

December 4, 2006

VIA MAIL AND FAX/EMAIL

Mr. J. Alexander M. Douglas, Jr. President and Chief Operating Officer North America Group The Coca-Cola Company One Coca-Cola Plaza Atlanta, GA 30313 (Fax: 404-515-6428)

Beverage Partners Worldwide c/o Mr. Martin Hahn Hogan & Hartson, LLP 555 Thirteenth Street, NW Washington, DC 20004 (Email: MJHahn@hhlaw.com) Mr. Peter Brabeck-Letmathe
President and Chief Executive Officer
Nestlé S.A.
Nestlé USA, Inc.
800 North Brand Blvd.
Glendale, CA 91203
(Fax: 818-549-6952)

Re: Center for Science in the Public Interest v. The Coca-Cola Company, Nestlé S.A., and Beverage Partners Worldwide

Dear Messrs. Douglas, Brabeck-Letmathe, and Hahn:

The Center for Science in the Public Interest (CSPI) has reviewed news reports, press releases, advertising, and website information about the introduction of Enviga by The Coca-Cola Company (Coca-Cola) and Nestlé S.A. and Nestlé USA, Inc. (Nestlé). According to reports, Coca-Cola and Nestlé have formed a joint venture called Beverage Partners Worldwide (BPW) to market Enviga.

One press release for Enviga, dated October 11, 2006, makes it clear that Coca-Cola and Nestlé plan to market Enviga as a weight-loss or weight-control product: "The accumulated body of scientific research shows the ability of green tea's powerful antioxidant EGCG (epigallocate-chin gallate) to speed up metabolism and increase energy use, especially when combined with caffeine," said Nestlé researcher Dr. Hilary Green. That same release also says, "Enviga is a great tasting beverage that invigorates your metabolism to gently burn calories." However, the truth is that calorie-related claims for the product cannot be substantiated because the minimal studies that exist are conflicting and inadequate.

The Enviga can itself makes multiple representations. The Principal Display Panel touts Enviga as "The Calorie Burner," and the side panel contains many other claims:

- Enviga "increases your metabolism to gently increase calorie burning."
- Enviga gives "your body a little extra boost."

- The caffeine and EGCG in Enviga "invigorate your metabolism to burn calories."
- The caffeine alone "stimulates your body to enhance the calorie burning process."

The product website, www.enviga.com, makes similar claims, including:

- "Enviga is a precise balance of ingredients that have been proven to invigorate your metabolism helping you burn more calories."
- Enviga contains the "powerful EGCG."²
- Including Enviga in the diet is "much smarter than following fads, quick-fixes, and crash diets."
- Each can of Enviga causes a consumer to "end up burning more [calories] than you consume so for the first time you can actually 'drink negative.' "4"
- Enviga provides "another way to keep those extra calories from building up." 5
- "Enviga results in negative calories, because you burn more calories than you consume."
- "There is a calorie burning effect from a single can."⁷
- "Enviga is expected to have a comparable effect on individuals over 35."
- "Consuming the equivalent of three cans of Enviga beverage over the course of the day helped participants increase calorie burning by an average of 106 calories."
- "Enviga is the perfect refresher for you: everyday you do your bit to cut out or burn a few extra calories, Enviga is there doing its little bit to help." ¹⁰

Outdoor advertising in New York City makes even bolder statements:

- "The calorie burner."
- "Burning calories is now officially delicious."
- "Be positive. Drink negative."
- "Invigorate your metabolism."

CSPI calls on Coca-Cola, Nestlé, and BPW to cease and desist immediately from all efforts to market Enviga based on weight-loss, weight control, or calorie burning.

www.enviga.com/#Benefits (accessed November 27, 2006).

www.enviga.com/#FAQs (accessed November 27, 2006).

www.enviga.com/#BePositiveFeelGreat (accessed November 27, 2006).

CSPI is concerned with food marketing that exaggerates or misrepresents the nature and degree of health claims. Accordingly, when we learned of your plans to introduce this new drink into the American food supply, we investigated whether sufficient evidence exists to support the weight-control or calorie-reduction claims that your companies are making for Enviga.

In summary, we found that the evidence for the effect of EGCG and caffeine on energy metabolism and body weight is weak and inconsistent. The studies—mostly industry-sponsored—are primarily small and short-term, they used unrealistically large doses of the two substances, and they produced inconsistent results. It's not clear that EGCG and caffeine, especially in the amounts that would be provided by consuming one can of Enviga per day, have any benefit for caloric expenditure and for the control of body weight. If they do, the effect is quite small.

Accordingly, because the weight-control and calorie-burning claims cannot be substantiated, CSPI concludes that Enviga is "misbranded" in violation of both the Federal Food, Drug, and Cosmetic Act (FDCA), and state food and drug laws, such as the California Food, Drug, and Cosmetic Act, California Health and Safety Code § 110660.

We also reviewed the label and marketing efforts for Enviga to determine whether they were unfair or deceptive under state consumer protections laws such as Massachusetts G.L. c. 93A, Texas Business & Professions Code § 17.41 et seq., District of Columbia Code § 28-3905 et seq., New Jersey Statutes Ann. 56:8-1 et seq., and California Business & Professions Code Section 17200 (jointly, "UDAP" laws). For the same reasons that Enviga is misbranded under food and drug law, the marketing practices as to Enviga are unfair and deceptive, and thus in violation of state UDAP laws.

We note as well the high caffeine content (300 mg) of the recommended daily intake (3 cans). We understand that ads for Enviga on buses carrying kids to school. Because caffeine is a mildly addictive stimulant drug that promotes insomnia, your marketing campaign raises the additional problem of marketing a high-caffeine product to children and teens. In addition, any marketing aimed at or attractive to women who are or may become pregnant raises serious safety and product liability concerns.

CSPI is sending this letter at this time to put Coca-Cola and Nestlé on notice that express or clearly implied representations about the effect of Enviga on weight or burning calories are in violation of both state and federal laws.

If Coca-Cola, Nestlé, and BPW continue to market Enviga in this manner, CSPI plans to file suit, on its own behalf and on behalf of its members who purchase Enviga. Because these unfair and deceptive acts and practices caused similar injury to numerous other persons similarly situated, CSPI may also represent all other persons so injured.

As primary relief, CSPI will seek an injunction to prevent Coca-Cola, Nestlé, and BPW from misleading American consumers with claims that Enviga may increase calorie expenditures or that otherwise imply that consuming Enviga can have a beneficial effect on body weight.

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Please advise me at your earliest convenience if you need additional information about this potential lawsuit, or if you wish to meet with us to resolve our concerns. If I do not hear back from you within 30 days, CSPI will assume that your companies do not wish to resolve these concerns.

Stanley Garder

Director of Litigation

cc: Michael Jacobson, Ph.D.