

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOAN RITCHIE SILLECK, THE ESTATE OF
RICHARD JAMES RITCHIE, and
ROBERT RITCHIE,

Declaratory Judgment Plaintiffs,

v.

PEPSICO, INC.,

Declaratory Judgment Defendant.

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND DAMAGES FOR
INTERFERENCE WITH
PROPERTY RIGHTS
DEMAND FOR JURY TRIAL**

Civil Action No.: _____

FILED
U.S. DISTRICT COURT
12 MAY 4 PM 1:11
S.D. OF N.Y.

Plaintiffs Joan Ritchie Silleck, the Estate of Richard James Ritchie, and Robert Ritchie (collectively, the "Heirs" or "Plaintiffs"), for their Complaint for Declaratory Judgment and Damages for Interference With Property Rights against defendant, PepsiCo, Inc. ("Pepsi" or "Defendant"), allege as follows, upon knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters:

THE NATURE OF THE ACTION

1. By this action, the Heirs seek to eliminate any doubt that original, historically significant documents belonging to their deceased father, Richard John Ritchie ("Ritchie"), who is historically acknowledged as the person who developed the original, commercially successful formula for Pepsi-Cola on or about 1931 (the "Ritchie Invention"), are their personal property, as his lawful heirs, which they may freely share with historians, collectors, journalists, and television and film producers, and ultimately, members of the interested public, to tell their

father's extraordinary life story without interference or the threat of litigation from Mr. Ritchie's former employer, Pepsi. The Heirs also seek damages for Pepsi's unjustified and improper acts that have interfered with the Heirs' property rights in and related to the Ritchie Invention and their father's documents (the "Ritchie Documents").

2. Specifically, for their declaratory judgment, the Heirs seek a declaration from this Court that they are the rightful owners of the Ritchie Documents and the Ritchie Invention. The Ritchie Documents have been physically and legally controlled by a member of the Ritchie family for over half a century.

3. Upon information and belief, the Heirs are the rightful owners of the Ritchie Invention because, *inter alia*, Pepsi failed to require that Mr. Ritchie transfer ownership to the Ritchie Invention to Pepsi despite knowing that he had developed the Pepsi-Cola formula while working as an employee of another company.

4. In the alternative, the Heirs further seek a declaration that neither their continued ownership nor planned disclosure of the Ritchie Documents can give rise to a trade secret misappropriation claim because, *inter alia*, the contents of these documents are not protectable as trade secrets. Upon information and belief, over sixty years ago when Mr. Ritchie left his position at Pepsi, Pepsi failed to take adequate precautions to ensure that the Ritchie Documents and/or their contents qualify for trade secret protection.

5. Pepsi has asserted that certain Ritchie Documents and the Ritchie Invention are, in fact, Pepsi property and deserve trade secret protection. Pepsi has demanded that these documents and even the facts surrounding their possession and discovery never be made public.

6. Upon information and belief, Pepsi has made the foregoing demands with the purposeful intent of interfering with the Heirs' ability to inform the public about their father's

invention and his life story, and the Heirs' freedom to market, sell or otherwise exploit the rights related thereto, including the documentary record of his remarkable achievements, such as playing a prominent role in the commercial history of the United States by developing one of the most iconic and celebrated beverages in the world.

7. In the alternative, even if, *arguendo*, certain Ritchie Documents contain trade secrets, the Heirs have a First Amendment-protected right to make a journalistic disclosure of historically significant, newsworthy documents to an interested public. The Heirs therefore seek a judgment that any disclosure of the Ritchie Documents including the Ritchie Invention is protected by the First Amendment, before Pepsi's threats successfully stifle public access to and historical appreciation of Mr. Ritchie's complete life story, including the genesis of his most successful invention.

8. The Heirs seek a declaratory judgment on these bases (and the additional bases described herein) so that there will be no controversy clouding their rights in and to the Ritchie Invention and the Ritchie Documents which are of great sentimental value to the Heirs as well as historical significance to scholars and the general public.

9. The Heirs also seek damages for Pepsi's improper interference with their rights in the Ritchie Invention and the Ritchie Documents.

JURISDICTION AND VENUE

10. This is a declaratory judgment action pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and for damages due to the improper interference with property rights. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, as this action concerns an amount in controversy that exceeds \$75,000, exclusive of costs and interest, and is between citizens of different states. Subject matter jurisdiction is further conferred upon

this Court pursuant to 28 U.S.C. § 1367 with respect to the state common law claims that form part of the same case and controversy that is subject to this Court's jurisdiction.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Defendant is doing and transacting business in this Judicial District; and a substantial portion of the events at issue have arisen and continue to occur in this Judicial District.

THE PARTIES

12. Plaintiff Joan Ritchie Silleck is an individual residing in the State of Virginia.

13. The Estate of Plaintiff Richard James Ritchie is located in the State of Pennsylvania, which was the state of his domicile at the time of his death.

14. Plaintiff Robert Ritchie is an individual residing in the State of Maryland.

15. Pepsi is a Delaware corporation with its principal place of business in Purchase, New York.

GENERAL ALLEGATIONS

Richard John Ritchie's Formulation of Pepsi-Cola for Charles Guth

16. Upon information and belief, in 1928, Mr. Ritchie, who had no advanced education in chemistry or college degree, only ethereal aspirations of becoming a professional baseball player, was hired by Loft Incorporated ("Loft") to work on Loft's candy formulations.

17. Upon information and belief, at the time, Loft operated retail stores that sold fountain beverages in addition to candy. In 1931, Loft's President, Charles Guth, personally acquired in his own name the bankrupt Pepsi-Cola Company (for himself and other investors) because he wanted to use a less expensive cola syrup to replace the costly Coca-Cola product in the Loft candy stores.

18. Upon information and belief, Mr. Guth, however, was not satisfied with the Pepsi-Cola flavor, and asked Mr. Ritchie, then the chief chemist at Loft, if he could come up with a better tasting formulation. At the age of twenty three, on or about 1931, Mr. Ritchie developed for Mr. Guth a new formula for Pepsi-Cola syrup. The new Pepsi-Cola became successful by about 1934, spurred on in the marketplace by its unique taste and the introduction of a 12 ounce bottle of Pepsi-Cola that sold for the same 5 cent price as Cola-Cola's 6 ounce bottle.

19. Upon information and belief, starting in the early 1930s, Loft began to suffer tremendous financial difficulties while Mr. Guth's Pepsi-Cola Company was beginning to thrive due to the success of the Pepsi-Cola product. Against this backdrop, in 1935, Loft sued Mr. Guth for breaching his fiduciary duty, as the president of Loft, by acquiring the Pepsi-Cola Company for his personal benefit, thereby depriving Loft of a corporate opportunity. In 1938, the Delaware Chancery Court ruled that Mr. Guth wrongfully engaged in self-dealing and ordered the transfer of his shares in the Pepsi-Cola Company to Loft. This decision was affirmed by the Delaware Supreme Court in 1939.

20. Upon information and belief, in 1939, after Loft acquired a majority position in the Pepsi-Cola business, Mr. Ritchie was hired as chief chemist for the Pepsi-Cola Company.

21. Upon information and belief, Loft ultimately renamed itself the Pepsi-Cola Company in 1941 and spun off the failing candy business.

22. Upon information and belief, Mr. Ritchie developed the Ritchie Invention well prior to his employment at Pepsi.

23. Upon information and belief, Mr. Ritchie was not hired by Loft to invent beverage formulations for either Loft or Pepsi, which were separate companies in 1931.

24. Upon information and belief, at no time did Mr. Ritchie assign or agree to assign to Loft or to Pepsi any of his rights in and to the Ritchie Invention.

Pepsi's Request for Mr. Ritchie to Provide Pepsi with a Copy of the Ritchie Invention

25. Upon information and belief, until 1941, only Mr. Ritchie and his protégé and successor at Pepsi, Thomas Elmezzi, knew the Ritchie Invention.

26. Upon information and belief, in 1941, the then president of Pepsi, Walter Mack, asked Mr. Ritchie to write down the Ritchie Invention for Pepsi.

27. Upon information and belief, Mr. Ritchie provided Mr. Mack with a document setting forth the Ritchie Invention, signed by Mr. Ritchie ("1941 Document").

28. Upon information and belief, Pepsi kept a duplicate original copy of the 1941 Document in a bank vault because Pepsi needed to have secure access to the formulation in case something happened to Mr. Ritchie.

29. Upon information and belief, Pepsi knew that Mr. Ritchie kept a duplicate original of the 1941 Document for himself.

30. The 1941 Document is among the Ritchie Documents.

31. Upon information and belief, the 1941 Document is of tremendous historical value and of interest to scholars and the general public as a remarkable artifact of American commercial history.

The 1951 Consulting Agreement Between Pepsi and Mr. Ritchie

32. In 1951, Mr. Ritchie left the employ of Pepsi and entered into a March 1, 1951 agreement with Pepsi ("1951 Consulting Agreement," a true and correct copy of which is attached hereto as Exhibit A), which was entered into when Mr. Ritchie became an outside consultant to Pepsi.

33. The 1951 Consulting Agreement expressly canceled all rights, duties and obligations and superseded all prior agreements and understandings between Pepsi and Mr. Ritchie, including, without limitation, any obligations (if any) concerning the Ritchie Invention and the Ritchie Documents. Exhibit A, ¶¶ 1 and 8.

34. The 1951 Consulting Agreement does not contain any provision whatsoever purporting to transfer to Pepsi ownership of Mr. Ritchie's intellectual property rights, including, without limitation, the Ritchie Invention.

35. In that agreement, Pepsi acknowledged and agreed that Mr. Ritchie would have no restriction on his rights to use the Ritchie Invention other than a limited eight year non-compete provision which expired in 1959. *Id.*, ¶ 7.

36. In fact, in 1962, with no objection from Pepsi, Mr. Ritchie joined the Cantrell & Cochrane Company ("C&C"), a direct competitor to Pepsi, located in Elizabeth, New Jersey. While at C&C, he developed the formula for C&C Cola, once again with no protest by Pepsi.

37. Pepsi's only restriction on the Ritchie Invention was a personal obligation of Mr. Ritchie that he would make no "voluntary" disclosure of it: "Ritchie agrees that he shall at no time . . . voluntarily disclose to any person other than the Board of Directors of The Company . . . any information relating to The Company's plants, manufacturing methods, processes, formulae involved in the production of The Company's products or The Company's trade secrets." *Id.*, ¶ 6.

38. Upon information and belief, Mr. Ritchie honored this obligation for the entire 34 remaining years of his life, until his death in 1985.

39. Mr. Ritchie's non-disclosure obligation does not bind and is not enforceable against the Heirs in any way. The 1951 Consulting Agreement did not purport to bind the Heirs to honor

Mr. Ritchie's personal obligations. Indeed, that Agreement specifically provided that Mr. Ritchie's benefits under the Agreement inured to the benefit of his heirs and assigns, but it failed to provide that any of his obligations were binding on them. *Id.*, ¶ 10.

Pepsi's Failure to Maintain Adequate Protections To Guard the Confidentiality of the Ritchie Invention and the Ritchie Documents

40. The 1951 Agreement, which terminated Mr. Ritchie's employment with Pepsi, contained no restriction on Mr. Ritchie's use of the Ritchie Invention for the benefit of a direct competitor after an eight year non-compete period.

41. The 1951 Agreement further failed to contain any provision requiring Mr. Ritchie to return any documents he might have in his possession that contained the formula for or the process to make the Pepsi-Cola product. It even failed to contain any provision whereby Mr. Ritchie represented or warranted that he no longer maintained the possession of any documents relating to the Ritchie Invention or to any of Pepsi's purported trade secrets.

42. The 1951 Agreement failed to include any provision imposing a duty of confidentiality regarding Pepsi's claimed trade secrets surviving Mr. Ritchie's death.

43. The 1951 Agreement did not contain any provision requiring Mr. Ritchie to maintain any documents and things relating to Pepsi's claimed trade secrets in a secure location.

44. Upon information and belief, Mr. Ritchie's possession of the Ritchie Documents including the 1941 Document did not violate the 1951 Agreement.

45. Upon information and belief, Pepsi has known for over 70 years that Mr. Ritchie had a duplicate original copy of the 1941 Document in his possession.

46. Upon information and belief, at no time did Pepsi object to Mr. Ritchie's continuing possession of the 1941 Document or any other documents relating to the Ritchie Invention.

**The Heirs Lawfully Obtained
Newsworthy, Historically Significant Documents**

47. Upon information and belief, with no one in Mr. Ritchie's family being aware of their contents, three boxes which eventually turned out to contain the Ritchie Documents remained in storage after Mr. Ritchie's death in 1985, until the death of his wife in 1992, when the boxes were transferred to the basement of their son, Richard James Ritchie. Only in 2008, nearly a quarter century after Mr. Ritchie's death, did Richard James Ritchie get around to looking through the boxes and for the first time discovered their contents.

48. Upon information and belief, none of the Heirs is under any contractual or other obligation to Pepsi to maintain the confidentiality of any claimed Pepsi trade secret.

49. Upon information and belief, the Ritchie Documents have been legally possessed, owned and controlled by either Mr. Ritchie, his wife, or the Heirs for over sixty years.

50. Upon information and belief, the Heirs came into possession of the Ritchie Documents through no voluntary act of Mr. Ritchie, who had been deceased nearly a quarter of a century before the Heirs discovered the documents.

51. Upon information and belief, at all times, the Heirs have lawfully obtained and possessed the Ritchie Documents.

52. The Ritchie Documents, the Ritchie Invention and the 1941 Document, if made available to the public, would serve as a source of scholarly and educational enrichment to all.

53. The original formulas of iconic beverages and the lore that surrounds their genesis and provenance are of great interest to the public.

Pepsi's Threats Against The Heirs

54. Upon information and belief, in late 2008, after Mr. Richard James Ritchie discovered the Ritchie Documents, he contacted a Pepsi historian to discuss their historical significance.

55. Upon information and belief, the Pepsi historian informed Pepsi of the existence of the Ritchie Documents, and shortly thereafter, a Pepsi representative contacted Mr. Richard James Ritchie, visited his home in Gettysburg, Pennsylvania, reviewed the Ritchie Documents and took a photograph of the 1941 Document containing the original Pepsi-Cola formula. Shortly thereafter, in a second visit to Mr. Richard James Ritchie's home, the Pepsi representative demanded that all of the Ritchie Documents be handed over to him; however, Mr. Richard James Ritchie refused this request. He had also previously placed all of the important documents in a bank safe deposit box for protection.

56. At the times the Pepsi representative came to Mr. Richard James Ritchie's home, Mr. Richard James Ritchie was suffering from severe and debilitating Parkinson's disease, which noticeably impaired his speech and physical condition. Mr. Richard James Ritchie ultimately succumbed to this disease in late 2011.

57. Pepsi, through its counsel, has claimed that the 1941 Document and all other documents in Mr. Richard James Ritchie's possession relating to the formulation or production of Pepsi-Cola are its physical property, and that any disclosure of them would be a misappropriation of a Pepsi trade secret, and Pepsi has demanded their return.

58. Notwithstanding the Heirs' ownership and other rights in and to the Ritchie Invention and the Ritchie Documents and the information contained therein, the Ritchie Documents have been to date maintained in a secure location by the Heirs due to Pepsi's threats.

59. The parties have been unable to resolve their dispute.

60. Pepsi's actions and threats have seriously impeded the Heirs' ability to communicate, disclose, market and/or sell the rights to their father's life story and the Ritchie Invention. As a result, the Heirs have lost and are continuing to lose opportunities to commercially exploit the Ritchie Invention and the Ritchie Documents.

61. Pepsi's claims that certain Ritchie Documents and the Ritchie Invention are, in fact, Pepsi property and that these documents disclose Pepsi trade secrets, are adverse to the Heirs' rights in and to the Ritchie Documents and the Ritchie Invention.

62. Therefore, there is a current, definite and concrete controversy between the parties having adverse legal interests, wherein the controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment under 28 U.S.C. § 2201.

COUNT I

Declaratory Judgment — Ownership of the Ritchie Documents

63. Plaintiffs incorporate by reference all allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

64. Plaintiffs contend that by virtue of, *inter alia*, the physical and legal control exercised by a member of the Ritchie family over the Ritchie Documents for over sixty years, without objection or adverse claim by Pepsi, they are the lawful owners of these documents. Plaintiffs further contend that any claim by Pepsi to ownership of the Ritchie Documents (which Plaintiffs dispute) has been abandoned or otherwise lost due to laches, waiver, acquiescence and/or estoppel.

65. Defendant alleges that certain Ritchie Documents are its property and have demanded return of the documents.

66. An actual controversy has arisen and exists between the parties regarding the ownership of the Ritchie Documents. The controversy is of sufficient immediacy and reality to warrant declaratory relief under 28 U.S.C. § 2201.

67. Plaintiffs seek a declaration that they are the lawful owners of the Ritchie Documents so that there will be no controversy clouding Plaintiffs' right to ownership or lawful possession of those documents.

COUNT II

Declaratory Judgment — Ownership of the Ritchie Invention

68. Plaintiffs incorporate by reference all allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

69. Mr. Ritchie, as the creator and developer of the Ritchie Invention, is by law the sole and exclusive owner of that invention.

70. Upon information and belief, at no time did Mr. Ritchie assign or agree to assign to Pepsi or to any other entity any of his rights in or to the Ritchie Invention.

71. Pepsi contends that it is the sole owner of the Ritchie Invention.

72. An actual controversy has arisen and exists between the parties regarding the ownership of the Ritchie Invention. The controversy is of sufficient immediacy and reality to warrant declaratory relief under 28 U.S.C. § 2201.

73. Plaintiffs seek a declaration that they are the lawful owners of the Ritchie Invention so that there will be no controversy clouding Plaintiffs' rights in and to their father's invention.

COUNT III

Declaratory Judgment — No Misappropriation of Trade Secrets

74. Plaintiffs incorporate by reference all allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

75. Plaintiffs seek a declaration that neither their discovery nor their continued ownership and possession of the Ritchie Documents constitutes a misappropriation of trade secrets under the common law of the State of New York.

76. Pepsi has asserted that certain Ritchie Documents are, in fact, Pepsi property and these documents disclose Pepsi trade secrets.

77. Pepsi has demanded that these documents and the facts surrounding their possession and discovery never be made public.

78. Pepsi, through its counsel, has threatened litigation to prevent the disclosure of certain Ritchie Documents.

79. The Ritchie Documents, including the 1941 Document, which, upon information and belief, contains the Ritchie Invention, do not qualify for trade secret protection because, *inter alia*, Pepsi has not taken reasonable measures to protect the confidentiality of the Ritchie Documents. In addition, Pepsi has abandoned or otherwise lost any trade secret rights it may have had (which Plaintiffs dispute) to the contents of the Ritchie Documents and/or to the Ritchie Invention, due to laches, waiver, acquiescence and/or estoppel.

80. Because there is no trade secret at issue, Plaintiffs' discovery, continued ownership, and/or planned disclosure of the Ritchie Documents cannot constitute misappropriation of Pepsi's trade secrets.

81. In the alternative, even if, *arguendo*, certain Ritchie Documents qualify for trade secret protection, which they do not, Plaintiffs' sale and/or disclosure of the documents is

protected by the First Amendment, among other defenses. Accordingly, Plaintiffs seek a declaration that the sale and/or disclosure of the Ritchie Documents and the facts surrounding their possession and discovery are protected by the First Amendment.

COUNT IV

Interference With the Heirs' Use and Enjoyment of Their Property Rights

83. Plaintiffs incorporate by reference all allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

84. By reason of the aforesaid acts and threats of Pepsi, Pepsi has unjustifiably and improperly interfered with the Heirs' rights to disclose, transfer or otherwise exploit the Ritchie Invention, the Ritchie Documents and their father's story. This interference has caused harm, loss and damage to the Heirs in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment as follows:

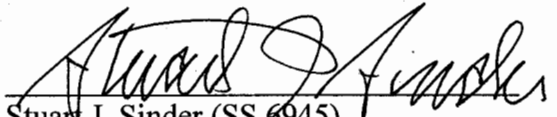
- A. Declaring that Plaintiffs are the rightful owners of the Ritchie Documents.
- B. Declaring that Plaintiffs have the right to possess the Ritchie Documents.
- C. Declaring that the Ritchie Documents do not qualify for trade secret protection by Pepsi.
- D. Declaring that all rights in and to the Ritchie Invention belong to Plaintiffs.
- E. Declaring that Plaintiffs have not in the past, nor are they currently, engaging in any form of trade secret misappropriation through their discovery and continued ownership of the Ritchie Documents.

- F. Declaring that Plaintiffs may freely disclose, transfer ownership and/or possession, or otherwise commercially exploit the Ritchie Documents and the facts surrounding their possession and discovery without interference from Defendant.
- G. Enjoining Defendant, its officers, agents, servants, employees, related companies, parent companies, subsidiary companies, licensees, assigns, and all parties in privity and/or acting in concert with them from:
- 1) Challenging Plaintiffs' right to use the Ritchie Invention or interfering in any manner with Plaintiffs' right to market, license and/or sell the Ritchie Invention;
 - 2) Challenging Plaintiffs' right to freely disclose, publish and/or transfer ownership and/or possession of the Ritchie Documents; and
 - 3) Challenging Plaintiffs' ownership rights in and to the Ritchie Documents and/or the Ritchie Invention.
- H. Awarding to Plaintiffs the damages they have suffered by reason of the acts of Defendant complained of herein, said amount to be determined at trial,
- I. Awarding to Plaintiffs their attorney's fees, costs, and such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a jury trial on all issues properly triable by a jury.

Dated: 5/4/12

By: 

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The Estate of Richard James Ritchie
Robert Ritchie

EXHIBIT A

AGREEMENT

Between

PEPSI-COLA COMPANY

And

RICHARD J. RITCHIE

Dated: March 1st, 1951.

0/23

THIS AGREEMENT made as of the 1st day of March, 1951, between PEPSI-COLA COMPANY, a Delaware corporation (hereinafter referred to as "The Company"), and RICHARD J. RITCHIE (hereinafter referred to as "Ritchie").

WHEREAS, Ritchie is presently employed by The Company as chief chemist, pursuant to a written agreement made as of June 1, 1950; and

WHEREAS, the parties are desirous of terminating the said agreement and of entering into a new agreement of employment.

NOW, THEREFORE, in consideration of the premises, it is mutually agreed between the parties as follows:

1. The agreement of June 1, 1950, is hereby cancelled and terminated as of the date hereof and all rights, duties, obligations and restrictions thereunder are likewise hereby cancelled and terminated.

2. The Company agrees to pay and does herewith pay to Ritchie his full salary at the rate provided by the said agreement of June 1, 1950, through August 31, 1951.

3. The Company hereby agrees to hire and does hereby hire Ritchie for a period of Seven and one-half (7-1/2) years commencing October 1, 1951, in the capacity of consulting chemist at a salary of Ten Thousand Dollars (\$10,000), per annum, payable monthly promptly

upon the first day of each and every month commencing October 1st, 1951, at such address or addresses as Ritchie may, for that purpose, from time to time designate in writing. Ritchie agrees to this hiring and consents to serve thereunder.

4. In the performance of his duties hereunder, Ritchie shall not be required to absent himself from other employment he may then be engaged in, to an extent that will jeopardize such other employment. His failure to comply with any request of The Company for his services hereunder because of illness, incapacity or other reason beyond Ritchie's control shall in no way affect The Company's obligation hereunder. Subject to those limitations, however, Ritchie is required to use his reasonable best efforts to comply with any such request. It is understood and agreed that all expenses necessary and incidental to his compliance with any such request, actually incurred by Ritchie, will be forthwith reimbursed to him by The Company.

5. The payments provided in Paragraph 3 above shall, in the event of the death of Ritchie at any time after the date of this agreement and prior to March 1st, 1959, be made by The Company for a period of three years from the date of death, provided, however, that in the event Ritchie shall die prior to the 1st day of March, 1959, but after the 28th day of February, 1956, The Company shall only be liable for and shall make the said payments for the period remaining between the date of Ritchie's death and March 1st, 1959. All payments made

by The Company after the death of Ritchie, as in this paragraph provided, shall be paid by The Company to Ritchie's widow, and in the event Ritchie leaves no widow, then to the representative of the estate of Ritchie.

6. Ritchie agrees that he shall at no time during his employment by The Company, or subsequent thereto, voluntarily disclose to any person other than the Board of Directors of The Company, or upon the written order of said Board, any information relating to The Company's plants, manufacturing methods, processes, formulae involved in the production of The Company's products or The Company's trade secrets.

7. Ritchie agrees that he will not, prior to March 1st, 1959, become engaged in the United States of America in the manufacture of, or do any work on, any cola beverage and will not give to any person, firm or corporation any formula for the manufacture of a cola beverage or any information with regard to such a formula; and will not permit his name to be used in any way in connection with a cola beverage or in any way deleterious to The Company. These restrictions, however, will not, and are not intended to, prevent Ritchie from accepting employment with any employer engaged in the manufacture of soft drinks, even if the said employer also manufactures cola beverages.

8. This agreement cancels and supersedes all agreements and understandings of whatsoever nature between the parties and contains the entire and only agreement of any nature whatsoever between the parties.

9. The parties hereto hereby respectively release each other from any and all claims, causes of action, rights, duties or obligations of any nature whatsoever, whether known or unknown, except such rights, duties and obligations as shall be given rise to by this agreement.

10. This agreement shall enure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the said PEPSI-COLA COMPANY has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer and the undersigned individual, RICHARD J. RITCHIE, has hereunto set his hand and seal all as of the day and year first above written.

PEPSI-COLA COMPANY

By Alfred Z. Stute
President

Richard J. Ritchie (L. S.)
Richard J. Ritchie

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the 20th day of March, 1951, before me personally came ALFRED H. STEELE ;
to me known, who, being by me duly sworn, did depose and
say that he resides at 36 Sutton Place South, New York, N. Y.
; that he is President
of PEPSI-COLA COMPANY, the corporation described in and
which executed the foregoing instrument; that he knows the
seal of said corporation; that the seal affixed to said
instrument is such corporate seal; that it was so affixed
by order of the Board of Directors of said corporation,
and that he signed his name thereto by like order.

Rosalind K. Roth

ROSALIND K. ROTH
Notary Public, State of New York
No. 41-8675250
Qualified in Queens County
Cert. Filed with N. Y. Co. Clerk
Queens & N. Y. Co. Regs.
Commission Expires March 30, 1952

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the 20th day of March, 1951, before me
came RICHARD J. RITCHIE, to me known and known to me to
be the individual described in and who executed the fore-
going instrument and acknowledged that he executed the
same.

Corinne S. Hohfeler

CORINNE S. HOHFELER
Notary Public, State of New York
No. 30-1830200
Qualified in Nassau County
Cert. filed with New York
County Clerks and Registers
Term Expires March 20, 1951

MAY 04 2012

JS 44C/SDNY REV. 4/2012

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS: JOAN RITCHIE SILLECK, THE ESTATE OF RICHARD JAMES RITCHIE, and ROBERT RITCHIE
DEFENDANTS: PEPSICO, INC.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER): Kenyon & Kenyon LLP, One Broadway, New York, NY 10004, (212) 425-7200
ATTORNEYS (IF KNOWN): Stuart Sinder, Esq., Elizabeth Gardner, Esq.

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE) (DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Declaratory judgment action under 28 U.S.C. 2201-02 for rights in documents/invention and damages for interference with property rights.

Has this or a similar case been previously filed in SDNY at any time? No [X] Yes [] Judge Previously Assigned

If yes, was this case Vol. [] Invol. [] Dismissed. No [] Yes [] If yes, give date & Case No.

IS THIS AN INTERNATIONAL ARBITRATION CASE? No [X] Yes []

(PLACE AN [x] IN ONE BOX ONLY) NATURE OF SUIT

Table with columns: TORTS, ACTIONS UNDER STATUTES, CONTRACT, PERSONAL INJURY, FORFEITURE/PENALTY, BANKRUPTCY, OTHER STATUTES, REAL PROPERTY, IMMIGRATION. Includes various legal categories and checkboxes for selection.

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ OTHER JUDGE DOCKET NUMBER

Check YES only if demanded in complaint

JURY DEMAND: [X] YES [] NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judge Judgment
- a. all parties represented
- b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1322, 1441)

- 1 U.S. PLAINTIFF
- 2 U.S. DEFENDANT
- 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF 1	DEF 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF 3	DEF 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF 5	DEF 5
CITIZEN OF ANOTHER STATE	x 2	2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	4	x 4	FOREIGN NATION	6	6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Joan Ritchie Silleck, 128 Caroline Street, Fredericksburg, VA 22401 (Fredericksburg County)
 The Estate of Richard James Ritchie, 60 Long View Drive, Gettysburg, PA, 17235 (Adams County)
 Robert Ritchie, 5 Sandy Court, Thurmount, MD 21788 (Frederick County)

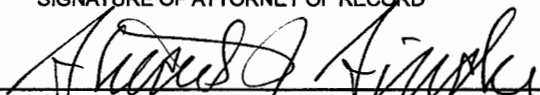
DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

PepsiCo, Inc., 700 Anderson Hill Road, Purchase, NY 10577 (Westchester County)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS MANHATTAN
 (DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 5/4/12	SIGNATURE OF ATTORNEY OF RECORD 	ADMITTED TO PRACTICE IN THIS DISTRICT NO X YES (DATE ADMITTED Mo. 3 Yr. 1970) Attorney Bar Code # SS-6495
RECEIPT #		

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

MAG. JUDGE MAAS