

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
Pamela Jones Harbour  
William E. Kovacic  
J. Thomas Rosb

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In the Matter of )  
 )  
PepsiCo, Inc., ) Docket No. C-  
a coporation )  
\_\_\_\_\_)

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receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 234, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

1. Respondent PepsiCo is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 700 Anderson Hill Road, Purchase, New York 10577.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

## ORDER

I.

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IT I



- N. “DPSG Information Relating to Bottler Functions” means DPSG Commercially Sensitive Information Relating to DPSG Bottler Functions; DPSG Information Relating to Bottler Functions includes no more than the type of information that DPSG provided to its Bottlers in the Territories prior to the Acquisition; provided, however, that DPSG Information Relating to Bottler Functions may not necessarily include all such information.
- O. “DPSG Information Relating to Concentrate Functions” means DPSG Commercially Sensitive Information relating to DPSG Concentrate-Related Functions.
- P. “DPSG Information Relating to Independent DPSG Promotions” means DPSG Commercially Sensitive Information relating to planned Promotional Activities for DPSG Beverages that are separate from and independent of planned Promotional Activities for PepsiCo Beverages.
- Q. “DPSG National Accounts” means those retailers that sell DPSG Beverages in the Territories (or those retailers that do not sell DPSG Beverages in the Territories but that DPSG is calling on to persuade them to sell DPSG Beverages in the Territories) to which DPSG makes account calls in support of the DPSG Beverages sold by PepsiCo in the

- X. "PepsiCo Beverages" means PepsiCo brands of carbonated soft drink products and all package sizes and flavors thereof; PepsiCo Beverages shall not include DPSG Beverages.
- Y. "PepsiCo Bottling Operations Personnel" means the persons, functions, or positions of or within PepsiCo that satisfy all of the criteria described in Paragraph I. of this Order. "PepsiCo Bottling Operations Personnel" as of the date the Agreement Containing Consent Order is executed shall include, but not be limited to, the names, functions, or positions described in Appendix A to the Order ("List") and all people who report (directly or indirectly) to such names, functions, or positions; the List shall indicate those who have limited access under paragraph I.A; all changes to the PepsiCo Bottling Operations Personnel shall be in accordance with the procedure described in Paragraph II. of this Order
- Z. "Promotional Activities" means in-store promotions, end-aisle displays and newspaper inserts.
- AA. "Territories" means those territories stipulated in the license transaction.

II.

IT IS FURTHER ORDERED that:

- A. PepsiCo shall use DPSG Commercially Sensitive Information only under the following conditions:
  1. the DPSG Commercially Sensitive Information consists only of DPSG Information Relating to Bottler Functions;
  2. the DPSG Commercially Sensitive Information is provided, disclosed, or otherwise made available only to PepsiCo Bottling Operations Personnel or to Additional Firewalled PepsiCo Personnel;
  3. PepsiCo Bottling Operations Personnel shall include only those persons, functions, or positions that:
    - a. are responsible for Bottler Functions or legal or Regulatory Functions only; provided, however, that persons, functions, or positions included within "PepsiCo Bottling Operations Personnel" because they are responsible for Legal or Regulatory Functions shall have access to and use of such DPSG Commercially Sensitive Information only to the extent such information is necessary to perform such Legal or Regulatory Functions;
    - b. are not responsible for Concentrate-Related Functions, and if any such person, f

responsible for Concentrate-Related Functions, that person, function, or position shall not disclose, provide, or otherwise make available DPSC Commercially Sensitive Information to the person responsible (directly or indirectly) for Concentrate-Related Functions; and

c. do not receive bonus or other tangible benefits related to the marginal sale of PepsiCo Beverages as a disproportionate benefit to any bonus or tangible benefit related to the marginal sale of DPSC Beverages.

4. an executed non-disclosure agreement and a statement attesting that he or she has received a copy of this Order, will comply with its terms, and will take all reasonable steps to assure that employees that report to him or her will comply with its terms:

a. shall be submitted to the staff of the Commission by each person specifically identified in Appendix A no later than two (2) days (20 d2i000 TD28hD (6 TD

- B. PepsiCo shall change the PepsiCo Bottling Operations Personnel only pursuant to the following procedures:
1. replacing individuals who report (directly or indirectly) to the people, functions, or positions specifically identified in Appendix A shall be in accordance with the usual and customary business practices of PepsiCo;
  2. replacing any of the people specifically identified in Appendix A or reorganizing functions or positions specifically identified in Appendix A shall be in accordance with the usual and customary business practices of PepsiCo after notification to the Monitor;
  3. adding new functions or positions that are not specifically identified in Appendix A shall require prior notification to the Monitor and staff of the Federal Trade Commission in accordance with the following:
    - a. the staff shall have ten (10) days from notification to consider the proposed change; and
    - b. if the staff does not object to the change within ten (10) days of its notification, PepsiCo shall be permitted to make the change.
- C. PepsiCo shall disclose DSPG Commercially Sensitive Information to Additional Firewalled PepsiCo Personnel only under the following conditions:
1. such Additional Firewalled PepsiCo Personnel:
    - a. are employees or agents of PepsiCo; and
    - b. are approved by DSPG, receive only the limited information approved by DSPG, for the time period approved by DSPG, all according to the procedure described in ¶ 11.C.2. of the Order below.
  2. PepsiCo shall comply with the following procedure in connection with Additional Firewalled PepsiCo Personnel:
    - a. PepsiCo shall submit the name, position, and function of proposed Additional Firewalled PepsiCo Personnel to DSPG, the Monitor, and Commission staff, together with a statement of the reasons for the need to include such person, the specific DSPG Information Relating to Bottler Functions that is necessary to be shared, and the time period during which the information is intended to be shared;
    - b. DSPG shall notify PepsiCo, the Monitor, and Commission staff within twenty (20) days whether or not it objects to the proposal;

- c. if DPSG does not object within twenty (20) days of receiving notification of the proposal, PepsiCo shall notify the Commission staff;
- d. if Commission staff does not object within ten (10) days of its notification that DPSG does not object, the person shall be an Additional Fie walled PepsiCo Personne and
- e. PepsiCo must obtain from each Additional Fie walled PepsiCo Personne an executed nondisclosure agreement and a statement attesting that he or she has received a copy of this Order and will comply with its terms.

D. PepsiCo shall develop and implement procedures with respect to DPSG Commercially Sensitive Information, with the advice and assistance of the Monitor, to comply





2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Monitor shall serve until five (5) years after the License Transaction is effective; provided, however, that the Commission may extend or modify this period as maybe necessary or appropriate to accomplish the purpose of this Order
4. Subject to any demonstrated legally recognized privilege the Monitor shall have full and complete access to PepsiCo's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to PepsiCo's compliance with its obligations under this Order. PepsiCo shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor PepsiCo's compliance with this Order.
5. The Monitor shall serve without bond or other security, at the expense of PepsiCo, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ at the expense of PepsiCo, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
6. PepsiCo shall indemnify the Monitor and hold the Monitor harmless against all losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.
7. PepsiCo shall report to the Monitor in accordance with the requirements of this Order. The Monitor shall evaluate the reports submitted to the Monitor by PepsiCo. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by PepsiCo of its obligations under this Order
8. PepsiCo may require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Monitor (and its representatives) from providing any information to the Commission.
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materials and information received in connection with the performance of the Monitor's duties.

10. In the event the Commission determines that the Monitor has failed to act or failed diligently to act, the Commission may appoint a substitute Monitor in the same manner as provided in this paragraph.
11. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

#### IV.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after this Order becomes final, PepsiCo shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, and has complied with this Order. PepsiCo shall at the same time also provide a copy of its report concerning compliance with this Order to any Monitor that may have been appointed.
- B. One (1) year after this Order becomes final, annually for the next nineteen (19) years on the anniversary of that date, and at other times as the Commission may require, PepsiCo shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied, and is complying, with this Order.

#### V.

IT IS FURTHER ORDERED that PepsiCo shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of PepsiCo;
- B. Any proposed acquisition, merger, or consolidation of PepsiCo;
- C. Any other change in PepsiCo including, but not limited to, assignment and termination or dissolution of subsidiaries, if such change may affect compliance with this Order.

States subsidiary, or headquarters address, PepsiCo shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of PepsiCo and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence memoranda and all other records and documents in the possession or under the control of PepsiCo related to compliance with this Order, which copying services shall be provided by PepsiCo at the request of the authorized representative(s) of the Commission and at the expense of PepsiCo.
- B. The opportunity to interview officers, directors, or employees of PepsiCo, who may have counsel present, related to compliance with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date this Order becomes final.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED:



- This position will be responsible for all aspects of Pepsi Beverages Company's human resources function, including talent management, compensation and benefits, labor relations, diversity and communications.
- This position will report directly to CEO, Pepsi Beverages Company.

Chief Strategy Officer of Pepsi Beverages Company who at the time of the closing of the  
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