856-667-0500
 Fax: 856-667-5133

Stephen Gardner, Esquire
 Director of Litigation
CENTER FOR SCIENCE IN THE PUBLIC INTEREST
 5646 Milton Street, Suite 211
 Dallas, Texas 75206
 214-827-2774 (voice)
 214-827-2787 (fax)
 Admitted *pro hac vice*

Attorneys for Plaintiffs

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

Linda Franulovic, individually and on
 behalf of a class of persons,

Plaintiffs,

v.

The Coca-Cola Company,
 Defendant.

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Civil Action No. 07-539 (RMB)

NOTICE OF MOTION FOR CLASS CERTIFICATION

TO: Gita F. Rothschild, Esquire
 Peter J. Boyer, Esquire
 McCarter & English, LLP
 Four Gateway Center
 100 Mulberry Street
 P.O. Box 652
 Newark, NJ 07102-0652

Jane Thorpe
Scott Elder
Alston & Bird, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424

PLEASE TAKE NOTICE that as soon hereafter as counsel may be heard and pursuant to the Court's Amended Scheduling Order of August 6, 2008, the undersigned, Mark R. Cuker, Esquire, of the law firm of WILLIAMS CUKER BEREZOFSKY, co-counsel for Plaintiff Linda Franulovic and the Class, shall make application before the United States District Court for the District of New Jersey for an order declaring that this action be maintained, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2), as a class action on behalf of the following class:

All persons in the State of New Jersey who purchased the soft drink Enviga manufactured and marketed by Defendant from November 1, 2006 through the date this class is certified, excluding Defendant itself and its officers, directors, affiliates, legal representatives, heirs, successors, employees, and assignees;

or such other class or subclasses as the Court may deem appropriate. Specifically excluded from any such class or subclasses are Defendant and any and all of its officers, directors, affiliates, legal representatives, heirs, successors, employees, and assignees.

Plaintiff further moves for an order designating herself, Plaintiff Linda Franulovic, as representative for the Class.

Plaintiff further moves for an order designating Mark R. Cuker and Michael J. Quirk of Williams Cuker Berezofsky and Stephen Gardner of Center for Science in the Public Interest as Class Counsel.


PLEASE TAKE FURTHER NOTICE that at the aforesaid time and place

Plaintiff shall rely on the accompanying Memorandum of Points and Authorities in Support of Plaintiff's Motion for Class Certification and the accompanying Affidavit of Mark R. Cuker and exhibits thereto.

PLEASE TAKE FURTHER NOTICE that Plaintiff requests oral argument and respectfully requests that the Court grant the same pursuant to Local Court Rules 7.1(b)(4) and 78.1(b).

WILLIAMS CUKER BEREZOFSKY

Counsel for Plaintiff and the Proposed Class

By: 

Mark R. Cuker

Dated: October 21, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Motion for Class Certification and all papers submitted in support thereof have been served via ECF and by first-class mail upon the following counsel for Defendant:

Gita F. Rothschild, Esquire
Peter J. Boyer, Esquire
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
P.O. Box 652
Newark, NJ 07102-0652

Jane Thorpe
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Atlanta, GA 30309-3424



Mark R. Cuker

Dated: October 21, 2008

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Civil Action No. 07-539 (RMB)

**ORDER CERTIFYING PLAINTIFF CLASS AND
DESIGNATING CLASS REPRESENTATIVES**

THIS MATTER having come before the Court on the motion of Mark R. Cuker,
Counsel for Plaintiff Linda Franulovic, and the Court having considered the motion
papers and for good cause shown.

IT IS on this _____ day of _____, 200_;

ORDERED that the motion is hereby **GRANTED**. This action shall be

maintained as a class action in accordance with Federal Rule of Civil Procedure 23(a) and (b)(2) on behalf of a class (the “Class”) consisting of:

All persons in the State of New Jersey who purchased the soft drink Enviga manufactured and marketed by Defendant from November 1, 2006 through the date this class is certified, excluding Defendant itself and its officers, directors, affiliates, legal representatives, heirs, successors, employees, and assignees

pursuant to the following findings of fact:

1. The Class consists of at least several thousand members, which is so numerous that joinder of all members is impracticable.
2. There are questions of law and/or fact common to the Class, including, but not limited to, the following:
 - a) whether Defendant advertised and/or branded its soft drink product Enviga as having “calorie burning” effects;
 - b) whether Defendant and Enviga’s “calorie burning” message would lead a reasonable consumer to perceive a promise of weight-loss or weight-management from drinking Enviga;
 - c) whether Defendant had sufficient substantiation for its “calorie burning” promises at the time it made them;
 - d) whether, in light of the foregoing, Plaintiff and Class members are entitled to injunctive relief prohibiting Defendant from advertising and branding Enviga as having “calorie burning” effects.
3. Plaintiff’s claims are typical of the claims of the class.
4. Plaintiff’s interests are aligned with and not antagonistic to the interests of the Class. Plaintiff and her counsel will fairly and adequately assert and protect the

interests of the Class.

5. Plaintiff has sufficiently alleged that Defendant has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief and corresponding declaratory relief would be appropriate respecting the Class as a whole.

Based on the foregoing, it is therefore,

ORDERED, that the Class is hereby certified and defined pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2) as consisting of the following:

All persons in the State of New Jersey who purchased the soft drink Enviga manufactured and marketed by Defendant from November 1, 2006 through the date this class is certified, excluding Defendant itself and its officers, directors, affiliates, legal representatives, heirs, successors, employees, and assignees.

Excluded from the Class are Defendant and any and all of its officers, directors, affiliates, legal representatives, heirs, successors, employees, and assignees; and it is further

ORDERED, that Plaintiff Linda Franulovic is certified as Class Representative; and it is further

ORDERED, that Mark R. Cuker and Michael J. Quirk of Williams Cuker Berezofsky and Stephen Gardner of Center for Science in the Public Interest shall serve as Co-Lead Counsel.

The Honorable Renee Marie Bumb
United States District Judge