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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES

14 THE PEOPLE OF THE STATE OF  
CALIFORNIA,

15 Plaintiff,

16 v.

17 THE GATORADE COMPANY, a Delaware  
18 Corporation,

19 Defendant.

Case No.

**BC 6 7 6 7 3 4**

**COMPLAINT FOR INJUNCTIVE AND  
OTHER RELIEF**

(BUS. & PROF. CODE, §§ 17200 et seq.,  
17500 et seq.)

[EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103]

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ORIGINAL FILED**  
Superior Court of California  
County Of Los Angeles

**SEP 21 2017**

Sherril R. Carter, Executive Officer/Clerk  
By: Charlie L. Coleman, Deputy

1 Plaintiff, the People of the State of California, by and through Xavier Becerra, Attorney  
2 General of the State of California, alleges the following on information and belief:

3 INTRODUCTION

4 1. Defendant The Gatorade Company (Defendant), a subsidiary of PepsiCo, Inc. and the  
5 leading seller of sports drinks in California and throughout the United States, violated California  
6 law through numerous false and misleading statements and depictions of water in a mobile-app  
7 videogame featuring Olympic gold medalist Usain Bolt, entitled “Bolt!” (Bolt). In the game,  
8 which Defendant developed and made available for free on iTunes, users controlled a cartoon  
9 version of the Olympic sprinter to run a lengthy race. Throughout the race, water was  
10 inaccurately and negatively depicted as hindering the sprinter’s performance. This marketing  
11 message was further made clear through the game’s tutorial, which instructed its largely teen and  
12 young adult audience to “Keep Your Performance Level High By Avoiding Water.”

13 2. This fanciful videogame, which featured animation of flying pirate ships and stolen gold,  
14 courted a youthful demographic that is particularly prone to inaccurate beliefs regarding the  
15 nutrition benefits of beverages.<sup>1</sup> And studies have confirmed that so-called “advergames”—  
16 downloadable or internet-based videogames that feature a brand-name product within the game—  
17 have a significant impact on consumer behavior not unlike more traditional forms of advertising.<sup>2</sup>  
18 Defendant violated California law by making false and misleading statements in connection with

19 <sup>1</sup> For example, “[t]here . . . is a common misperception that sports drinks are beneficial for  
20 children in connection with any amount of physical activity.” (Munsell, Christina R., et. al.,  
21 *Parents’ beliefs about the healthfulness of sugary drink options: opportunities to address*  
22 *misperceptions* (March 2015) Rudd Center for Food Policy and Obesity, Yale University, Public  
23 Health Nutrition, Vo. 19, No. 1, p. 46-54, at p. 47.) This misperception persists despite the  
24 position of the American Academy of Pediatrics that kids “rarely need sports drinks” and that  
25 “[w]ater, not sports drinks, should be the principal source of hydration for children and  
26 adolescents.” (American Academy of Pediatrics, *Kids Should Not Consume Energy Drinks, and*  
27 *Rarely Need Sports Drinks, Says AAP* (May 30, 2011) < [https://www.aap.org/en-us/about-the-  
28 aap/aap-press-room/pages/kids-should-not-consume-energy-drinks,-and-rarely-need-sports-  
drinks,-says-aap.aspx](https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/kids-should-not-consume-energy-drinks,-and-rarely-need-sports-drinks,-says-aap.aspx) >.)

25 <sup>2</sup> See, e.g., Harris, Jennifer L., et. al., *US Food Company Branded Advergames on the*  
26 *Internet: Children’s Exposure and Effects on Snack Consumption* (February 2012) Rudd Center  
27 for Food Policy and Obesity, Yale University, *Journal of Children and Media*, Vo. 6, No. 1, p. 51-  
28 68, at p. 63 [“This form of marketing appeals disproportionately to children; and advergames  
have the potential to negatively affect snack food consumption in a similar manner to television  
advertising.”].

1 its sale of Gatorade-branded goods.

2 3. California law prohibits false or misleading statements in connection with the selling of a  
3 good. This is true regardless of the medium in which the statements are made—whether through  
4 more traditional advertising or emerging fields such as advergames or social media—and  
5 regardless of whether the “statements” are made through words, images, or a combination  
6 thereof. Brand integration in mobile gaming is thus no exception to the rule: sellers of goods  
7 must follow California’s False Advertising Law and Unfair Competition Law regardless of what  
8 medium sellers use to advertise their goods.

9 DEFENDANT AND VENUE

10 4. Defendant The Gatorade Company is a Delaware corporation, with its principal place of  
11 business in Chicago, Illinois. Defendant is a subsidiary company of PepsiCo, Inc. that advertises  
12 and sells Gatorade-branded products and has, at all relevant times, transacted business throughout  
13 California, including Los Angeles County.

14 5. The violations of law alleged in this Complaint occurred in the County of Los Angeles  
15 and elsewhere in the State of California.

16 DEFENDANT’S BUSINESS PRACTICES

17 6. Defendant sells sports drinks, shakes, energy bars, and other consumable products under  
18 its Gatorade brand. Defendant is a subsidiary of PepsiCo, Inc., a large multinational food and  
19 beverage corporation with several well-known brands, such as Pepsi, Lays, and Mountain Dew.  
20 Gatorade is one of PepsiCo’s largest brands.

21 7. In 2012, Defendant worked with its media agency and a third-party game developer to  
22 create Bolt, an iOS-based mobile app. Defendant’s purpose in developing Bolt was to create a  
23 videogame that would be both entertaining to a youthful audience and contain a Gatorade-  
24 branded marketing message. That marketing message showed Gatorade in a positive light while  
25 simultaneously depicting the misleading message that water hindered athletic performance.

26 8. Defendant’s marketing of Gatorade in its Bolt game was false or misleading in at least  
27 three ways. First, the game falsely depicted water slowing down the athletic performance of the  
28 Olympic sprinter, while depicting Gatorade as increasing his speed. Second, a “fuel meter” in the

1 game falsely depicted water as decreasing the amount of “fuel” available to the Olympic athlete,  
2 while depicting Gatorade as increasing the amount of available “fuel.” Third, the tutorial directly  
3 told its users to “Keep Your Performance Level High By Avoiding Water.”

4 9. Bolt was released in July 2012 to coincide with Usain Bolt’s popularity during the  
5 Summer Olympics. Defendant marketed the game to Defendant’s millions of followers on social  
6 media, including Twitter and Facebook. Defendant and its agents also marketed the game  
7 through social media promotional posts by athletes and celebrities.

8 10. Bolt remained available for free download on iTunes throughout 2012 and 2013. The  
9 game was also made available on iTunes for a period of time in 2017. It is no longer available for  
10 download.

11 11. Defendant tracked the success of the game’s release, including the total number of  
12 downloads, games played, time spent on the game, and number of Gatorade logo interactions.  
13 The game resulted in more than 2.3 million downloads and 87 million games played worldwide.  
14 During this time period, the game was downloaded an estimated 30,000 times in California.  
15 More than 70% of users were 13-to-24 years old.

16 12. By Defendant’s measures, Bolt successfully achieved its marketing aims. The game  
17 received numerous marketing awards.

18 FIRST CAUSE OF ACTION

19 VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500

20 (False Advertising Law)

21 13. Plaintiff realleges and incorporates by reference each of the paragraphs above as though  
22 fully set forth in this cause of action.

23 14. Defendant violated Business and Professions Code section 17500 et seq. in connection  
24 with Bolt by making or disseminating, or causing to be made or disseminated, false or misleading  
25 statements with the intent to induce members of the public to purchase Gatorade-branded  
26 products when Defendant knew, or by the exercise of reasonable care should have known, that the  
27 statements were false or misleading.

28 15. Defendant’s false or misleading statements made in Bolt include the following:

1 a. Defendant states and/or represents that Gatorade consumption increases the speed  
2 of an athlete while water consumption decreases the speed of an athlete.

3 b. Defendant states and/or represents that Gatorade consumption increases the  
4 amount of "fuel" available to an athlete while water consumption decreases the amount of  
5 "fuel" available to an athlete.

6 c. Defendant states and/or represents that athletes should "Keep Your Performance  
7 Level High by Avoiding Water."

8 SECOND CAUSE OF ACTION

9 VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200

10 (Unfair Competition Law)

11 16. Plaintiff realleges and incorporates by reference each of the paragraphs above as though  
12 fully set forth in this cause of action.

13 17. Defendant engaged in unfair competition as defined in California Business and  
14 Professions Code section 17200 in connection with its marketing of the mobile app Bolt.

15 18. Defendant's acts and practices of unfair competition in connection with Bolt include the  
16 following:

17 a. Defendant violated Business and Professions Code section 17500 et seq., as  
18 alleged above in the First Cause of Action.

19 b. Defendant states and/or represents that Gatorade consumption increases the speed  
20 of an athlete while water consumption decreases the speed of an athlete.

21 c. Defendant states and/or represents that Gatorade consumption increases the  
22 amount of "fuel" available to an athlete while water consumption decreases the amount of  
23 "fuel" available to an athlete.

24 d. Defendant states and/or represents that athletes should "Keep Your Performance  
25 Level High by Avoiding Water."

26 ///

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

1. That under Business and Professions Code section 17535, Defendant, its successors, agents, representatives, employees, and all persons who act in concert with Defendant, be permanently enjoined from making any false or misleading statements in violation of Business and Professions Code section 17500 as alleged in this complaint;

2. That under Business and Professions Code section 17203, Defendant, its successors, agents, representatives, employees, and all persons who act in concert with Defendant, be permanently enjoined from committing any acts of unfair competition in violation of Business and Professions Code section 17200 as alleged in this complaint;

3. That under Business and Professions Code section 17536, the Court assess a civil penalty of \$2,500 for each violation of Business and Professions Code section 17500, as proved at trial;

4. That under Business and Professions Code section 17206, the Court assess a civil penalty of \$2,500 for each violation of Business and Professions Code section 17200, as proved at trial;

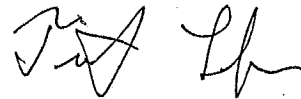
5. That Plaintiff recover its costs of suit, including costs of investigation; and

6. For such other and further relief that the Court deems just and proper.

Dated: September 21, 2017

Respectfully Submitted,

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