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ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 21 2017

Sherri R. Carter, Executive Officer/Clerk
By B. Gregg, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
THE GATORADE COMPANY, a Delaware Corporation,
Defendant.

Case No. **BCL676734**
~~PROPOSED~~ FINAL JUDGMENT AND PERMANENT INJUNCTION
Judge: **MARC MARMARO**
Date:
Time:
Action Filed:
Trial Date: None Set

Plaintiff, the People of the State of California ("People" or "Plaintiff"), through its attorney, Xavier Becerra, Attorney General of the State of California, by Deputy Attorneys General Timothy D. Lundgren and Hunter H. A. Landerholm, and defendant The Gatorade Company ("Defendant"), appearing through its attorneys Jerome C. Roth and Miriam Kim of Munger, Tolles & Olson LLP, having stipulated and consented to the entry of this Final Judgment and Permanent Injunction ("Judgment") without the taking of proof and without trial or adjudication of any fact or law, without this Judgment constituting evidence of or an admission by Defendant regarding any issue of law or fact alleged in the Complaint on file, and without Defendant admitting any liability, and with all parties having waived their right to appeal, and the Court having considered the matter and good cause appearing:

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court has jurisdiction over the allegations and subject matter of the People’s complaint filed in this action, and the parties to this action; venue is proper in this County; and this Court has jurisdiction to enter this Judgment.

DEFINITIONS

2. For purposes of this Judgment:
- a. “Bolt! App” shall mean the mobile application Bolt! featuring Usain Bolt.
 - b. “Effective Date” shall mean the date on which a copy of this Judgment is approved by, and becomes a judgment of, the Court.
 - c. “Gatorade” shall mean any Gatorade-branded beverage product marketed by Defendant.
 - d. “Statement” shall mean “statement” as that term is used in Business and Professions Code section 17500.

INJUNCTION

3. Nothing in this Judgment alters the requirements of federal or state law to the extent they offer greater protection to consumers.
4. The injunctive provisions of this Judgment shall apply to Defendant as well as its subsidiaries; its successors and the assigns of all or substantially all of the assets of its businesses; and its directors, officers, employees, agents, independent contractors, partners, associates, and representatives of each of them.
5. Under Business and Professions Code sections 17203 and 17535, Defendant is hereby permanently enjoined and restrained from directly or indirectly engaging in any of the following acts or practices in connection with the advertising, marketing, promotion, offering for sale, or sale of Gatorade in California:

- a. Making the Bolt! App, in its present form or in any iteration, or other app or electronic game, available for download that creates the misleading impression(s) that: (a) water will hinder and/or adversely affect athletic performance; (b) consuming water in general is to be

1 avoided in favor of consuming Gatorade; (c) athletes consume Gatorade and avoid all water
2 consumption; and (d) water consumption in general should be avoided.

3 b. Making Statements that disparage water or the consumption of water.

4 6. Defendant will use reasonable efforts to abide by the applicable PepsiCo Policy on
5 Responsible Advertising to Children, which policy PepsiCo makes publicly available.

6 Notwithstanding the foregoing, for a period of five years following the Effective Date, Defendant
7 will use reasonable efforts to abide by the version of the PepsiCo Policy on Responsible
8 Advertising to Children that is in effect as of the Effective Date, which is attached as Exhibit A.

9 7. Defendant will use reasonable efforts to include a provision in its contracts with
10 endorsers providing that endorsers will clearly and conspicuously disclose their relationship with
11 Defendant in communications promoting Gatorade (in compliance with applicable laws and
12 regulations) on any webpages or through social media channels controlled by that person and
13 aimed at the general public.

14 8. Nothing in this Judgment will prohibit Defendant from making any non-misleading
15 Statement regarding Gatorade.

16 **MONETARY PROVISIONS**

17 9. Defendant shall pay to the California Attorney General a total aggregate amount of
18 \$300,000, made up of the following amounts:

19 a. \$180,000 to be paid directly to the California Attorney General and used by
20 the California Attorney General to defray costs of the investigation leading to this Judgment, and
21 for the California Attorney General's enforcement of consumer protection laws, at the sole
22 discretion of the California Attorney General;

23 b. \$120,000 to be paid directly to the California Attorney General and used by
24 the California Attorney General to provide funding in the form of grants to California state or local
25 agencies, or California public or non-profit colleges or universities, or California non-profit
26 organizations, for study, research, or education in the following areas: (a) nutrition of children or
27 teenagers, or (b) consumption of non-branded water. These funds shall be disbursed as grants at
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1 the sole discretion of the California Attorney General following an application and selection
2 process that shall be established in his sole discretion. No more than 20% of the funds shall go to
3 a single recipient agency, college or university, or non-profit organization, and grant funds shall
4 augment, and not supplant or cause any reduction in, the recipient's budget. Funds not used for
5 that purpose within five years of the Effective Date of this Judgment shall be used as described in
6 paragraph 9(a), above, without any further action of the Court or approval by Defendant.

7 10. Payments required to be paid pursuant to Paragraph 9 of this Judgment shall be
8 made within thirty (30) calendar days of the Effective Date, payable by wire transfer to the
9 California Attorney General's Office pursuant to instructions provided by the California Attorney
10 General's Office.

11 **RELEASE**

12 11. This Judgment shall have a res judicata effect and shall constitute a full, final, and
13 binding settlement and release, to the fullest extent permitted by law, of each cause of action set
14 forth in the accompanying Complaint, and of any and all liabilities, rights, claims, actions, causes
15 of action, demands, penalties, fines, damages, restitution, costs, attorney's fees, losses, and
16 remedies that Plaintiff has or could have brought against Defendant and all of its past and present
17 officers, directors, shareholders, employees, affiliates, subsidiaries, predecessors, assigns and
18 successors based on, arising out of, or in any way related, in whole or in part, directly or
19 indirectly, to the Bolt! App prior to the Effective Date to the extent such practices were or could
20 have been asserted in the Complaint or addressed by the terms of this Judgment.

21 12. Plaintiff acknowledges that this Judgment resolves the above-captioned action and
22 Plaintiff's investigation into Gatorade.

23 13. Entry of this Judgment is in the public interest.

24 **DISCLAIMER OF ADMISSION OF LIABILITY**

25 14. This Judgment is not, and is not to be construed as, an admission of fact or liability
26 by any party, or a finding of fact or liability against any party. This Judgment was entered into as
27 a result of a stipulation of the parties, without admissions or findings of fact or law of wrongdoing,
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1 misconduct, or illegal acts by Defendant, or of any facts alleged in the Complaint.

2 OTHER TERMS

3 15. Defendant shall cooperate with the Plaintiff in any investigation concerning
4 compliance with this Judgment. Nothing herein precludes or affects Plaintiff's right to determine
5 and ensure compliance with this Judgment, or to seek enforcement or penalties for any violations
6 of this Judgment.

7 16. Jurisdiction is retained by the Court for the purpose of enabling any party to the
8 Judgment to apply to the Court at any time for such further orders and directions as may be
9 necessary or appropriate for the construction or carrying out of this Judgment, for the modification
10 of any of the injunctive provisions hereof, for enforcement of compliance herewith, and for the
11 punishment of violations hereof, if any.

12 17. Nothing in this Judgment shall be construed to create, waive, or limit any private
13 right of action.

14 18. Any notices that must be sent to Plaintiff or Defendant under, or any
15 correspondence sent in relation to, this Judgment shall be sent by United States certified mail,
16 return receipt requested, or other nationally recognized courier service that provides for tracking
17 services and identification of the person signing for the document. The documents shall be sent to
18 the following addresses:

19
20 For Plaintiff:

21 Timothy D. Lundgren
22 Deputy Attorney General
23 California Department of Justice
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

24 For Defendant:

25 Gatorade Legal Counsel
26 The Gatorade Company
555 West Monroe
27 Chicago, IL 60661

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Jerome C. Roth, Esq.
Miriam Kim, Esq.
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105

Any party may designate a different individual to receive the notices required to be sent by sending written notice to the other party at least thirty (30) calendar days before such change will occur, identifying that individual by name and/or title and mailing address.

19. The clerk is ordered to enter this Judgment forthwith.

DATED:

SEP 21 2017

MARC MARMARO

JUDGE OF THE SUPERIOR COURT,
COUNTY OF LOS ANGELES

Exhibit A



PepsiCo Policy on Responsible Advertising to Children

As a multinational food and beverage company with global brands that millions of consumers enjoy every day, we understand that it is vital to communicate responsibly about our products and healthy eating.

PepsiCo is committed to responsible advertising to all consumers, as shown for example through our adherence to the International Chamber of Commerce Consolidated ICC Code of Advertising and Marketing Communication Practice. Additionally, we consistently apply the ICC "Framework for Responsible Food and Beverage Communication" as well as the regional and national self-regulatory Codes locally developed on that basis.

PepsiCo believes children are a special audience and takes particular care in developing advertisements and evaluating programming that carries messages to children under 12 years of age. Therefore, we are committed on a global basis to only advertise to children under 12 those products that meet PepsiCo's Global Nutrition Criteria for Advertising to Children (A2C Criteria) to encourage the consumption of healthier food and beverage products.

PepsiCo has also adopted similar industry-led voluntary commitments through several global, regional and national pledge programs (Pledge Programs). These Pledge Programs are all based on the principle that pledge program signatories only advertise to children under 12 products that meet specific nutrition criteria.¹

PepsiCo's A2C Criteria are grounded in well-established and broadly recognized scientific principles in accordance with international and national nutrition authorities and reflect dietary recommendations of these authorities (e.g. WHO/FAO). We also adhere to all relevant laws and regulations within the countries in which we operate. In the event there are conflicts between PepsiCo's A2C Criteria, and any Pledge Program nutrition criteria and/or any applicable laws, PepsiCo will apply the strictest criteria for each nutrition category.

Our current policy applies to TV, print and internet (including third party, corporate and brand-owned websites) advertising directed to children under 12. This means that PepsiCo will not buy advertising in programs with an audience profile greater than 35% of children under 12.

¹ PepsiCo has adopted pledges in the United States, the 27 countries of the European Union, the six countries of the Cooperation Council for the Arab States of the Gulf, and in Australia, Brazil, Canada, India, México, Peru, The Philippines, Russia, South Africa, Switzerland, Turkey and Thailand. PepsiCo also adopted the International Food & Beverage Alliance Global Policy on Marketing and Advertising to Children.

We are strengthening this global policy to cover any paid advertising or commercial sales messages in all covered media, including marketing communications that use licensed characters (excluding company-owned, brand equity characters), celebrities and movie tie-ins, primarily directed to children under 12.² Covered media under the policy includes TV, radio, print, cinema, online (including company-owned websites), DVD/CD-ROM, direct marketing, product placement, interactive games, outdoor marketing, mobile and SMS marketing. Packaging, in-store and point of sale, and other forms of marketing communications, which are not under PepsiCo's direct control are not covered by this policy.

This policy change is currently being rolled out and will be fully implemented, at the latest, by the end of 2016. These additional restrictions have already been implemented, in whole or in part, in countries whose Pledge Programs cover paid marketing communications beyond TV, print and internet.

PepsiCo further commits not to engage in product advertising or marketing communications directed to students in primary schools. This restriction does not apply to menus and signage at the point of sale identifying those products available for purchase, charitable donations or fundraising activities, public service messages, and items provided to school administrators for education purposes or for their personal use are not covered.

We are committed to annual monitoring and reporting compliance with this policy.

September 2014

² Primarily directed to children under 12 means advertising in measured media where 35% or more of the audience is under 12 years of age. Where adequate data are unavailable, PepsiCo will consider other factors as appropriate, which may include the overall impression of the advertising, actions taken to restrict child access and the target demographic based on PepsiCo's media plan.