

Exhibit 1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

POM WONDERFUL LLC, a Delaware
limited liability company,

Plaintiff,

v.

THE COCA COLA COMPANY, a
Delaware corporation

Defendants.

Case No. CV-08-06237 SJO (JTLx)

**[PROPOSED] SECOND AMENDED
COMPLAINT FOR FALSE
ADVERTISING UNDER LANHAM
ACT § 43(A) AND UNLAWFUL
SALES BELOW COST**

DEMAND FOR JURY TRIAL

1 For its complaint against Defendant The Coca-Cola Company (“Coca-Cola”),
2 Plaintiff POM WONDERFUL LLC (“POM Wonderful”) alleges:

3 **PARTIES**

4 1. POM Wonderful is a Delaware limited liability company with its
5 principal place of business in Los Angeles, California.

6 2. Coca-Cola is a Delaware corporation with its principal place of
7 business in Atlanta, Georgia.

8 3. Coca-Cola conducts business and manufactures and/or distributes
9 products in the greater Los Angeles area, and throughout the United States.

10 **JURISDICTION AND VENUE**

11 4. This action arises under 15 U.S.C. § 1125(a). This Court has subject
12 matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question)
13 and 15 U.S.C. § 1121 (Lanham Act claims).

14 5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and
15 1400 because a substantial part of the events or omissions giving rise to the claims
16 occurred in this District.

17 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

18 6. This action seeks redress for Coca-Cola’s deliberate and unlawful false
19 and misleading representations regarding its “Minute Maid® Enhanced Juice
20 Pomegranate Blueberry 100% Fruit Juice Blend” (“Pomegranate Blueberry Juice”).
21 On its packaging, Coca-Cola represented that the Pomegranate Blueberry Juice
22 contained primarily pomegranate and blueberry juice, and/or that there are
23 significant amounts of pomegranate and blueberry juice in the product. In fact, the
24 Pomegranate Blueberry Juice contains virtually no pomegranate or blueberry juice,
25 but is comprised almost entirely of apple and grape juice.

26 7. According to sworn testimony Coca-Cola presented in this case, Coca-
27 Cola sold the Pomegranate Blueberry Juice below cost. Such sales had an injurious
28

1 effect upon POM Wonderful. Coca-Cola also targeted the sales of the Pomegranate
2 Blueberry Juice against POM Wonderful.

3 **I. POM WONDERFUL**

4 8. POM Wonderful is the largest grower and distributor of pomegranates
5 and pomegranate juice in the United States.

6 9. POM Wonderful produces, markets, and sells POM WONDERFUL®
7 brand bottled pomegranate juice, and various pomegranate juice blends including a
8 pomegranate blueberry blend. POM Wonderful has been bottling, selling and
9 marketing its juice products since 2002.

10 10. Consumers who purchase pomegranate and blueberry juices do so for
11 many reasons – including, but not limited to, because they like the taste,
12 pomegranates and blueberries are “super fruits” containing antioxidants; because
13 antioxidants are good for one’s general health; or because pomegranates and
14 blueberries are unusual or exotic. When Coca-Cola introduced its Pomegranate
15 Blueberry Juice, it targeted “the health-conscious shopper.” Whatever the reason
16 consumers have for purchasing pomegranate and blueberry juices, they do so with
17 the belief that the juice portrayed as being in the product is actually in the product
18 (whether through advertising or the name, label, package or coloring of the product)
19 in a significant amount. Coca-Cola deceived consumers and cheated its competitor
20 POM Wonderful by selling a “Pomegranate Blueberry” juice that contains virtually
21 no pomegranate juice or blueberry juice.

22 **II. COCA-COLA AND ITS FALSE ADVERTISING OF ITS**
23 **POMEGRANATE BLUEBERRY JUICE**

24 11. Coca-Cola markets and sells various bottled juice products under such
25 brands as Odwalla and Minute Maid throughout the United States.

26 12. In September 2007, Coca-Cola announced the addition of a new
27 “Minute Maid® Enhanced Juice Pomegranate Blueberry 100% Fruit Juice Blend” to
28 its line of “Minute Maid Enhanced Juices” targeting “the health-conscious shopper.”

1 13. Coca-Cola is one of POM Wonderful’s primary competitors in the
2 bottled pomegranate juice market. Coca-Cola marketed, distributed and sold its
3 Pomegranate Blueberry Juice in Los Angeles County and throughout the United
4 States.

5 14. Coca-Cola’s Pomegranate Blueberry Juice contains virtually no
6 pomegranate or blueberry juice – just 0.3% pomegranate juice and 0.2% blueberry
7 juice, with 0.1% raspberry juice added. 99.4% of the juice blend is less expensive
8 apple and grape juice.

9 15. Coca-Cola designed the name and label of the Pomegranate Blueberry
10 Juice in a manner that deceives consumers and harms its competitor POM
11 Wonderful. Coca-Cola named the Product “Pomegranate Blueberry” and the words
12 “Pomegranate Blueberry” are displayed with far more prominence than other words
13 on the label. Despite the miniscule amounts of pomegranate and blueberry juices in
14 the blend, Coca-Cola displays the words “POMEGRANATE BLUEBERRY” in all
15 capital letters on two separate lines. The Pomegranate Blueberry Juice pictures a
16 large pomegranate along with blueberries and raspberries. Although an apple and
17 grapes are also pictured, Coca-Cola did not truthfully name its product “Apple
18 Juice,” “Grape Juice” or “Apple Grape” juice, when apple and grape juices comprise
19 99.4% of the product. Coca-Cola did not list the actual percentages of juices that
20 Pomegranate Blueberry Juice contains. Attached as “Exhibit A” are true and correct
21 copies of photographs of the original label for Coca-Cola’s Pomegranate Blueberry
22 Juice.

23 16. Coca-Cola deceived consumers and harmed its competitor POM
24 Wonderful by calling the Pomegranate Blueberry Juice a “Five Juice Blend,” when
25 really it has only two juices – apple and grape – in non-trivial amounts. For the
26 other three juices – pomegranate, blueberry and raspberry – there is no juice there:
27 0.3% pomegranate, 0.2% blueberry juice, and 0.1% raspberry juice.

28

1 17. Coca-Cola deceived consumers and harmed its competitor POM
2 Wonderful by coloring its apple-grape juice blend to look like it contains significant
3 amounts of pomegranate and blueberry.

4 18. Coca-Cola harms consumers and its competitor POM Wonderful by
5 suggesting on the Nutrient Facts Label on the back of the Pomegranate Blueberry
6 Juice that pomegranate juice and blueberry juice are present in meaningful amounts
7 in the product. The ingredient list on the Nutrient Facts Label lists supposed
8 ingredients: “Contains Apple, Grape and Pomegranate Juices from Concentrate,
9 Fruit and Vegetable Juices (For Color), Blueberry Juice from Concentrate, Natural
10 Flavors, Raspberry Juice From Concentrate[.]” The label conveys to a reasonable
11 consumer that pomegranate juice, blueberry juice and raspberry juice, although
12 present in lesser amounts than apple and grape juice, are nevertheless present in
13 meaningful amounts, not miniscule amounts.

14 19. Coca-Cola never informed consumers or competitors that there are
15 virtually no pomegranate or blueberry juices in its Pomegranate Blueberry Juice,
16 and virtually no raspberry juice in the product: 0.3% pomegranate, 0.2% blueberry
17 juice, and 0.1% raspberry juice.

18 20. Coca-Cola’s cost in producing its apple-grape juice – misnamed
19 Pomegranate Blueberry Juice – was significantly less than producing a product with
20 significant amounts of pomegranate and blueberry juices instead of apple and grape.
21 As a result, Coca-Cola was able to sell its counterfeit Pomegranate Blueberry Juice
22 at a price significantly below POM Wonderful’s pomegranate juices. Consumers
23 believed they were purchasing a pomegranate blueberry juice at a lower price than if
24 Coca-Cola had sold an authentic pomegranate blueberry juice. Coca-Cola’s conduct
25 harmed consumers and its competitor POM Wonderful.

26 21. The natural, probable and foreseeable result of Coca-Cola’s wrongful
27 conduct has been to cause confusion, deception and mistake to consumers, deprive
28 POM Wonderful of sales and to cause foreseeable damage to POM Wonderful.

FIRST CLAIM FOR RELIEF

(False Advertising Under Lanham Act § 43(a), 15 U.S.C. §1125(a))

22. POM Wonderful incorporates and realleges Paragraphs 1 through 21 above.

23. Coca-Cola has made and distributed, in interstate commerce and in this District, advertisements that contain false or misleading statements of fact regarding its Pomegranate Blueberry Juice.

24. Coca-Cola's false and misleading statements on its Pomegranate Blueberry Juice actually deceived, or had a tendency to deceive, a substantial segment of consumers and potential consumers of the Pomegranate Blueberry Juice. These deceptions were material in that it they were likely to influence the purchasing decisions of consumers of Coca-Cola's Pomegranate Blueberry Juice.

25. Coca-Cola's false and misleading advertising statements and omissions injured both consumers and its competitor POM Wonderful.

26. Coca-Cola's false and misleading advertising statements and omissions violated the Lanham Act § 43(a), 15 U.S.C. §1125(a).

27. Coca-Cola caused immediate and irreparable injury to POM Wonderful, including injury to its business, reputation, and goodwill, for which there is no adequate remedy at law. Unless required to state the percentages of juice in its products, Coca-Cola is likely to harm consumers and competitors in the future. As such, POM Wonderful is entitled to an injunction under 15 U.S.C. §1116 restraining Coca-Cola from selling juice products that do not disclose the percentages of juice in its products.

28. Pursuant to 15 U.S.C. §1117, POM Wonderful is entitled to recover from Coca-Cola the damages sustained by POM Wonderful as a result of Coca-Cola's sale of its Pomegranate Blueberry Juice in violation of Lanham Act § 43(a). Pursuant to 15 U.S.C. §1117, POM Wonderful is further entitled to recover from

1 Coca-Cola the gains, profits and advantages that it has obtained as a result of the
2 unlawful sale of its counterfeit Pomegranate Blueberry Juice.

3 29. Pursuant to 15 U.S.C. §1117, POM Wonderful is further entitled to
4 recover the costs of this action. Coca-Cola's conduct in selling its counterfeit
5 Pomegranate Blueberry Juice was undertaken willfully and with the intention of
6 causing confusion, mistake or deception, making this an exceptional case entitling
7 POM Wonderful to recover additional damages and reasonable attorneys' fees.

8 30. Coca-Cola's conduct in selling juice products that contain virtually
9 none of the juice in the product name deceived and harmed consumers and its
10 competitor POM Wonderful. There is no adequate remedy at law to prevent Coca-
11 Cola from engaging in such deceptive practices in the future.

12 **SECOND CLAIM FOR RELIEF**

13 (Below-Cost Pricing, Pleaded In The Alternative, Under California's Unfair
14 Practices Act §17403)

15 31. POM Wonderful incorporates and realleges Paragraphs 1 through 30
16 above, and pleads this Second Claim for Relief in the alternative to the First Claim
17 for Relief.

18 32. California Business and Professions Code Section 17043 makes it
19 unlawful for any person engaged in business in California to sell any product at less
20 than the cost of such product for the purpose of injuring competitors or destroying
21 competition.

22 33. "Cost" includes the cost of raw materials, labor, and all overhead
23 expenses of the producer. Cal. Bus. & Prof. Code § 17026.

24 34. Under California Business and Professions Code Section 17071, one or
25 more acts of selling or giving away any article or product below cost or at
26 discriminatory prices, together with an injurious effect of such acts, is presumptive
27 evidence of the purpose to injure competitors or destroy competition.
28

1 35. Coca-Cola asserts in this action that from the time of inception of the
2 Pomegranate Blueberry Juice product in 2007 through at least June of 2009, that
3 Coca-Cola sold its Pomegranate Blueberry Juice at prices below cost as defined by
4 Section 17043. Specifically, Coca-Cola's expert, Avram Tucker, at pages 3-17 of
5 his expert report dated January 4, 2010, asserts that Coca-Cola sold the Pomegranate
6 Blueberry Juice below its average costs on this product after considering discounts
7 against gross revenues (including trade promotions specifically targeting POM
8 Wonderful), and after deducting from the resulting net revenues (1) costs of goods
9 sold (2) all direct and indirect overhead expenses that Coca-Cola allocates to this
10 product, such that its total costs of this product significantly exceeded the net
11 revenues attributed to it.

12 36. Upon information and belief, the prices and costs of Coca-Cola's
13 Pomegranate Blueberry Juice product have remained relatively stable since 2009,
14 and Coca-Cola has continued to sell its product below cost as defined by Section
15 17043 up through the time it pulled the product off the market in late 2014.

16 37. At the outset of Coca-Cola's inception of the Pomegranate Blueberry
17 Juice product, Coca-Cola sought to both capture consumers of POM Wonderful and
18 to specifically injure POM Wonderful. Coca-Cola, in fact, specifically targeted
19 POM Wonderful and crafted the low pricing of its Pomegranate Blueberry Juice
20 product with the purpose of injuring POM Wonderful.

21 38. Coca-Cola, through its pricing of its Pomegranate Blueberry Juice
22 product and its deceptions previously described herein, did in fact injure POM
23 Wonderful.

24 39. Pursuant to California Business and Professions Code Section 17082,
25 POM Wonderful is entitled to an award of three times the damages it sustained as a
26 result of Coca-Cola's below cost sales of Pomegranate Blueberry Juice, and an
27 award of POM Wonderful's attorneys' fees and costs in pursuing this action.

28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff POM Wonderful prays for judgment against Defendant Coca-Cola as follows:

1. That Coca-Cola be adjudged to have violated 15 U.S.C. Section 1125(a) by unfairly competing against POM Wonderful by using false, deceptive or misleading statements of fact that misrepresent the nature, quality and characteristics of their Pomegranate Blueberry Juice.

2. That POM Wonderful be awarded damages it has sustained in consequence of Coca-Cola's conduct.

3. That POM Wonderful be awarded Coca-Cola's profits obtained as a consequence of Coca-Cola's deceptive conduct.

4. That such damages and profits be trebled and awarded to POM Wonderful as a result of Coca-Cola's willful, intentional and deliberate acts in Plaintiff violation of Lanham Act Section 43(a).

5. That POM Wonderful recover its costs and reasonable attorneys' fees.

6. That Coca-Cola be enjoined from selling any juice product that does not accurately disclose the percentages of juices in its products.

7. That Coca-Cola be adjudged to have violated California Business and Professions Code Section 17043 by selling the Pomegranate Blueberry Juice below cost in California for the purpose of harming POM Wonderful.

8. That POM Wonderful be awarded three times the damages it sustained from Coca-Cola's below cost sales of the Pomegranate Blueberry Juice in California.

9. That POM Wonderful recover its costs and attorneys' fees.

10. That POM Wonderful be granted prejudgment and post judgment interest.

11. That POM Wonderful have such other and further relief as the Court deems just and proper.

1
2 Dated: June 5, 2015

/s/ Forrest A. Hainline III

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21 Attorneys for Plaintiff
22 POM WONDERFUL LLC
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues properly triable by jury.

Dated: June 5, 2015

By: /s/ Forrest A. Hainline III
FORREST A. HAINLINE III
Attorneys for Plaintiff
POM WONDERFUL LLC

EXHIBIT A



