

Louis M. Solomon (LS-7906)
Brendan J. O'Rourke (BO-2351)
Kevin J. Perra (KP-3723)
PROSKAUER ROSE
1585 Broadway
New York, NY 10036-8299
Phone: (212) 969-3000
Fax: (212) 969-2900
Email: borourke@proskauer.com

OFFICE COPY

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Attorneys for Plaintiff Stokely-Van Camp, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



STOKELY-VAN CAMP, INC.,
Plaintiff,

v.

THE COCA-COLA COMPANY and
ENERGY BRANDS INC.,
Defendants.

09 Civ.

**COMPLAINT FOR FALSE
ADVERTISING, TRADEMARK
DILUTION, DECEPTIVE ACTS AND
PRACTICES, INJURY TO BUSINESS
REPUTATION, UNFAIR
COMPETITION**

**PLAINTIFF DEMANDS A TRIAL BY
JURY**

Plaintiff, Stokely-Van Camp, Inc. ("SVC" or "Plaintiff"), by its undersigned attorneys, for its Complaint against defendants The Coca-Cola Company ("Coca-Cola") and Energy Brands Inc. d/b/a Glacéau ("Glacéau"), alleges as follows (Coca-Cola and Glacéau will be referred to herein together as "Defendants"):

NATURE OF THE ACTION

1. This is an action for false advertising, trademark dilution, deceptive acts and practices, injury to business reputation, and unfair competition under the Federal Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.* (the "Lanham Act"), as well as New York state and common law.

2. SVC is the manufacturer of GATORADE[®] Thirst Quencher (“GATORADE”), the number one selling sports drink in the United States and the world. This action arises from Defendants’ false and deceptive advertising campaign, launched approximately two weeks ago, for a competitive brand of sports drink called Powerade ION⁴[®].

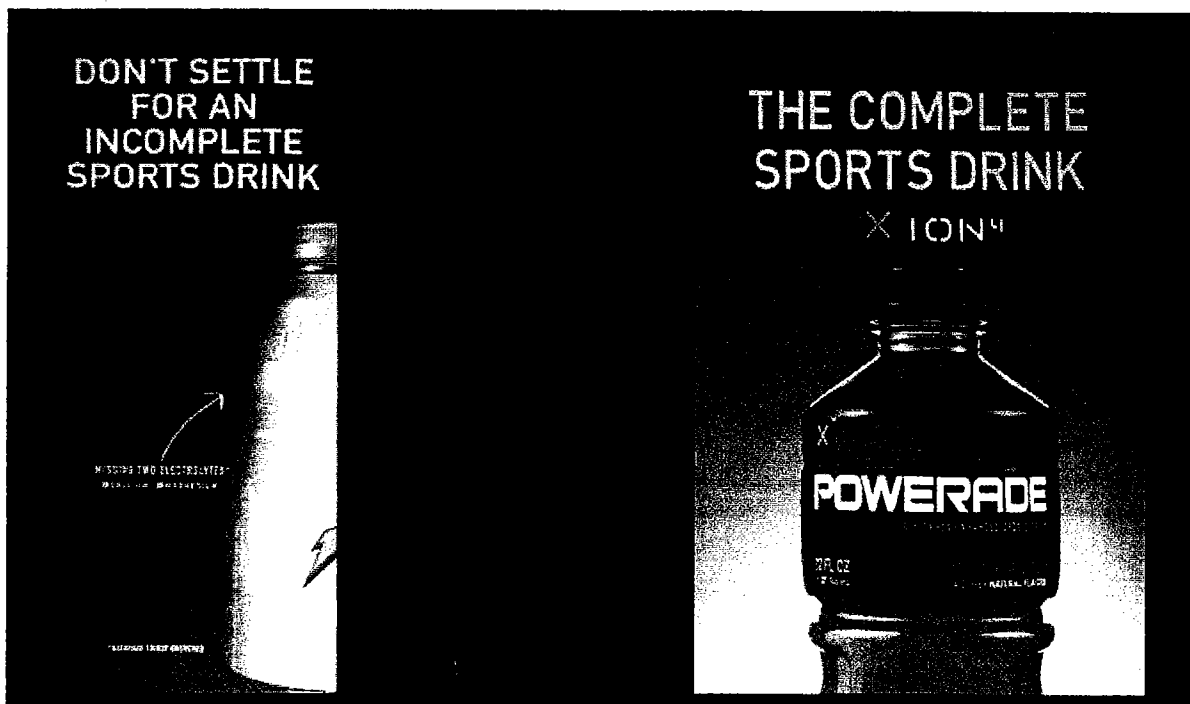
3. Specifically, SVC seeks to preliminarily and permanently enjoin Defendants from continuing to run comparative advertising making the false and deceptive claim that Powerade ION⁴ is superior to GATORADE. The claim is apparently premised on the fact that Powerade ION⁴ contains trace amounts of two electrolytes (magnesium and calcium) whereas GATORADE does not. Defendants have rolled out a national advertising campaign (on magazine covers and in other print, on billboards, on the Internet, on product labeling, and on point-of-purchase displays) that:

- touts Powerade ION⁴ as “THE COMPLETE SPORTS DRINK” while at the same time claiming that GATORADE is “MISSING TWO ELECTROLYTES” and “INCOMPLETE;”
- claims that Powerade ION⁴ represents an “UPGRADE” in sports drink formulas that will make consumers perform better on the playing field;
- describes the additional electrolytes in Powerade ION⁴ as “critical;” and
- claims that Powerade ION⁴ replaces four electrolytes (sodium, potassium, magnesium and calcium) “in the same ratio typically lost in sweat.”

Not one of these claims is true. There is no evidence, scientific or otherwise, that Powerade ION⁴ functions better than GATORADE as a sports drink. There is no evidence that Powerade ION⁴ will help consumers achieve better hydration, have more energy, or get nutrients that will result in improved athletic performance. There is no evidence that the minute quantities of magnesium and calcium present in Powerade ION⁴ make it superior to GATORADE in any way.

Specifically, Powerade ION⁴ contains only 2.5 milligrams of calcium and 1.2 milligrams of magnesium per eight ounce serving. These levels represent less than one-half of one percent (0.50%) of the recommended dietary intake level for adults and are not nutritionally or physiologically significant. Nor is there any evidence that there is a “typical” ratio of electrolytes lost in sweat, or that replacing these electrolytes in a particular ratio makes Powerade ION⁴ any better as a sports drink.

4. To make matters worse, Defendants have chosen to couple their false and deceptive claims regarding GATORADE and Powerade ION⁴ with mutilated and distorted depictions of GATORADE’s world famous trademark, logo and trade dress. For example, in many executions, Defendants show the GATORADE bottle (and logo) chopped in half, and labeled “INCOMPLETE,” side-by-side with a beauty shot of the full Powerade ION⁴ bottle below the headline “COMPLETE.” Here is an illustration:



These impactful visuals not only emphasize and reinforce Defendants’ false claim that GATORADE is incomplete and inferior; they also dilute, tarnish and disparage the famous

GATORADE brand and its trademarks and trade dress in violation of federal and New York state law.

5. Defendants' entire advertising campaign for Powerade ION4 is a calculated, intentional strategy designed to falsely and viciously attack the readily-identifiable market leader, GATORADE, in the hopes of unfairly gaining precious market share. As *Advertising Age*, a leading advertising industry journal, reports: "It's a classic challenger strategy, except it comes from one of the world's biggest marketers, Coca-Cola Co. The company might be a giant when it comes to soda, but in sports drinks, Coke's Powerade runs in the shadow of . . . Gatorade [T]he smaller rival is undertaking a . . . print and outdoor effort that positions the category leader as only half the brand Powerade is."

6. It is critical that the Court put an end to Defendants' deception at once. Defendants' marketing plan is escalating, with each execution causing additional irreparable harm to the GATORADE brand. What started as a mention in *Advertising Age* has grown to product labeling and in-store displays, a cover and advertising spread in national magazines, billboards in several major cities, print advertisements, and a relaunched website. This campaign will reportedly include additional elements, such as video vignettes featuring ESPN celebrities, mobile applications, and banner advertisements. Again according to *Advertising Age*, Defendants' clear "plan is to blitz the market with messaging that Gatorade is an inferior method of hydration," just as the biggest selling season for sports drinks is beginning. Defendants' goal here is to cause the maximum possible damage to SVC and the GATORADE brand. It must be stopped at once.

THE PARTIES

7. Plaintiff SVC is a corporation organized under the laws of Indiana with its principal place of business in the State of Illinois.

8. Plaintiff SVC is the manufacturer of GATORADE, the number one selling sports drink in the world.

9. Upon information and belief, Defendant Coca-Cola is a corporation organized under the laws of Delaware with its principal place of business in the State of Georgia.

10. Upon information and belief, Defendant Energy Brands Inc. does business under the name Glacéau and is a corporation organized under the laws of New York with its principal place of business in the City and State of New York. Upon information and belief, Defendant Glacéau is a wholly owned subsidiary of Defendant Coca-Cola.

11. Defendants are the manufacturers of the sports drinks Powerade and Powerade ION⁴. Upon information and belief, Defendant Glacéau is responsible for marketing and promotion of these products. Upon information and belief, in the coming weeks or months, Defendants plan to take Powerade off the market in the United States and replace it with Powerade ION⁴.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331 and § 1338(a) and (b), because this action arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.* This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

13. Upon information and belief, this Court has personal jurisdiction over Defendant Coca-Cola pursuant to N.Y. C.P.L.R. §§ 301 and 302 because, among other things, Coca-Cola regularly transacts, does and solicits business in this District, distributes Powerade ION⁴ to retail establishments in this District, and advertises for Powerade ION⁴ in this District.

14. Upon information and belief, this Court has personal jurisdiction over Defendant Glacéau pursuant to N.Y. C.P.L.R. §§ 301 and 302 because, among other things, Glaceau

regularly transacts, does and solicits business in this District, distributes Powerade ION⁴ to retail establishments in this District, and advertises for Powerade ION⁴ in this District.

15. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events giving rise to these claims arose in this District.

STATEMENT OF FACTS

SVC's GATORADE

16. GATORADE was born on the football fields of the famed University of Florida "Gators" in 1965. Following the hospitalization of several players for severe dehydration, a group of University of Florida nephrologists and other physicians formulated a new beverage, with an optimal balance of carbohydrates and electrolytes, specifically designed to rapidly rehydrate and refuel players so they would be able to perform at peak levels. The Gators' winning record – and, in particular, the players' ability to out-endure and out-perform the competition in the final quarter – caught the attention of athletes and coaches throughout the country who clamored for the secret beverage that eventually became known as GATORADE.

17. Forty years later, GATORADE is the number one selling sports drink in the United States. GATORADE is, and has always been, scientifically formulated to rapidly rehydrate and energize the active person, while replenishing critical electrolytes lost in sweat. Indeed, the objectives for the product are simple and are succinctly expressed on the product's label: "REHYDRATE, REPLENISH, AND REFUEL."

18. GATORADE is specifically formulated to address the number one danger posed to athletes – professional, college, and casual alike – dehydration. The energy generated by working muscles during exercise rapidly heats the body. The body's physiological response is to excrete sweat, the evaporation of which serves to lower the body's temperature. Some athletes

can lose as much as two liters of sweat during an hour of vigorous exercise. GATORADE helps to replenish these lost fluids, which, in turn, helps to maintain peak athletic performance.

19. GATORADE also helps to replenish certain critical electrolytes (namely sodium, potassium, and chloride) which are lost in significant amounts in sweat during exercise. Maintaining a proper level of these electrolytes – particularly sodium – in the bloodstream is vital to maintaining cardiovascular and thermoregulatory function.

20. GATORADE accomplishes its goal of “refueling” by supplying athletes with calories in the form of carbohydrates that are quickly converted to available energy and that help reduce muscle fatigue.

21. Throughout its history, SVC has remained true to GATORADE’s scientific and physiologic roots, constantly testing and confirming the efficacy of the product’s formulation. SVC has invested tens of millions of dollars in product development and research. In the past twenty years, more than 100 research studies have been published on various aspects of GATORADE’s efficacy. As a result, GATORADE is the most studied sports drink in the world. It represents the “Gold Standard” for sports drinks.

22. The Institute of Medicine and the American College of Sports Medicine (among other professional organizations) have issued position stands announcing their conclusions, based on a review of the relevant scientific evidence, that [complete and] properly formulated sports drinks contain sodium (~0.5-0.7 g/L) and potassium (~0.8-2.0 g/L), as well as about 5-10% carbohydrates. These organizations do not recommend the inclusion of magnesium or calcium in sports drinks. Gatorade’s formulation is consistent with the recommendations of these organizations.