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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

PASTOR WILLIAM H. LAMAR IV,
PASTOR DELMAN L. COATES, and THE
PRAXIS PROJECT, on behalf of themselves
and the general public,

Plaintiffs,

v.

THE COCA-COLA COMPANY,

Defendant.

Case No. 2017 CA 004801 B

Next Court Date: January 17, 2020

Event: Status Hearing.

**AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND DEMAND FOR JURY TRIAL**

On behalf of themselves and the general public, Pastor William H. Lamar IV, Pastor Delman Coates, and The Praxis Project (collectively, “Plaintiffs”), bring this amended complaint¹ against The Coca-Cola Company (“Coca-Cola” or “Defendant”) for its deceptive

¹ By Order dated Oct. 1, 2019 in this case, the Court ruled that Plaintiffs’ claims that Coca-Cola engaged in deceptive conduct prior to July 14, 2014 were barred by the statute of limitations, and granted Plaintiffs a limited right to amend their complaint. By filing this Amended Complaint, Plaintiffs do not waive their rights to appeal the Order of Oct. 1, 2019.

advertising, marketing, and sale of Coca-Cola's sugar-sweetened beverages, and allege the following based on information, belief, and the investigation of counsel.

NATURE OF THE ACTION

1. This is an action under the District of Columbia Consumer Protection Procedures Act ("DCCPPA") for declaratory and injunctive relief against Coca-Cola for its false, deceptive, and misleading advertising and promotion of sugar-sweetened beverages.²

2. Aware of the science linking sugar-sweetened beverages to obesity and obesity-related conditions, including type 2 diabetes and cardiovascular disease, and of growing public concern over this link, Coca-Cola has engaged in an aggressive campaign to protect profits earned from the sale of sugar-sweetened beverages by flooding the market with countervailing representations that obscure this link between the beverages and disease.

3. In doing so, Coca-Cola, the leading manufacturer and supplier in the world of sugar-sweetened beverages, misleads and deceives consumers about the characteristics of sugar-sweetened beverages.

4. In addition to denying established science on sugar-sweetened beverages, Coca-Cola has sought deceptively to switch the focus from sugar-sweetened beverages to inactivity as the key driver of obesity and related epidemics, including through its expenditure of hundreds of millions of dollars on research and programs that almost exclusively highlight exercise.

5. Contemporaneous with its false and misleading representations on sugar-sweetened beverages, Coca-Cola has represented to the public that its positions are consistent with objective scientific criteria, even claiming that it represents the voice of science.

6. Coca-Cola has undertaken these actions knowing that sugar-sweetened beverages are linked to serious medical conditions, including obesity, diabetes, and cardiovascular disease, and that substantial science exists to support this conclusion.

7. In addition to misleading the general public, Coca-Cola's advertising has made such misrepresentations to children, who are particularly susceptible to advertising influence, even though publicly Coca-Cola represents that it does not advertise to children under 12.

²"Sugar-sweetened beverage" refers to any carbonated or non-carbonated drink that is sweetened with sugar or high fructose corn syrup, or other caloric sweetener, including soda, fruit drinks, teas, coffees, sports drinks, and energy drinks. CTRS. FOR DISEASE CONTROL & PREVENTION, THE CDC GUIDE TO STRATEGIES FOR REDUCING THE CONSUMPTION OF SUGAR-SWEETENED BEVERAGES 4 (2010), <https://stacks.cdc.gov/view/cdc/51532>.

8. A primary purpose of Coca-Cola's campaign of disinformation and misrepresentation is to maintain and increase the sale and use of sugar-sweetened beverages.

9. Continued sales of Coca-Cola's flagship product, Coke, are particularly critical to Coca-Cola's market dominance and financial future. Coke garners exceptional brand loyalty—unlike Dasani water, for example.

10. Obesity, type 2 diabetes, and cardiovascular disease, have reached epidemic levels in the District of Columbia and the United States.

11. Each year, tens of thousands of Washingtonians, and millions across the United States, will either develop, or develop the markers for, obesity, type 2 diabetes, and cardiovascular disease.

12. Each year, Coca-Cola reaps huge profits from the sale of its sugar-sweetened beverages.

13. Each year, Coca-Cola spends billions of dollars on misleading and deceptive promotions and advertising. The impact on consumers of such messaging persists for years.

14. Coca-Cola intends for consumers to rely on its representations about sugar-sweetened beverages, and reasonable consumers have so relied.

15. Reasonable consumers lack the scientific knowledge necessary to determine that many of Coca-Cola's representations about sugar-sweetened beverages are false and misleading, including that they omit material facts about the link between such beverages and obesity, type 2 diabetes, and cardiovascular disease.

16. Coca Cola's false and misleading representations and omissions violate the District of Columbia Consumer Protection Procedures Act ("DCCPPA"), D.C. Code §§ 28-3901 *et seq.*

17. In 2012, the DCCPPA was amended to clarify that actionable misrepresentations include omissions. According to the Consumer Affairs Committee Report, which accompanied the amendments, "while facts may exist in the public domain as to veracity of claims made, merchants nevertheless flood the market with countervailing representations to hide the truth. . . . New 28-3904(f-1) seeks to . . . provide a cause of action when merchants bury the truth and leave false impressions without outright stating falsehoods."³

³ COUNCIL OF THE DISTRICT OF COLUMBIA, COMMITTEE ON PUBLIC SERVICE AND CONSUMER AFFAIRS, COMMITTEE REPORT: REPORT ON BILL 19-0581, THE "CONSUMER PROTECTION AMENDMENT ACT 2012," at 7 (2012), <https://goo.gl/2NxNgK>.

18. Because Coca-Cola's marketing and advertising tend to mislead and are materially deceptive about the true nature, characteristics, and quality of its sugar-sweetened beverages, Plaintiffs bring this case on behalf of themselves and the general public and seek relief, including an injunction, to halt Defendant's false marketing of sugar-sweetened beverages.

PARTIES⁴

19. Reverend William H. Lamar IV serves as Pastor of the historic Metropolitan African Methodist Episcopal Church ("AME") in Washington, D.C. He focuses on community outreach and social justice, and is a contributor to many publications including *The Washington Post*, *Christian Century*, and *Divinity*. Pastor Lamar is a graduate of Florida Agricultural and Mechanical School (B.S.), and Duke University Divinity School (M.Div.). He previously served as Managing Director of Leadership Education at Duke University Divinity School.

20. As recently as the spring of 2017, Pastor Lamar purchased sugar-sweetened beverages sold by Coca-Cola, including Sprite, for personal consumption in the District of Columbia. At the time of those purchases, Pastor Lamar was unaware of the link between sugar-sweetened beverages and obesity, type 2 diabetes, and cardiovascular disease.

21. At the time of these purchases, Defendant's flooding of the market with false representations and material omissions about the science and safety of sugar-sweetened beverages contributed to Pastor Lamar's impression that these drinks were not as harmful to health as they are. Had Pastor Lamar been aware of the extent of the health risks posed by the consumption of sugar drinks, he would not have purchased the products.

22. Reverend Delman L. Coates serves as Senior Pastor of Mt. Ennon Baptist Church in Clinton, Maryland. As Pastor, he administers to nearly 9,000 members, many of whom live and/or work in the District of Columbia. He is a known advocate on issues of social justice and health. Pastor Coates is a graduate of Morehouse College (B.A.), Harvard Divinity School (M.Div.), and Columbia University (Ph.D.) and, among other accolades, was named by *Ebony* magazine as one of their "Power 100" and *The African American Pulpit* as one of the "20 to Watch."

⁴ By Order dated Oct. 1, 2019 in this case, the Court ruled that Plaintiffs did not sufficiently allege that they had standing as testers within the meaning of the DCCPPA, but granted Plaintiffs a limited right to amend their complaint. By filing this Amended Complaint, Plaintiffs do not waive their rights to appeal the Court's ruling on tester standing.

23. As recently as the spring of 2017, Pastor Coates purchased sugar-sweetened beverages sold by Coca-Cola, including Spite and Fanta, in the District of Columbia for consumption by family members. He purchased these drinks for his children, who, in fact, consumed them. At the time of those purchases, Pastor Coates was influenced by statements that consumers could readily incorporate sugar sweetened beverages into their routine diets without risk of disease.

24. At the time of these purchases, Coca-Cola's flooding of the market with false representations and material omissions about the science and safety of sugar-sweetened beverages contributed to Pastor Coates' impression that these drinks did not link with disease. Had Pastor Coates been aware of the extent of the health risks posed by the consumption of Sprite and Fanta, regardless of the amount of exercise a consumer does, he would not have purchased as many of these sodas for his children as he did and would instead have offered them as an occasional treat.

25. Plaintiff Praxis is a nonprofit corporation pursuant to section 501(c)(3) of the Internal Revenue Code. Praxis's mission is to build healthier communities, including through the advocacy of its Executive Director, Xavier Morales, concerning sugar-sweetened beverages. Praxis diverts resources from other advocacy work in order to advocate on sugar-sweetened beverages.

26. Praxis performs its work throughout the United States, including in the District of Columbia. As of January 2017, Praxis maintains one of its two principal offices in the District, and routinely holds annual meetings of its Board of Directors and advocates in the District. Several of its staff members also reside in or work in the greater District of Columbia metropolitan area.

27. Although Praxis has long promoted healthier eating and drinking by consumers, especially those living in communities experiencing poorer health and wellness outcomes, it has had to divert resources from other health and wellness projects in order to counteract the Defendant's misleading representations and material omissions about the science and safety of sugar-sweetened beverages.

28. Approximately 50% of the time of Praxis Executive Director Xavier Morales is spent on advocacy of healthier eating and drinking, not including any time that he has spent participating in this litigation. Of that 50% of his time, he has had to devote 10-20% to public education, advocacy, and training counteracting the Defendant's misleading misrepresentations

about sugar-sweetened drinks, including by providing accurate information about the scientifically established link between sugar drinks and obesity, type 2 diabetes, and cardiovascular disease, rather than spending that time promoting the availability and consumption of healthier food and drinks.

29. Thus, Praxis has had to divert thousands of dollars in staff time that could have been spent on more critical needs, such as productively promoting the consumption of healthful food and beverages. Instead, the resources have had to be spent counteracting the misleading information put out by the Defendant.

30. Among the work that Praxis has had to do to counter Coca-Cola's deceptions and that has required expenditures of at least \$60,000 that Praxis would not otherwise have expended to carry out its food advocacy mission, has been: 1) participation in briefings with community groups and community health organizations to address misinformation about the dangers of sugar sweetened beverages; 2) the development of "Healthy Black Families" videos that counter misstatements about the health risks posed by sugar sweetened beverages; and 3) advocacy work with D.C. Greens to respond to Coca-Cola's misinformation about the consumption of sugar sweetened beverages, and the need for limits

31. Defendant Coca-Cola is a public corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Atlanta, Georgia. Coca-Cola describes itself as the largest manufacturer, distributor, and marketer of nonalcoholic beverage concentrates and syrups in the world, many of which are sugar-sweetened beverages, including its flagship Coca-Cola, or Coke. In 2016, Coca-Cola's gross profits were \$25.4 billion.⁵ In 2016, its advertising budget was \$4.0 billion.⁶ Given its history as one of America's oldest and most successful companies, and through its major financial support of key civil rights groups, Coca-Cola enjoys enormous good will from consumers, including in the District of Columbia. Coca-Cola is well-aware of this good will and the trust consumers implicitly place in its representations.

JURISDICTION AND VENUE

32. This Court has subject matter jurisdiction over this action pursuant to D.C. Code § 11-921 and § 28-3905(k), because it is an action seeking injunctive relief for violations of the District of Columbia Consumer Protection Procedures Act.

⁵ THE COCA-COLA CO., ANNUAL REPORT FORM 10-K: FISCAL YEAR 2016, at 47 (Feb. 24, 2017), <https://goo.gl/W4z4Jg>.

⁶ *Id.* at 51.

ALLEGATIONS

I. THE INTERESTS OF THE GENERAL PUBLIC

33. This action is brought by Plaintiffs on behalf of themselves and the general public pursuant to D.C. Code § 28-3905(k)(1)(A–D).

34. Faced with a growing scientific consensus linking sugar-sweetened beverages to obesity, type 2 diabetes, and cardiovascular disease, Defendant made numerous false and deceptive representations, including by way of material omissions, about the consequences of drinking sugar-sweetened beverages routinely, the character of the calories in sugar-sweetened beverages, and sugar-sweetened beverages' purported value as healthful sources of hydration for most consumers.

35. Defendant's statements, representations, and material omissions are directed at the general consumer public, including District of Columbia consumers, with the purpose of persuading consumers to purchase Coca-Cola's sugar-sweetened beverages and to discourage them from considering, or drowning out, the contrary advice of medical experts and scientists.

36. Defendant knew or should have known that consumers would consider their representations material to their decisions whether to purchase Coca-Cola's sugar-sweetened beverages, decisions that the general consumer public, including District of Columbia consumers, otherwise would have modified had Defendant been truthful in their representations and their public pledges about promoting unbiased and objective science.

37. Upon information and belief, Defendant has caused injury and adverse effects to the general consumer public, including District of Columbia consumers.

1. ESTABLISHED SCIENCE ON THE CHARACTERISTICS OF SUGAR-SWEETENED BEVERAGES

38. Sugar-sweetened beverages are the leading source of added sugars in the American diet,⁷ providing approximately 34.4% of all added sugars. By contrast, candy comprises 6.7% of the total.⁸

⁷ U.S. DEP'T OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., SCIENTIFIC REPORT OF THE 2015 DIETARY GUIDELINES ADVISORY COMMITTEE 148 fig. D1.36 (2015), <http://goo.gl/2rc9v3>.

⁸ Adam Drewnowski & Colin D. Rehm, *Consumption of Added Sugars Among US Children and Adults by Food Purchase Location and Food Source*, 100 AM. J. CLINICAL NUTRITION 901, 904 (2014).

39. A 16-ounce bottle of Coke has 12 teaspoons of added sugar, a 15-ounce bottle of Coca-Cola's Minute Maid Cranberry Grape Juice Beverage has approximately 13 teaspoons of added sugar, and a 20-ounce bottle of the company's vitaminwater has 8 teaspoons of added sugar.⁹ Twelve teaspoons of sugar is 200% of the AHA recommended daily maximum for women and more than twice the sugar content of a Twix candy bar.¹⁰

40. The American Heart Association recommends a daily maximum of six (6) teaspoons of added sugar for adult women and children and nine (9) teaspoons for men.¹¹ The American Heart Association also recommends a maximum of one eight (8) ounce sugar drink a week for children and teens.¹²

41. Sugar-sweetened beverage consumption is scientifically linked to obesity, type 2 diabetes, and cardiovascular disease.

42. Stronger evidence links these diseases with the consumption of sugar-sweetened beverages than with the consumption of added sugar in non-liquid forms.¹³

43. Numerous governmental and medical bodies have recognized this link, including the Centers for Disease Control and Prevention ("CDC"), the 2015 Dietary Guidelines Advisory Committee, the American Heart Association, the Obesity Society, and the American Medical Association ("AMA"), and have urged reduction of sugar-sweetened beverage consumption, mainly as a means to address the epidemics of obesity, type 2 diabetes, and cardiovascular disease.

44. On June 14, 2017, the AMA passed a resolution supporting a comprehensive campaign to reduce consumption of sugar-sweetened beverages. According to its press release, the AMA explicitly recognizes the need affirmatively to warn consumers of health harms linked

⁹ Of the parents who purchased vitaminwater for their children, 78% thought it was healthy. Tina Rosenberg, *Labeling the Danger in Soda*, N.Y. TIMES (Mar. 30, 2016), <http://goo.gl/TnryHW>; Christina R Munsell et al., *Parents' beliefs about the healthfulness of sugary drink options: opportunities to address misperceptions*, 19 PUBLIC HEALTH NUTRITION 46, 50 (2015).

¹⁰ *Id.*

¹¹ *Added Sugars*, AM. HEART ASS'N, <http://goo.gl/PoigAa> (last visited July 7, 2017).

¹² *Children Should Eat Less Than 25 Grams of Added Sugar Daily*, Am. Heart Ass'n, <https://goo.gl/KcYKns> (last visited July 7, 2017); Rachel K. Johnson et al., *Dietary Sugars Intake and Cardiovascular Health: A Scientific Statement From the American Heart Association*, 120 CIRCULATION 1011 (2009); Miriam B. Vos et al., *Added Sugars and Cardiovascular Disease Risk in Children: A Scientific Statement From the American Heart Association*, 135 CIRCULATION e1017 (2017).

¹³ Expert Report of Walter Willett ¶ 10, *Am. Beverage Ass'n v. City & Cty. of San Francisco*, No. 3:15-cv-03415-EMC (N.D. Cal. filed Feb. 23, 2016), ECF No. 56-1 ("Willett Report"); CREDIT SUISSE, SUGAR CONSUMPTION AT A CROSSROADS 8–9 (2013), <https://goo.gl/7rMhXY>;

with sugar-sweetened beverages. AMA “[d]elegates also adopted a policy favoring evidence-based strategies to reduce consumption of SSBs including: imposing excise taxes; restricting access to SSBs in schools and other settings; using warning labels to educate consumers on the health harms of SSBs and using plain packaging.”¹⁴

45. Studies tracking thousands of adults for years show that those who consume sugar-sweetened beverages have higher rates of obesity and obesity-related chronic diseases.¹⁵

46. One highly regarded study (double-blind, randomized controlled intervention trial (“RCT”)) involving 641 Dutch children reported that those who were given just one 8-ounce sugar-sweetened drink a day gained more weight and body fat over 1½ years than those who were given sugar-free drinks. Similar findings have been reported in a number of other clinical trials on adults and children.¹⁶

¹⁴ Sara Berg, *AMA Backs Comprehensive Approach Targeting Sugary Drinks*, AMA WIRE (June 14, 2017), <https://goo.gl/tyAgGf>.

¹⁵ See, e.g., Ravi Dhingra et al., *Soft Drink Consumption and Risk of Developing Cardiometabolic Risk Factors and the Metabolic Syndrome in Middle-Aged Adults in the Community*, 116 CIRCULATION 480 (2007); Frank B. Hu & Vasanti S. Malik, *Sugar-Sweetened Beverages and Risk of Obesity and Type 2 Diabetes: Epidemiologic Evidence*, 100 PHYSIOLOGY & BEHAV. 47 (2010); Vasanti S. Malik et al., *Sugar Sweetened Beverages and Weight Gain in Children and Adults: A Systematic Review and Meta-Analysis*, 98 AM. J. CLINICAL NUTRITION 1084 (2013); Julie R. Palmer et al., *Sugar-Sweetened Beverages and Incidence of Type 2 Diabetes Mellitus in African American Women*, 168 ARCHIVES INTERNAL MED. 1487 (2008); Qibin Qi et al., *Sugar-Sweetened Beverages and Genetic Risk of Obesity*, 367 NEW ENG. J. MED. 1387 (2012); Matthias B. Schulze et al., *Sugar-Sweetened Beverages, Weight Gain, and Incidence of Type 2 Diabetes in Young and Middle-Aged Women*, 292 JAMA 927 (2004); Jiantao Ma, *Sugar-Sweetened Beverage but Not Diet Soda Consumption is Positively Associated with Progression of Insulin Resistance*, 146 J. OF NUTRITION 2544 (Nov. 9, 2016).

¹⁶ Janne C. de Ruyter et al., *A Trial of Sugar-Free or Sugar-Sweetened Beverages and Body Weight in Children*, 367 NEW ENG. J. MED. 1397 (2012); see also Cara B. Ebbeling et al., *A Randomized Trial of Sugar-Sweetened Beverages and Adolescent Body Weight*, 367 NEW ENG. J. MED. 1407 (2012); Cara B. Ebbeling et al., *Effects of Decreasing Sugar-Sweetened Beverage Consumption on Body Weight in Adolescents: A Randomized Controlled Pilot Study*, 117 PEDIATRICS 673 (2006); Janet James et al., *Preventing Childhood Obesity by Reducing Consumption of Carbonated Drinks: Cluster Randomised Controlled Trial*, 328 BMJ 1237 (2004); Anne Raben et al., *Increased Postprandial Glycaemia, Insulinemia, and Lipidemia After 10 Weeks’ Sucrose-Rich Diet Compared to an Artificially Sweetened Diet: A Randomized Controlled Trial*, 55 FOOD NUTRITION RES. 5961 (2011); Anne Raben et al., *Sucrose Compared with Artificial Sweeteners: Different Effects on Ad Libitum Food Intake and Body Weight After 10 Wk of Supplementation in Overweight Subjects*, 76 AM. J. CLINICAL NUTRITION 721 (2002); Michael G. Tordoff & Anne M. Alleva, *Effect of Drinking Soda Sweetened with Aspartame or High-Fructose Corn Syrup on Food Intake and Body Weight*, 51 AM. J. CLINICAL NUTRITION 963 (1990).

47. Scientific research has also established a link between the consumption of sugar-sweetened beverages and type 2 diabetes, which is only partly due to the impact of sugar-sweetened beverages on weight gain.

48. Put another way, the consumption of sugar-sweetened beverages is linked to an increase in type 2 diabetes risk even after researchers account for, that is, in addition to, the impact of sugar-sweetened beverages on weight.¹⁷

49. The 2015 Dietary Guidelines Advisory Committee concluded that “[s]trong evidence shows that higher consumption of added sugars, especially sugar sweetened beverages, increases the risk of type 2 diabetes among adults and this relationship is not fully explained by body weight.”¹⁸

50. Scientific studies also link sugar-sweetened beverage consumption to a higher risk of other obesity-related conditions, including coronary heart disease and stroke (collectively, cardiovascular disease).¹⁹

51. A systematic review and meta-analysis of 39 randomized clinical trials concluded that higher intakes of sugars are associated with risk factors for cardiovascular disease including

¹⁷ Dhingra et al., *supra* note 16, at 480; Darren C. Greenwood et al., *Association Between Sugar-Sweetened and Artificially Sweetened Soft Drinks and Type 2 Diabetes: Systematic Review and Dose-Response Meta-Analysis of Prospective Studies*, 112 BRIT. J. NUTRITION 725 (2014); Fumiaki Imamura et al., *Consumption of Sugar Sweetened Beverages, Artificially Sweetened Beverages, and Fruit Juice and Incidence of Type 2 Diabetes: Systematic Review, Meta-Analysis, and Estimation of Population Attributable Fraction*, 351 BMJ h3576 (2015); Lawrence de Koning et al., *Sugar-Sweetened and Artificially Sweetened Beverage Consumption and Risk of Type 2 Diabetes in Men*, 93 AM. J. CLINICAL NUTRITION 1321 (2011); Vasanti S. Malik et al., *Sugar-Sweetened Beverages and Risk of Metabolic Syndrome and Type 2 Diabetes: A Meta-Analysis*, 33 DIABETES CARE 2477 (2010); Andrew O. Odegaard et al., *Soft Drink and Juice Consumption and Risk of Physician-Diagnosed Incident Type 2 Diabetes*, 171 AM. J. EPIDEMIOLOGY 701 (2010); Palmer et al., *supra* note 16, at 1487; Schulze et al., *supra* note 16, at 927; The InterAct Consortium, *Consumption of Sweet Beverages and Type 2 Diabetes Incidence in European Adults: Results from EPIC-InterAct*, 56 DIABETOLOGIA 1520 (2013).

¹⁸ DIETARY GUIDELINES ADVISORY COMMITTEE, *supra* note 7, at pt. D, ch. 6, p. 20; *accord* Willett Report, *supra* note 13, ¶ 51 (“Findings from well-designed prospective cohort studies have shown a strong and consistent association between SSB consumption and diabetes.”).

¹⁹ Adam M. Bernstein et al., *Soda Consumption and the Risk of Stroke in Men and Women*, 95 AM. J. CLINICAL NUTRITION 1190 (2012); Lawrence de Koning et al., *Sweetened Beverage Consumption, Incident Coronary Heart Disease, and Biomarkers of Risk in Men*, 125 CIRCULATION 1735 (2012); Teresa T. Fung et al., *Sweetened Beverage Consumption and Risk of Coronary Heart Disease in Women*, 89 AM. J. CLINICAL NUTRITION 1037 (2009).

higher levels of triglycerides, LDL (“bad”) cholesterol, and blood pressure, and that “[t]he relation is independent of effects of sugars on body weight.”²⁰

52. The Dietary Guidelines Advisory Committee said, “higher intake of added sugars, especially in the form of sugar-sweetened beverages, is consistently associated with increased risk of hypertension, stroke, and [coronary heart disease] in adults.”²¹

53. Likewise, “the recommendations from the Institute of Medicine, the American Heart Association, the Obesity Society, and many other organizations [are] to reduce the consumption of sugar-sweetened beverages in both children and adults.”²²

54. This is because the “consumption of [sugar-sweetened beverages] causes excess weight gain and is associated with increased risk of type 2 diabetes and [cardiovascular disease]; thus, these beverages are unique dietary contributors to obesity and related chronic diseases.”²³

55. Today, roughly one-third of children and two-thirds of adults in the United States are overweight or obese.²⁴ Since 1980, obesity rates in the United States have tripled in children²⁵ and doubled in adults.²⁶

56. In Mexico, where consumption of sugar-sweetened beverages is high, diabetes is now the leading cause of death.²⁷

²⁰ Te Morenga LA et al., *Dietary Sugars and Cardiometabolic Risk: Systematic Review and Meta-analyses of Randomized Controlled Trials of the Effects on Blood Pressure and Lipids*, AM. J. CLINICAL NUTRITION 65–79 (2014).

²¹ DIETARY GUIDELINES ADVISORY COMMITTEE, *supra* note 7, at pt. D, ch. 6, p. 20.

²² Sonia Caprio, *Calories from Soft Drinks—Do They Matter?*, 367 NEW ENG. J. MED. 1462, 1463 (2012).

²³ Vasanti S. Malik & Frank B. Hu, *Fructose and Cardiometabolic Health: What the Evidence from Sugar-Sweetened Beverages Tells Us*, 66 J. AM. C. CARDIOLOGY 1615 (2015).

²⁴ Cynthia L. Ogden et al., *Prevalence of Childhood and Adult Obesity in the United States, 2011–2012*, 311 JAMA 806 (2014). Worldwide, according to McKinsey & Company, “almost half of the world’s adult population could be overweight or obese by 2030.” MCKINSEY GLOB. INST., *OVERCOMING OBESITY: AN INITIAL ECONOMIC ANALYSIS* 11 (2014) (internal citation omitted). The McKinsey Report added a critical public health perspective: the 2.1 billion obese or overweight people in the world is two and a half times the number of undernourished people. *Id.* at 14.

²⁵ CYNTHIA OGDEN & MARGARET CARROLL, CTRS. FOR DISEASE CONTROL & PREVENTION, *PREVALENCE OF OBESITY AMONG CHILDREN AND ADOLESCENTS: UNITED STATES, TRENDS 1963–1965 THROUGH 2007–2008*, at 5 (2010), <https://goo.gl/6afktw>.

²⁶ CHERYL D. FRYAR, MARGARET D. CARROLL & CYNTHIA L. OGDEN, CTRS. FOR DISEASE CONTROL & PREVENTION, *PREVALENCE OF OVERWEIGHT, OBESITY, AND EXTREME OBESITY AMONG ADULTS: UNITED STATES, 1960–1962 THROUGH 2011–2012*, at tbl. 2 (2014), <http://goo.gl/dc2UHy>.

²⁷ WHO, MEXICO: WHO STATISTICAL PROFILE 3 (2015), <https://goo.gl/qlMNLO>.

57. The adult obesity rate in the District of Columbia has increased approximately 50% in the last 25 years.²⁸ In 2011, roughly 40% of the residents in Wards 7 and 8 were obese (excluding those who were overweight). This compared to roughly 24% of D.C. residents overall.²⁹

58. According to the District of Columbia’s Department of Health, “obese residents were more likely than residents who were a normal weight or overweight to drink soda three or more times within the past seven days.”³⁰

59. Forty-seven percent (47%) of District of Columbia adult residents—about half—are also estimated to have pre-diabetes or diabetes.³¹

60. More District of Columbia residents die each year from complications related to obesity than from AIDS, cancer, and homicides combined.³²

61. Estimates on the annual cost of medical care and premature mortality attributable to the consumption of sugar-sweetened beverages are astronomical. For example, in New York City, the figure is estimated to be between \$3.23 billion and \$13.17 billion.³³ Globally, the McKinsey Global Institute has estimated that the cost of mitigating obesity exceeds two trillion dollars annually—roughly matching the annual economic burden of armed conflict and tobacco.³⁴

2. **BACKGROUND FACTS ON COCA-COLA’S FALSE AND MISLEADING REPRESENTATIONS ABOUT THE CHARACTER OF SUGAR-SWEETENED BEVERAGES**³⁵

²⁸ *Adult Obesity in the United States*, TRUST FOR AMERICA’S HEALTH AND THE ROBERT WOOD JOHNSON FOUNDATION (2015), <http://stateofobesity.org/adult-obesity/> (last visited Nov. 13, 2019).

²⁹ DISTRICT OF COLUMBIA DEP’T OF HEALTH, *OBESITY IN THE DISTRICT OF COLUMBIA*, 2014, at 22 (2014), <https://goo.gl/bQHxjy>.

³⁰ *Id.* at 5.

³¹ AMERICAN DIABETES ASSOCIATION, *THE BURDEN OF DIABETES IN THE DISTRICT OF COLUMBIA* (2015), <https://goo.gl/00wIFR>.

³² DISTRICT OF COLUMBIA DEP’T OF HEALTH, *CHRONIC DISEASE PREVENTION STATE PLAN FOR THE DISTRICT OF COLUMBIA*, 2014–2019, at 4 (2014), <https://goo.gl/Jw93DN>.

³³ Shi-Ling Hsu, *A Cost-Benefit Analysis of Sugary Drink Regulation in New York City*, 10 J. FOOD L. & POL’Y 73, 103 tbl. 12 (2014).

³⁴ MCKINSEY GLOB. INST., *supra* note 24, at 1.

³⁵ By Order dated Oct. 1, 2019 in this case, the Court ruled that Plaintiffs’ claims that Coca-Cola engaged in deceptive conduct prior to July 14, 2014 were barred by the statute of limitations, and granted Plaintiffs a limited right to amend their complaint. By filing this Amended Complaint, Plaintiffs do not waive their rights to appeal the Order of Oct. 1, 2019. Plaintiffs have set forth facts herein that predate July 13, 2014 as background to the facts relating to deceptive conduct after July 13, 2014 set forth in section IV below.

62. In 2012, faced with a growing body of scientific research establishing the link between its products and obesity, type 2 diabetes, and cardiovascular disease, Coca-Cola began a campaign of misrepresentation and deception.

63. Various scientists, regulators, and health professionals were drawing attention to the science linking the epidemics of obesity, diabetes, and cardiovascular disease to sugar-sweetened beverages, as well as proposed solutions.

64. To combat these scientific developments, which were antagonistic to profits, Coca-Cola executives embarked on an intensive public promotion and marketing campaign.

65. Defendant's campaign sought to reverse the growing public perception that sugar-sweetened beverages are linked to obesity, type 2 diabetes, or cardiovascular disease, and to provide a straw man instead: lack of caloric balance and exercise.

66. To aid this deception—that exercise alone can counteract routine consumption of sugar-sweetened beverages and halt the obesity epidemic—Coca-Cola adopted, and continues to push, euphemistic slogans such as “balance,” “calories in, calories out,” and “mixify,” as well as “a calorie is a calorie” or “all calories are equal,” coupling them with deceptive science denials.

67. Defendant made these representations despite overwhelming scientific evidence of the link between sugar-sweetened beverages and obesity, type 2 diabetes, and cardiovascular disease, and, moreover, that exercise alone—particularly of the type promoted by Defendant on various platforms—will not protect consumers from developing these conditions if they routinely consume sugar-sweetened beverages.

68. Defendant carried out its campaign of deception by a variety of means.

A. **False Representations to the Public by Coca-Cola Executives**

69. In response to adverse science, Coca-Cola's top scientists and executives embarked on an aggressive communications crusade to inform the public, falsely, that sugar-sweetened beverage consumption is not linked to obesity, type 2 diabetes, or cardiovascular disease.

70. Coca-Cola's executives issued their public denials despite actual knowledge of facts to the contrary.

71. Coca-Cola’s Senior Vice President, Katie Bayne, for example, was repeatedly quoted for her blanket denial, stating that “[t]here is no scientific evidence that connects sugary beverages to obesity.”³⁶

72. Coca-Cola’s former Chairman and Chief Executive Officer, Douglas Ivester, claimed that “Coca-Cola is an excellent complement to the habits of a healthy life.”³⁷

73. James Quincey, who served as President of Coca-Cola’s Europe Group in 2013 and was later named Coca-Cola’s Chief Executive Officer in 2017, also joined the campaign of deception, stating in an interview, “The experts are clear—the academics, the government advisors, diabetes associations. . . . A calorie is a calorie.”³⁸

B. Coca-Cola’s Secret Funding of Scientific Research

74. In addition to the public denials of its own executives, who relied on the good will of one of America’s oldest and most iconic companies to mislead the public, Coca-Cola also funded “front” groups, such as the Global Energy Balance Network (“GEBN”), to message deceptively. These groups were presented to the public as disinterested research entities but are and were secretly funded by Coca-Cola to suppress and obfuscate the facts about sugar-sweetened beverages.

75. Coca-Cola regularly relied on, and republished, such studies to support its misleading claims about sugar-sweetened beverages.

76. Dr. Steven Blair, formerly vice president of GEBN, claimed that “[m]ost of the focus in the popular media and the scientific press . . . blames . . . sugary drinks [for the obesity epidemic], and there is really virtually no compelling evidence that that, in fact, is the cause. Those of us interested in science, public health, medicine, we have to learn how to get the right information out there.”³⁹

³⁶ Bruce Horowitz, *Coke Says Obesity Grew as Sugar Drink Consumption Fell*, USA TODAY (June 7, 2012), <http://goo.gl/w0jFU2> (statement by Coke executive Katie Bayne).

³⁷ *The Unhappy Truth About Soda*, CTR. FOR SCI. IN THE PUB. INTEREST, <http://www.therealbears.org/> (last visited Nov. 13, 2017).

³⁸ CNN, *Interview by Richard Quest with James Quincey, in London, England*, YOUTUBE (May 9, 2013), <https://goo.gl/dw6RHp>; see also Ignored voices, *BBC Interview by Jeremy Paxman with James Quincey, in London, England*, YOUTUBE (Nov. 27, 2013), <https://goo.gl/4Y7xVN> (shifting responsibility for the obesity and diabetes epidemics away from sugar-sweetened beverages and, explicitly, to a lack of activity).

³⁹ CrossFit, *Dr. Steven Blair of Coca-Cola and ACSM’s Global Energy Balance Network*, YOUTUBE (Sept. 10, 2015), <https://goo.gl/h14Yq8>.

77. Claiming to be “the voice of science,” GEBN touted “strong evidence” that the key to preventing weight gain is not reducing sugar-sweetened beverage intake, “but maintaining an active lifestyle and eating more calories.”⁴⁰

78. Whether through GEBN, or payments to professors or centers at certain universities, Coca-Cola spent approximately \$120 million in just five years to quietly fund research and related programs as part of its campaign to mislead the public about the true characteristics of sugar-sweetened beverages, and specifically the science linking sugar-sweetened beverages to obesity, type 2 diabetes, and cardiovascular disease.⁴¹

79. A study by Dr. Dean Schillinger, of the University of California San Francisco’s Division of General Internal Medicine and Center for Vulnerable Populations, found that 26 of 26 “negative” studies—those finding no link between sugar-sweetened beverages and obesity or diabetes—received funding from the sugar-sweetened beverage industry. Conversely, only one of the 34 “positive” studies received industry funding. Dr. Schillinger concluded that “[t]he SSB industry seems to be manipulating contemporary scientific processes to create controversy and advance their business interests at the expense of the public’s health.”⁴²

80. Coca-Cola admitted to “cultivating relationships” with scientists as a way to “balance the debate” on sugar-sweetened beverages, a euphemism for distortion.⁴³ This effort was, for a time, directed by Dr. Rhona Applebaum, Coca-Cola’s “Chief Science and Health Officer.”

81. Dr. Applebaum cultivated Dr. James Hill, of the University of Colorado, for example. He pledged, in return for research funding, to “provide a strong rationale for why a

⁴⁰ Anahad O’Connor, *Coca-Cola Funds Scientists Who Shift Blame for Obesity Away from Bad Diets*, N.Y. TIMES (Aug. 9 2015), <http://goo.gl/tpfgr7> (quoting GEBN’s now-discontinued website); *see also* Anahad O’Connor, *Coke’s Chief Scientist, Who Orchestrated Obesity Research, Is Leaving*, N.Y. TIMES (Nov. 24, 2015), <https://tinyurl.com/yffz87e8> (while Coca-Cola said it had no influence on GEBN, “reports show that Dr. Applebaum and other executives at Coke helped pick the group’s leaders, create its mission statement and design its website . . .”).

⁴¹ Anahad O’Connor, *Coke Discloses Millions in Grants for Health Research and Community Programs*, N.Y. TIMES (Sept. 22, 2015), <http://goo.gl/hK48HC>.

⁴² Dean Schillinger et al., *Do Sugar-Sweetened Beverages Cause Obesity and Diabetes? Industry and the Manufacture of Scientific Controversy*, 165 ANNALS INTERNAL MEDICINE 895 (2016).

⁴³ Anahad O’Connor, *Coke’s Chief Scientist, Who Orchestrated Obesity Research, Is Leaving*, N.Y. TIMES (Nov. 24, 2015), <https://tinyurl.com/yjuoa7cf>.

company selling sugar water should focus on promoting physical activity. This would be a very large and expensive study, but could be a game changer.”⁴⁴

82. As part of his funding appeal, Dr. Hill added, “I want to help your company avoid the image of being a problem in people’s lives”⁴⁵

83. Coca-Cola’s then-Chief Executive Officer, Muhtar Kent, liked this so much that he directed Dr. Applebaum to get CBS to invite Dr. Hill on “CBS This Morning.”⁴⁶

84. Coca-Cola also surreptitiously funded Dr. Hill to organize several obesity conferences for science journalists, where these journalists were exposed to “Coca-Cola friendly dogma.”⁴⁷

85. Meanwhile, Dr. Applebaum publicly represented that Coca-Cola’s funding was unrestricted and any scientists that it funded were independent.

86. So too, James Quincey explained in a widely-circulated television interview that Coca-Cola “get[s] information [about obesity and SSBs] into people’s hands” to empower their “choices.” Coca-Cola is “not trying to hide the information,” “we are focused on getting the information out there.” Quincy also claimed deceptively that sugar-sweetened beverages constitute a minute percent of all calories, and by implication, bear only a tiny fraction of responsibility for the obesity epidemic.⁴⁸

IV. COCA-COLA’S CAMPAIGN OF DECEPTION SINCE 2014

A. Coca-Cola’s Deceptive Advertising Campaigns

87. After launching a public relations campaign to deny the scientifically-supported connection between sugar-sweetened beverages and disease, and trying to develop new, distorted science to deny that established connection, Coca-Cola then developed several direct advertising and marketing campaigns to falsely and misleadingly promote to consumers that they can or will “balance” routine consumption of sugar-sweetened beverages through casual exercise.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Paul Thacker, *Coca-Cola’s Secret Influence on Medical and Science Journalists*, 357 *BMJ* 1638 (2017).

⁴⁸ *BBC Interview by Jeremy Paxman with James Quincey*, *supra* note 38.

88. Established scientific research shows that exercise, especially light exercise like walking a dog or the “75 seconds of laughing out loud” featured in one ad by Coca-Cola,⁴⁹ cannot offset the negative health effects, including obesity and related chronic diseases, of drinking sugar-sweetened beverages routinely.

89. The federal government itself has acknowledged that “the contribution that physical activity makes to weight loss and weight stability is relatively small.”⁵⁰

90. And beyond maintaining weight, the fallacy of achieving a healthy weight for the percentage of overweight or obese Coca-Cola consumers is apparent. Even intensive exercise programs often fail to improve weight.⁵¹

91. According to Dr. Margaret Chan, Director-General of the World Health Organization:

[T]he widespread occurrence of obesity and diabetes throughout a population is not a failure of individual willpower to resist fats and sweets or exercise more. It is a failure of political will to take on powerful economic operators, like the food and soda industries.⁵²

92. Coca-Cola’s “Be Ok” advertising campaign ran extensively, including during the popular television show American Idol and the Super Bowl. It implied that consumers would “be ok” if consumption were coupled with various light activities—always undertaken by

⁴⁹ See The Coca-Cola Co., *Be OK*, YOUTUBE (Jan. 16, 2013), <https://goo.gl/12e520> (video advertisement by Coke).

⁵⁰ See, e.g., *Physical Activity Guidelines Advisory Committee Report Part G. Section 4: Energy Balance*, U.S. DEP’T OF HEALTH & HUMAN SERVS, <https://goo.gl/3p57wo> (last visited Nov. 13, 2019).

⁵¹ See, e.g., Timothy S. Church et al., *Changes in Weight, Waist Circumference and Compensatory Responses with Different Doses of Exercise Among Sedentary, Overweight Postmenopausal Women*, 4 PLOS ONE e4515 (2009); Emily J. Dhurandhar et al., *Predicting Adult Weight Change in the Real World*, 39 INT’L J. OBESITY (LONDON) 1181 (2015); Edward L. Melanson et al., *Resistance to Exercise-Induced Weight Loss: Compensatory Behavioral Adaptations*, 45 MED. & SCI. SPORTS & EXERCISE 1600 (2013); Herman Pontzer et al., *Constrained Total Energy Expenditure and Metabolic Adaptation to Physical Activity in Adult Humans*, 26 CURRENT BIOLOGY 410 (2016); K. A. Shaw et al., *Exercise for Overweight or Obesity*, COCHRANE DATABASE OF SYSTEMATIC REVS. (2006); D. M. Thomas et al., *Why Do Individuals Not Lose More Weight from an Exercise Intervention at a Defined Dose? An Energy Balance Analysis*, 13 OBESITY REV. 835 (2012); Klaas R. Westerterp, *Physical Activity and Physical Activity Induced Energy Expenditure in Humans: Measurement, Determinants, and Effects*, 4 FRONTIERS PHYSIOLOGY 90 (2013).

⁵² Dr. Margaret Chan, *Obesity and diabetes: the slow-motion disaster: Keynote Address 47th Mtg of the National Academy of Medicine*, WORLD HEALTH ORGANIZATION (Oct. 17, 2016), <https://goo.gl/AVE9Zv>.

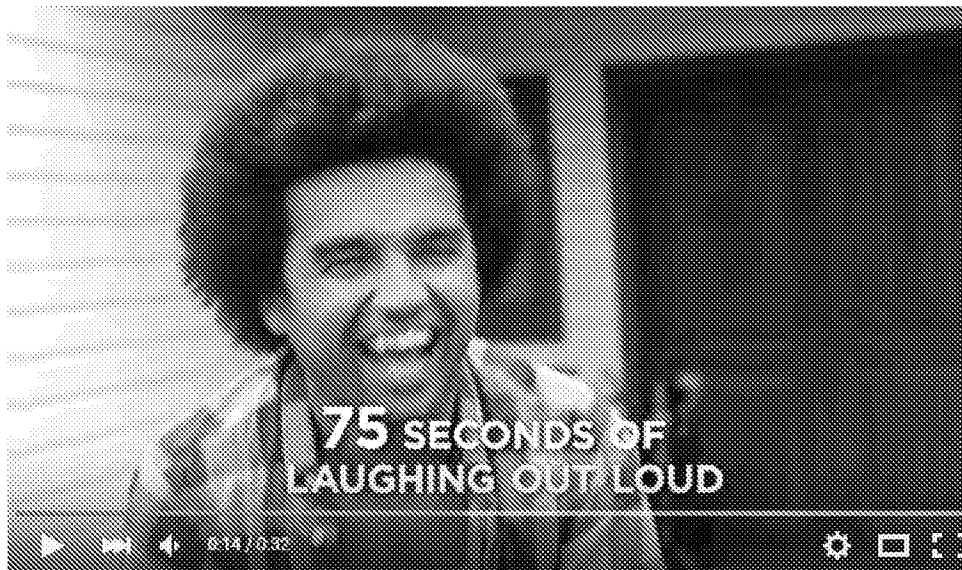
deceptively trim models—like laughing for 75 seconds, or doing a victory jig in the bowling alley, or 15 minutes of happy dancing. See Illustrations 1–3.

Illustrations 1–3

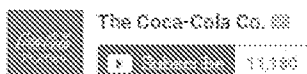
“A 12oz can of Coke = 140 calories. There are many ways to burn those calories through EXTRA physical activity and have fun while doing so. Balance your lifestyle. **Be OK.** Open happiness. Visit <http://comingtogether.com>.”



Coca-Cola: 'Be OK' 139 calories advert



Be OK



110 554



Coca-Cola: 'Be OK' 139 calories advert

93. Coca-Cola's "Be OK" advertisements continued to run on the company's official YouTube channel into 2019.⁵³

94. Coca-Cola's "Coming Together" advertising campaign promotes a related deception. It proclaims, "All calories count. No matter where they come from including Coca-Cola and everything else with calories."⁵⁴

95. The "Coming Together" advertisements also continued to run on the company's official YouTube channel into 2019.⁵⁵

96. As Professor Ruth Fagan, Wagley Professor of Biomedical Ethics and Director of the Johns Hopkins Berman Institute of Bioethics, said of the Coming Together campaign, For Coca-Cola to suggest that all calories are equal flies in the face of reality. . . . Coca-Cola wants us to ignore the considerable

⁵³ <https://www.youtube.com/watch?v=yfh0BeNMxGY&feature=youtu.be> (visited on Nov. 13, 2019)

⁵⁴ Erdi Özüağ, *Coca Cola Coming Together*, YOUTUBE (Jan. 25, 2013), <https://goo.gl/BpjxqP> (video advertisement by Coke).

⁵⁵ <https://youtu.be/oV2D0Zg124g> (visited on Feb. 6, 2019)

research confirming that sugary soda is a major contributor to obesity, and that it has no nutritional value.⁵⁶

97. That calorie sources carry different values is the basis for the Dietary Guidelines for Americans, published by the U.S. Office of Disease Prevention and Health Promotion.

98. The Centers for Disease Control distinguish between types of calories too, adding that “individuals may fail to compensate for . . . calories consumed as liquid.”⁵⁷

99. Working with the ABA, Coca-Cola also spent millions to develop and promote the “Mixify” multi-platform advertising campaign, which, among other things, deceptively promoted the idea that kids who do some exercise should drink even more sugar-sweetened beverages.⁵⁸ “Just finished an afternoon of Frisbee? Maybe you’ve earned a little more [soda].”⁵⁹

⁵⁶ Ruth Faden, *Coke’s Unconscionable New Ad*, THE ATLANTIC (Jan. 25, 2013), <http://goo.gl/eGYEgI>.

⁵⁷ CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 2, at 4; *accord* Robin P. Bolton et al., *The Role of Dietary Fiber in Satiety, Glucose, and Insulin: Studies with Fruit and Fruit Juice*, 34 AM. J. CLINICAL NUTRITION 211 (1981); Diane M. DellaValle et al., *Does the Consumption of Caloric and Non-Caloric Beverages with a Meal Affect Energy Intake?*, 44 APPETITE 187 (2005); D. P. DiMeglio & R. D. Mattes, *Liquid Versus Solid Carbohydrate: Effects on Food Intake and Body Weight*, 24 INT’L J. OBESITY 794 (2000); G. B. Haber et al., *Depletion and Disruption of Dietary Fibre: Effects on Satiety, Plasma-Glucose, and Serum-Insulin*, 310 LANCET 679 (1977); Jessica N. Kuzma et al., *No Difference in Ad Libitum Energy Intake in Healthy Men and Women Consuming Beverages Sweetened with Fructose, Glucose, or High-Fructose Corn Syrup: A Randomized Trial*, 102 AM. J. CLINICAL NUTRITION 1373 (2015); R. D. Mattes, *Beverages and Positive Energy Balance: The Menace Is the Medium*, 30 INT’L J. OBESITY S60 (2006); D. M. Mourao et al., *Effects of Food Form on Appetite and Energy Intake in Lean and Obese Young Adults*, 31 INT’L J. OBESITY 1688 (2007); An Pan & Frank B. Hu, *Effects of Carbohydrates on Satiety: Differences Between Liquid and Solid Food*, 14 CURRENT OPINION CLINICAL NUTRITION & METABOLIC CARE 385 (2011).

⁵⁸ MIXIFY, <http://deliveringchoices.org/mixify/> (last visited Nov. 13, 2019) (website discontinued, now available only on website archives: <https://goo.gl/3mY57q>).

⁵⁹ *MyMixify*, YOUTUBE (Sept. 23, 2014), <https://goo.gl/8azpWA> (last visited Mar. 6, 2017) (video has been removed).

Illustrations 4-5



B. Coca-Cola's Paid Blogger Dietitians

100. In addition to these advertising campaigns, Coca-Cola has paid a network of health professionals and blogger-dietitians to promote sugar-sweetened beverages. According to one key executive, Coca-Cola “ha[s] a network of dietitians we work with.” In February of 2015, for example, Coca-Cola paid dietitians to write numerous online pieces for American Heart

Month that included the suggestion that a soda could be a healthy snack, “like . . . packs of almonds.”⁶⁰

101. While designed to look like regular stories, the pieces were sponsored by Coca-Cola and ran in 1,000 or more news outlets. Sometimes the authors indicated that they were “consultants,” other times not—but rarely, if ever, did any disclaimer make clear that Coca-Cola paid for the columns. Instead, such dietitians presented as trustworthy authorities.⁶¹

102. Coca-Cola’s representations to the public and those of its agents and/or paid spokespersons about the character of sugar-sweetened beverages, and the state of the science relating thereto, were false and deceptive. They were made to gain the trust of the consuming public and to cast doubt on, and/or bury, the substantial, credible science linking Coca-Cola’s sugar-sweetened beverages to obesity, diabetes, and cardiovascular disease.

C. Coca-Cola’s Founding, Funding and Encouraging Other Organizations to Promote Its Deceptions

103. Since July 2014, Coca-Cola has founded, funded, and encouraged other organizations to distort the science relating to sugar-sweetened beverages.⁶²

104. One such organization is the European Hydration Institute (“EHI”). Coca-Cola co-founded EHI, and its Director, Dr. Jane Holdsworth, is a paid Coca-Cola consultant.⁶³ Like GEBN, EHI has advocated that the key to preventing weight gain is not reducing sugar-sweetened beverage intake, but maintaining an active lifestyle.⁶⁴

105. Another such organization is the International Food Information Council (“IFIC”). Coca-Cola sponsors the IFIC, but this is not indicated in IFIC publications.⁶⁵

⁶⁰ Candice Choi, *Coca-Cola Teams up with Nutritionists to Push Coke as Healthy Treat*, FOOD MANUFACTURING (Mar. 16, 2015), <http://goo.gl/CnWLgA>.

⁶¹ *Id.*

⁶² Again, by filing this Amended Complaint, Plaintiffs do not waive their right to appeal the Court’s Sept. 30, 2019 ruling that Coca-Cola may not be held liable under the DCPPA for deceptive statements made by other organizations that it founded, funded and/or controlled. In this Amended Complaint, Plaintiffs allege that it was an unfair and deceptive trade practice for Coca-Cola to found and/or fund organizations to spread its deceptive message.

⁶³ *What Is the European Hydration Institute?*, EUROPEAN HYDRATION INST., <http://goo.gl/TGO6W> (last visited Nov. 13, 2019) (website discontinued, now available only on website archives: <https://goo.gl/RYjNJa>).

⁶⁴ EUROPEAN HYDRATION INST., <http://goo.gl/JEKIb> (last visited Nov. 19, 2019) (website discontinued, now available only on website archives: <https://goo.gl/dYtzdJ>).

⁶⁵ *See, e.g., id.*

106. Coca-Cola’s website promotes the “science” of hydration with links to “Food Insight” publications—“Your Nutrition and Food Safety Resource”—produced by the IFIC. These publications stress the importance of hydration “whether you’re an elite athlete . . . or more the spectator type.” And, IFIC emphasizes that, with respect to hydration, “the term ‘water’ can mean more than just plain drinking water. . . . It includes . . . beverages such as soft drinks”⁶⁶

107. Most importantly, Coca-Cola has specially funded and encouraged the beverage industry’s trade organization, the American Beverage Association (the “ABA”), to perpetrate deceptions concerning the health effects of consuming sugar sweetened beverages.

108. The ABA exists to promote the sale and use of beverages and to protect the interests of its members, including, in particular, with respect to sugar-sweetened beverages. Its commercial purpose is self-evident. As prominently stated on its homepage, “We are America’s beverage companies We make American products.”⁶⁷

109. Coca-Cola extensively finances and influences the ABA, particularly in the area of public relations. Coca-Cola executives casually refer to “working an issue through” the ABA.

110. For example, Coca-Cola’s State & Local Government Relations Director noted that she had “worked closely with ABA to manage” a *New York Times* story on sugar-sweetened beverages,⁶⁸ and thereafter, that the ABA will manage this story “with strong input and guidance from the Coca-Cola system.”⁶⁹

111. Encouraged by Coca-Cola, the ABA has made numerous deceptive representations about the characteristics of sugar-sweetened beverages and their effect on human health:

- Focusing on [sugar-sweetened beverages] ignores the bigger problem and doesn’t offer real solutions.⁷⁰

⁶⁶ INT’L FOOD INFO. COUNCIL FOUND., HYDRATION: DOES IT ALWAYS HAVE TO BE WATER?, at 1 (2011), <https://tinyurl.com/yffz87e8>.

⁶⁷ AM. BEVERAGE ASS’N, <http://www.ameribev.org> (last visited July 7, 2017).

⁶⁸ E-mail from Jennifer Lemming, State & Local Government Relations Director, to Matt Echols, Senior Vice President of Public Affairs and Communications, and Ben Deutsch, Vice President of Corporate Communications (Apr. 3, 2016) (on file with Counsel).

⁶⁹ E-mail from Jennifer Lemming, State & Local Government Relations Director, to Matt Echols, Senior Vice President of Public Affairs and Communications (Mar. 14, 2016) (on file with Counsel).

⁷⁰ Am. Beverage Ass’n, LET’S CLEAR IT UP, <http://goo.gl/Ft8VNp> (last visited July 7, 2017); Am. Beverage Ass’n, *Health*, LET’S CLEAR IT UP, <http://goo.gl/NZCwGy> (last visited Nov. 13,

- “You may have read articles recently suggesting that there is something unique about soda when it comes to diabetes. Yes, diabetes. It’s always something if you’re reading the headlines. But if you dig deep enough, there’s no ‘there’ there”;⁷¹
- “[T]here’s nothing unique about beverage calories when it comes to obesity or any other health condition. Sadly, however, the days of simply enjoying a refreshing beverage are under assault—that is, if you choose to listen to our critics”;⁷²
- “Sugar isn’t the enemy, the problem is calories. . . . demonizing [] sugar isn’t going to improve public health”;⁷³
- “[T]he attack on added sugars is not founded on the totality of scientific evidence. . . . Like past false food scares, the anti-soda campaign misleads people with unsound science”;⁷⁴
- “You may have seen some attention to research presented at an American Heart Association meeting that suggests that drinking two or more sugar-sweetened beverages per day increases the risk of cardiovascular disease among women. It’s always worth questioning a news report on a study if it only presents one side”;⁷⁵
- “Despite what you may read in frequent stories that come out in the media, sugar-sweetened beverages are not a unique driver of public health concerns such as obesity and diabetes”;⁷⁶

2019); Am. Beverage Ass’n, *Beverages*, LET’S CLEAR IT UP, <http://goo.gl/D1o8EI> (last visited Nov. 13, 2019).

⁷¹ *Cut Through the Headlines and Get the Facts*, AM. BEVERAGE ASS’N (Nov. 8, 2013), <https://goo.gl/rpdmm2> (last visited Nov. 13, 2019).

⁷² *Simply Soda*. . . ., AM. BEVERAGE ASS’N (June 11, 2012), <https://goo.gl/d2wYyq> (last visited Nov. 13, 2019).

⁷³ *Experts: Blaming Sugar Won’t Yield Results*, AM. BEVERAGE ASS’N (Oct. 1, 2015), <https://goo.gl/kRDPp2> (quoting, in part, Dr. John L. Sievenpiper) (last visited Nov. 13, 2019).

⁷⁴ *The Added Sugar Fantasy*, AM. BEVERAGE ASS’N (June 17, 2015), <https://goo.gl/guS42d> (last visited Nov. 13, 2019).

⁷⁵ *Here We Go Again*. . . ., AM. BEVERAGE ASS’N (Nov. 14, 2011), <https://goo.gl/Dv5PFt> (last visited Nov. 13, 2019).

⁷⁶ *Taking a Closer Look at Recent Studies on Diabetes*, AM. BEVERAGE ASS’N (July 23, 2015), <https://goo.gl/Bbr95Q> (last visited Nov. 13, 2019).

- “[A]ll calories are the same regardless of food source. . . . 100 calories from a donut or a yogurt is still 100 calories”;⁷⁷
- “Recently we’ve seen some food activists allege that sugar-sweetened beverages ‘cause’ obesity, diabetes and a host of other adverse health conditions. Obviously they are hoping you never look at the science behind their claims. Because it doesn’t exist”;⁷⁸
- “According to leading health organizations, beverage consumption is not a known risk factor for type 2 diabetes . . .”;⁷⁹ and
- “Overconsumption of anything (even water) can be risky.”⁸⁰

D. Coca-Cola as the Supposed Champion of Health and Wellness

112. Finally, in order to highlight exercise as the panacea to the obesity crisis, and to draw attention away from sugar-sweetened beverage consumption, Coca-Cola has also spent heavily on promoting physical activity. According to published figures, in 2014 alone it spent \$22 million.⁸¹

113. Coca-Cola has used such programs to deceptively brand itself as a purveyor of health and wellness to the public, in addition to refocusing the obesity debate on exercise alone. *See Illustrations 6-12.*⁸²

⁷⁷ *Setting the Record Straight on Calories*, AM. BEVERAGE ASS’N (Sept. 16, 2015), <https://goo.gl/2AXtAl> (last visited Nov. 13, 2019) (quoting Megan Meyer, PhD, program manager of health and wellness communications at the International Food Information Council—a Coca-Cola-funded group)

⁷⁸ *Clearing up the Conversation on Beverages*, AM. BEVERAGE ASS’N (June 24, 2015), <https://goo.gl/8QDFY1> (last visited Nov. 13, 2019).

⁷⁹ *Beverage Industry Responds to British Medical Journal Paper on Diabetes*, AM. BEVERAGE ASS’N (July 22, 2015), <https://goo.gl/U5jEIn> (last visited July 7, 2017).

⁸⁰ *Overconsumption of Anything (Even Water) Can Be Risky*, AM. BEVERAGE ASS’N (Aug. 3, 2015), <https://goo.gl/wqf9Vz> (last visited Nov. 13, 2019).

⁸¹ THE COCA-COLA CO., 2014/2015 SUSTAINABILITY REPORT 10 (2015), <https://goo.gl/VWPnsP>.

⁸² *Id.* at 8, 11.

Illustration 6



114. Coca-Cola's "Get the Ball Rolling" effort is part of this activity campaign. According to Coca-Cola, the campaign derived from "our Company's global commitments to help fight obesity and be part of the solution."⁸³ Coca-Cola has co-hosted "Get the Ball Rolling" events with organizations such as the Boys & Girls Clubs of America, National Foundation for Governors' Fitness Councils, NASCAR, and others.⁸⁴

115. Local "Get the Ball Rolling" events have included flag-football tournaments for students aged 5 and older—in partnership with the Washington Redskins. *See* Illustrations 7-12.

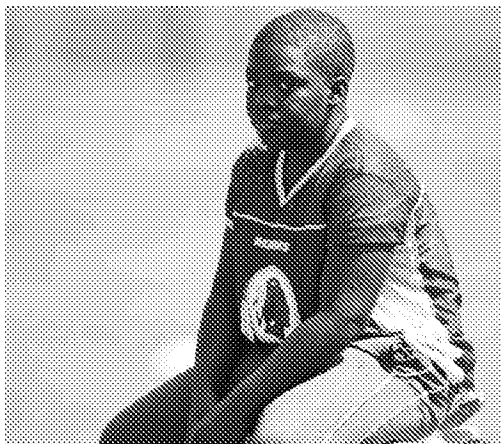
116. As officially described, "Coca-Cola's Get the Ball Rolling initiative is a partnership between the Redskins, Coca-Cola and other Washington, D.C. area professional sports teams to combat childhood obesity. . . . Get the Ball Rolling is part of Coca-Cola's commitment to encourage healthy living. . . ."⁸⁵ However, Defendant uses such events to heavily promote the consumption of Coke.

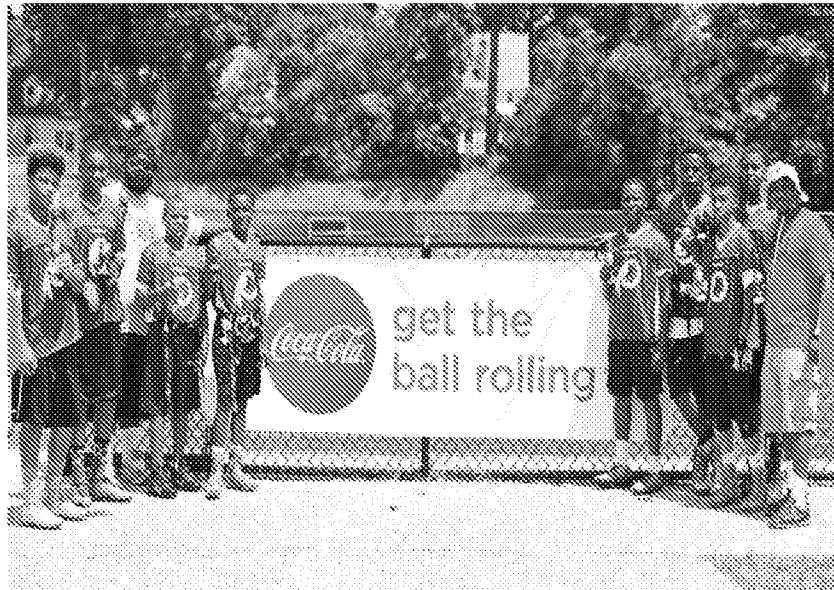
⁸³ Stuart Cronauge, *Coca-Cola USA Sets Goal To Inspire Americans To Rediscover The Joy Of Activity*, COCA-COLA (May 13, 2013), <https://goo.gl/1rPoLf>.

⁸⁴ Caren Pasquale Seckler, *How Has Coca-Cola Inspired More Than 3 Million People To "Get The Ball Rolling"?*, THE COCA-COLA CO. (Sept. 23, 2013), <https://goo.gl/3KN55m>.

⁸⁵ *Richmond Initiatives*, REDSKINS, <https://tinyurl.com/yg8mlt7e> (last visited Nov. 13, 2019).

Illustrations 7-11





117. Other “healthy” events locally have included a “morning of fun” at Benning Park in July 2016. Here too, Coca-Cola branded itself as a purveyor of public health, emblazoning its product promotions across the event. *See* Illustration 12.

118. The Union of Concerned Scientists noted that “DC DPR’s tweets from the ceremony revealed photos of teens wearing Coca-Cola tee-shirts and young children dressed as Coca-Cola cans.”⁸⁶

⁸⁶ *Coca-Cola and NRPA Celebrate Court Improvements at Benning Park Community Center*, DC DEPARTMENT OF PARKS AND RECREATION, <https://goo.gl/LXfwQH> (last visited Nov. 13,

Illustration 12



119. Coca-Cola and the ABA also sponsor the annual Childhood Obesity Prevention Awards. These are high-fanfare honors conveyed by the U.S. Conference of Mayors to six cities for their exercise-based anti-obesity programs.⁸⁷

120. According to Coca-Cola, one of the most trusted American brands, “[w]ell-being is an integral part of our business—from the communities we serve to the people we refresh.”⁸⁸

2019); Genna Reed, *Coca-Cola Breaks Pledge Not to Advertise to Kids (Again)*, UNION OF CONCERNED SCIENTISTS, <https://goo.gl/eHPjxp> (last visited Nov. 13, 2019).

⁸⁷ U.S. Conference of Mayors, *Six Cities Share \$445,000 in Grants to Support Childhood Obesity Prevention Programs*, PR NEWswire (Jan. 21, 2016), <https://goo.gl/X4IpQ7>; *Six Cities Share \$445,000 in Grants to Support Childhood Obesity Prevention Programs*, AM. BEVERAGE ASS’N (Jan. 18, 2016), <https://goo.gl/vbP87T> (last visited Nov. 13, 2019); see also *Coca-Cola Foundation Awards \$8.1 in Third Quarter Benefitting 3.8 Million People Worldwide*, THE COCA-COLA CO. (Oct. 18, 2013), <https://goo.gl/SZRYkE> (last visited Nov. 13, 2019) (promoting Coca-Cola Foundation’s funding of foreign childhood obesity programs).

⁸⁸ THE COCA-COLA CO., *supra* note 84, at 8.

CLAIM FOR RELIEF
Violation of the District of Columbia Consumer Protection Procedures Act
D.C. CODE § 28-3901 *et seq.*

121. Plaintiffs reallege and incorporate by reference the allegations in each of the preceding paragraphs of this Complaint.

122. Coca-Cola has marketed sugar-sweetened beverages so as to suggest, among other deceptions, that: their consumption has not been linked scientifically to obesity, diabetes, and cardiovascular disease; their nutritional value is equivalent to other foods with the same caloric content; they are beneficial for purposes of redressing hydration needs; and their consumption is not central to concerns about obesity and, by corollary, that mild exercise can redress such concerns.

123. Defendant's marketing of sugar-sweetened beverages misrepresents, tends to mislead, and omits material facts regarding the source, characteristics, standard, quality, and grade of sugar-sweetened beverages.

124. Defendant's representations omit the truth about the character of sugar-sweetened beverages, including that abundant, credible science links sugar-sweetened beverage consumption to obesity, diabetes, and cardiovascular disease.

125. Sugar-sweetened beverages lack the characteristics, benefits, standards, qualities, or grades that Coca-Cola implies in its marketing and branding.

126. The Defendant's misstatements, innuendos, and omissions are material and have the tendency to mislead.

127. Defendant has flooded the market with such misstatements, innuendos, and omissions.

128. The products Coca-Cola markets and sells do not have the characteristics it claims.

129. The facts as alleged herein demonstrate that Defendant's acts, misrepresentations, omissions, innuendos, and practices, including republication of deceptive representations, constitute unlawful trade practices in violation of the following provisions of D.C. CODE § 28-3904:

- a. Section 28-3904(a), which prohibits "represent[at]ions] that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have";

- b. Section 28-3904(d), which prohibits “represent[at]ions that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another”;
- c. Section 28-3904(e), which prohibits “misrepresent[at]ions as to a material fact which has a tendency to mislead”;
- d. Section 28-3904(f), (f-1), which prohibits “fail[ing] to state a material fact if such failure tends to mislead” and the “use of innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and
- e. Section 28-3904(h), which prohibits “advertis[ing] or offer[ing] goods or services . . . without the intent to sell them as advertised or offered.”

130. The Committee Report on Section 28-3904(f-1) states that, “while facts may exist in the public domain as to veracity of claims made, merchants nevertheless flood the market with countervailing representations to hide the truth. . . . New 28-3904(f-1) seeks to . . . provide a cause of action when merchants bury the truth and leave false impressions without outright stating falsehoods.”⁸⁹ Defendant have sought to bury the truth about sugar-sweetened beverages.

131. D.C. Code § 28-3904 prohibits any “unlawful trade practice” “whether or not any consumer is in fact misled, deceived, or damaged thereby.”

132. Though Plaintiffs need not show proof of deception to succeed on their claim, consumers were in fact deceived.

133. Coca-Cola knew, or should have known, that reasonable consumers would believe its representations.

134. Defendant undertook such misrepresentations in order to induce the consumer public to purchase and continue to purchase sugar-sweetened beverage products.

135. Reasonable consumers were likely to be deceived, and were in fact misled, by Defendant’s misrepresentations and omissions.

136. Absent these misrepresentations, reasonable consumers would not have purchased sugar-sweetened beverages, purchased as much sugar-sweetened beverages, or purchased them as routinely.

137. As a direct and proximate result of Defendant’s fraudulent misrepresentations and active concealment, Plaintiffs and the general consumer public, including District of Columbia consumers, have suffered and will continue to suffer substantial injuries.

⁸⁹ COUNCIL OF THE DISTRICT OF COLUMBIA, *supra* note 3, at 7.

138. All of the wrongful conduct alleged herein occurred, and continues to occur, in the business of selling sugar-sweetened beverages. Defendant's wrongful conduct is part of a general practice that is still being perpetuated and repeated throughout the District of Columbia and nationally.

139. Plaintiffs request that this Court enter such orders or judgments as may be necessary to enjoin Defendant from continuing their unfair and deceptive business practices, and to provide such other relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment against Defendant and in favor of Plaintiffs, as follows:

A. Declare, adjudge, and decree the conduct of Defendant as alleged herein to be unlawful, unfair, and/or deceptive, and in violation of the DCCPPA;

B. Enjoin Defendant from continuing the unfair and deceptive promotion, marketing, and sale of sugar-sweetened beverages, including any claim that there is no scientific evidence linking sugar-sweetened beverages to obesity, diabetes, or cardiovascular disease;

C. Enjoin Defendant Coca-Cola from continuing the promotion, marketing, and sale of its sugar-sweetened beverages to children under 12, directly or indirectly;

D. Require Defendant to fund a corrective public education campaign to publicize the scientific consensus that calories have variable benefits and harms depending on their composition, which variations are highly significant to human health, that science has linked sugar-sweetened beverages to obesity, diabetes, and cardiovascular disease, and that light exercise does not offset the potential harm caused by routine consumption of sugar-sweetened beverages;

E. Award Plaintiffs reasonable attorneys' fees and costs; and

F. Award Plaintiffs such other further and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

JURY TRIAL DEMAND

Plaintiffs demand a jury trial on all causes of action so triable.

Date: Nov. 13, 2019

Respectfully submitted,

/s/

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