



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

March 3, 2010

Sanford Lewis
P.O. Box 231
Amherst, MA 01004-0231

Re: The Coca-Cola Company
Incoming letter dated February 26, 2010

Dear Mr. Lewis:

This is in response to your letter dated February 26, 2010 concerning the shareholder proposal that Alice de V. Perry and Eleanor G. Hand submitted to Coca-Cola. On February 17, 2010, we issued our response expressing our informal view that Coca-Cola could exclude the proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position. After reviewing the information contained in your letter, we find no basis to reconsider our position. In our view, the proposal concerns ordinary business matters and does not focus on a significant social policy issue.

Sincerely,

Thomas J. Kim
Chief Counsel &
Associate Director

cc: Sharon P. Nixon
Securities Counsel
Office of the Secretary
The Coca-Cola Company
P.O. Box 1734
Atlanta, GA 30301

SANFORD J. LEWIS, ATTORNEY

February 26, 2010

Meredith Cross, Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Coca-Cola on the Bottled Water Issue – Request for
Reconsideration of No Action Letter of February 17 on Behalf of Alice de V. Perry

Via e-mail

Dear Ms. Cross,

Alice de V. Perry (the “Proponent”) is the beneficial owner of common stock of The Coca-Cola Company (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to request your reconsideration of the no action letter granted by the Staff on February 17, 2010 which stated that the Proposal may be excluded from the Company’s 2010 proxy statement in reliance on Rule 14a-8(i)(7). A copy of this letter is being e-mailed concurrently to Sharon P. Nixon, Securities Counsel, The Coca-Cola Company. I enclose the correspondence record in a separate e-mail transmission following this letter.

We note the time-sensitive nature of this request. We did not receive the February 17, 2010 decision until a fax at 3:20 PM on Wednesday, February 24. We have turned around this reconsideration request in less than 36 hours from receipt of the decision. Last year, the Company issued its proxy on March 5.

The Proposal (appended with this letter) relates to a cluster of concerns about environmental and health impacts of bottled water which are characterized as “The Bottled Water Issue.” The industry itself has characterized these issues as placing the sector in a defensive *state of “war”* over these issues.

We are seeking reconsideration because it is difficult to reconcile the decision with the standing position of the Staff, stated in the 1998 release and reiterated numerous times, that a Proposal which addresses a “significant social policy issue” will transcend ordinary business and be nonexcludable unless it micromanages. By contrast, the no action letter states that the Proposal is being treated as excludable because it is in the category of proposals which are generally excludable as concerning “customer relations and decisions relating to product quality.”

We believe that our correspondence documented a significant social policy issue facing this company and its sector; indeed, the no action letter does not state that the issues involved are

not a significant social policy issue. Nor does it assert that the Proposal impermissibly “micromanages” the Company. Instead, it gives one the impression that consumer and product quality concerns are categorically excludable as ordinary business. As we will spell out further below, we believe this is both an ill-advised policy approach, and questionable in light of prior judicial rulings regarding the SEC’s administration of Rule 14a-8.

The subject matter of the proposal is a transcendent social policy issue.

The grant of reconsideration in *Tyson Foods* (December 15, 2009) represents the most recent example of SEC deliberation on the meaning of a “significant social policy issue” for purposes of Rule 14a-8. In its initial no action letter (Nov. 25, 2009), the Staff granted an ordinary business exclusion, noting parenthetically that the resolution related to “the choice of production methods and decisions relating to supplier relationships.” The no action letter stated further, “In this regard, we note that the proposal concerns the use of antibiotics in raising livestock.” However, reconsideration was granted because the subject matter was found, on further review, to be a nonexcludable social policy issue given emerging restrictions on markets and legislation. As we noted in our correspondence, both of these elements are present in this matter, as well as very extensive media coverage of the raging public battle over bottled water.

The bottled water controversy as presented in the Proposal encompasses focuses on major environmental concerns including the relative level of energy consumption associated with bottled versus tap water, as well as serious doubts about the putative health benefits associated with drinking bottled water. Members of the public and policymakers are puncturing the bubble of previously perceived health benefits from consuming bottled water, compounded concerns regarding detrimental environmental and energy impacts.

Clearly, these issues do encompass consumer concerns about the amount of information available and questions about product quality. Yet, this is a high profile policy controversy regarding consumer and government decisions regarding whether to continue purchasing bottled water, woven with environmental, health and value considerations. The environmental issues are inseparable from consumer concerns. The core contention in media and policy circles is that it is not worthwhile to pay the higher cost of bottled water given both the environmental impacts and the lack of quality and health difference compared with tap water.

As documented in our correspondence, this “bottled water issue” has garnered very substantial public controversy and high visibility media. According to *Forbes Magazine*, May 5, 2009, so far 60 US cities have decided to stop buying bottled water. At least three states, New York, Virginia and Illinois, have told agencies to cut spending on bottled water because the lack of added health benefit and the detrimental environmental impact impacts make such expenditures seem wasteful.

As we documented, the issue has been prominently profiled in major news publications including *Time Magazine* which referred to the issue as the “war on bottled water,” ranking fourth among its “top 10 food trends of 2008”. Among the many other publications prominently covering the controversy have been the *New York Times*, the *Wall Street Journal*

and the Christian Science Monitor. Further, a boycott movement is currently on an estimated 100 college campuses.

If there is any element of documentation that we may have failed to integrate to our prior submissions, perhaps it was the need for quotes from the industry itself, describing their perception of the magnitude of this public policy controversy. For instance, in a report on the International Bottled Water Association Convention, the President of the Association described an industry at “war”:

LAS VEGAS — The bottled industry is at war, International Bottled Water Association (IBWA) President Joe Doss told his members at the group’s 50th annual convention and trade show in November in Las Vegas.

“It is clear that a war is being waged against our products, and the future of the bottled water industry is at stake,” Doss told the convention in his annual “Report from Washington” address. He was referring to efforts by environmental activists and some legislators to impose new labeling rules, restrict water withdrawals, question bottled water quality, and ban purchases of bottled water by local governments.¹

The nexus to the Company is clear. In the Company’s no action request, it notes that bottled water constitutes 11% of its beverage business. Thus, for Coca-Cola, a major product line is “at war” in a public policy debate. If a public policy war over bottled water is not a significant social policy issue facing Coca-Cola, what would be?

More broadly, how can a sector by its own characterization be “at war” over a policy issue and yet the issue is not considered a significant social policy issue by the Staff?

Cracker Barrel ruling against categorical exclusions

In *Cracker Barrel* (October 13, 1992) the staff had developed a categorical exclusion of proposals in favor of or against the adoption of an equal employment opportunity (EEO) program because the staff found it was unable to draw lines as to whether a particular proposal did or did not relate to substantial policy considerations. The court in *Amalgamated Clothing and Textile Workers Union v. Wal-Mart*, 821 F. Supp. 877 (SDNY, 1993) made it clear that the SEC’s determination of whether a company may exclude a proposal should not depend on “whether the proposal could be characterized as involving some day-to-day business matter. Rather, the proposal may be excluded *only* after the proposal is also found to raise no substantial policy consideration.” at 890. [emphasis added] The court found that the staff decision in *Cracker Barrel* to exclude all EEO related proposals, rather than to assess each proposal for whether it raises a substantial policy consideration, was inconsistent with that decision principle. The same is true with the present decision; the Staff appears to be unwilling

¹ Water Tech Online: Volume 32, Issue 1 - January 2009: Around the Water Cooler, <http://www.watertechonline.com/article.asp?IndexID=6637063>

or unable to conclude or communicate that the current proposal involves “no substantial policy consideration” but instead has chosen to convey its opinion through a categorical exclusion of product quality and consumer information related proposals.

Somehow, the no action letter seems to have deviated from the keystone of ordinary business decision-making stated in Exchange Act Release No. 34-40018 (May 21, 1998) (“1998 Interpretive Release”) that “Ordinary Business” exclusion determinations would hinge on two factors:

Subject Matter of the Proposal: “Certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as hiring, promotion, and termination of employees, decisions on the production quality and quantity, and the retention of suppliers. However, *proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.*” 1998 Interpretive Release (emphasis added).

“Micro-Managing” the Company: The Commission indicated that shareholders, as a group, will not be in a position to make an informed judgment if the “proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* Such micro-management may occur where the proposal “seeks intricate detail, or seeks specific time-frames or methods for implementing complex policies.” *Id.* However, “timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.” *Id.*

There seems to still be a lack of clarity about what constitutes a “significant social policy issue.” But if it means anything, doesn’t it mean that if a sector is in a self-acknowledged “public policy war” over an issue, such subject matter is an appropriate topic for shareholder deliberation?

The no action letter

Many investors have found the no action letter process to be frustrating because it is difficult to predict the outcome of Staff decision-making. We understand that the Coca-Cola no action letter issued on February 17, 2010 follows a new response format, intended to reduce that frustration and add predictability, by providing additional information on the rationale of a Staff decision to allow exclusion of the Proposal.

However, the Division’s approach taken in this letter will do little to reduce investor frustration, because it neglects to address the core controversy between the parties as expressed in the correspondence, which had to do with whether the subject matter of the

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Proposal related to a significant social policy issue which would transcend ordinary business. Of course, the proposal relates in part to consumer and product quality information, which can be mundane, day-to-day considerations, but the pivotal question is, does the subject matter as a whole "raise no substantial policy consideration?"

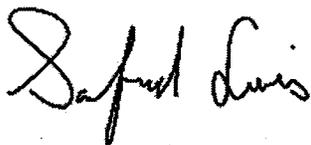
This decision is a clear example of why investors and issuers have difficulty understanding how to apply the significant policy standard. How much larger and more vigorous does a public controversy have to be before the Staff finds a proposal to transcend ordinary business?

At a minimum, we would expect that if the Staff disagreed with the Proponent's conclusion that the subject matter is a significant social policy issue, the letter would directly state that in the opinion of the staff, the subject matter of the proposal does not relate to a "transcendent social policy issue." Otherwise, investors are left with the impression that "consumer information and product quality" issues are being treated as excludable ordinary business even if they are at the core of major public controversy, a categorical exclusion that under the logic of *ACTWU v. Wal-Mart* would seem impermissible without a rulemaking.

If consumer information and product quality issues are categorically subject to exclusion as the letter seems to imply, a great many social policy issues with elements of consumer information or product quality concerns would seem off limits and "insignificant" despite their high profile and appropriate interest of investors and society. Consider automotive safety, greenwashing, toxic toys, food safety, and many other issues which are high profile social policy "wars" that face companies from time to time.

In conclusion, we request that you reconsider the decision and inform the Company that the SEC proxy rules require denial of the Company's no-action request. Please call me at (413) 549-7333 with any questions in connection with this matter.

Sincerely,



Sanford Lewis
Attorney at Law

cc: Sharon P. Nixon, Coca-Cola
Alice de V. Perry

Appendix – The Proposal

The Bottled Water Issue

Whereas, the relative quality and social, energy, and environmental impacts of bottled water in comparison to tap water have become a major public issue;

- A June 20, 2008 *New York Times* article “Bottles Bottles Everywhere, Amid the Drops We Drink” notes that a New York City Council decision to stop purchasing bottled water was “part of a nationwide movement against the growth in consumption of bottled water.”
- A September 10, 2008 *Los Angeles Times* article “Grace Restaurant to Stop Serving Bottled Water” noted that, “The environmental cost of bottled water is becoming an increasingly hot-button issue as the race for the White House pivots around renewable energy versus off-shore drilling.”

These concerns have spurred action by public policy makers and other industry players:

- On July 10, 2009, the U.S. House Subcommittee on Oversight and Investigation, part of the House Energy and Commerce Committee, convened a hearing on gaps in government oversight and industry practices regarding product labeling and quality testing disclosure for bottled water products;
- At this hearing, a focal point was a Government Accountability Office (GAO) study requested by Congress which found that “the information provided to consumers by bottlers [about bottled water quality testing and sourcing] is less than what EPA requires of public water systems,” and that “consumers may benefit from such additional information”;
- In conjunction with this hearing, members of Congress escalated this inquiry by contacting major U.S. water bottlers, including our Company, formally requesting information regarding water quality controls, breaches in water quality and the names and locations of each company’s water sources;
- An October 17, 2008 *New York Times* editorial “Water and What Else” stated that public water supplies’ water quality reports “are not always as helpful as they should be...but at least they are readily available, and the same details should be publicly available for bottled water...for the extra cost and the promise of added purity...consumers should be able to see certified data that prove it”;
- Coca-Cola’s major competitors, Pepsi and Nestle, have changed the labels of tap-water-based brands Aquafina and Pure Life to clearly indicate at the point of sale that their water is sourced from public water utilities, while Coca-Cola has failed to take similar action;

Although the company has reduced the weight of Dasani brand water bottles and has taken other steps to reduce energy use, studies show bottled water consumes much more energy than tap water. A 2009 study published in *Environmental Research Letters* found that bottled water uses as much as 2000 times the energy of tap water;

Resolved:

Shareholders ask the company to publish a report, at reasonable expense and excluding proprietary information, discussing policy options to respond to the public concerns described above regarding bottled water, including, but not limited to, the options of providing

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additional information to consumers, or further modifying the production, delivery or sale of bottled water products so as to minimize environmental and energy impacts.