

SENATE

COMMITTEE REPORT NO. 190

Submitted by the Committee on Trade and Commerce on
July 12, 1993

Re: P. S. Res. No. 3

Recommending approval of the recommendations contained
herein

Sponsor: Senator Maceda

MR. PRESIDENT:

The Committee on Trade and Commerce to which was
referred P. S. Res. No. 3 introduced by Senator Maceda,
entitled:

RESOLUTION DIRECTING THE COMMITTEE ON TRADE AND
COMMERCE, IN AID OF LEGISLATION, TO INVESTIGATE THE
PEPSI-COLA NUMBER FEVER GAME IN VIEW OF SAID COMPANY'S
REFUSAL TO PAY THOUSANDS OF PEOPLE HOLDING WINNING
BOTTLE CAPS NUMBERED "349", INCLUDING ALL SIMILAR
PROMOTIONS BY SEVERAL COMMERCIAL COMPANIES, BANKS AND
OTHER PERSONS AND TO RECOMMEND LEGISLATIVE MEASURES
THAT WILL PROTECT THE PUBLIC CONSUMERS"

has considered the same and has the honor to report it back
to the Senate with the recommendation that the findings and
recommendations contained herein be adopted.

I. Preliminary Statement

P. S. Res. No. 3 was referred to the Committee on Trade
and Commerce on August 5, 1992. A series of hearings and
public consultation meetings were held on September 1992 in
Digos, Davao, Cebu, Batangas and on October 6, 1992 at the
Army and Navy Club, during which those concerned were
invited and heard.

II. Background

(a) On January 15, 1992, Ogilby & Mather, Philippines,
Inc., an advertising company representing PepsiCo, Inc.
(PCI) and Pepsi-cola Products Phils., Inc. (PCPPI), filed an
application with the Department of Trade and Industry (DTI),
National Capital Region, to conduct a marketing promotion
entitled "Number Fever" for the period February 17, 1992 to
May 8, 1992.

(b) The "Number Fever" promotion was originally
conceived in 1984 by one Pedro Vergara, a Chilean national
then connected with the Promotions Department of PCI New
York, and launched in several Latin American countries
(Mexico, Guatemala, Argentina) and in Chile early last year.

Upon Mr. Vergara's recommendation, PCI subsequently engaged the services of D.G. Consultores (Mexico), a consultancy firm which handled the same promotion in other countries. The promotion essentially consisted of winning softdrinks crowns, printed with a three-digit number combination and a security code, which were randomly pre-selected by computer and seeded into the trade. The numbers of the winning crowns which were entitled to win varying cash prizes were to be announced daily, based on a list previously filed with DTI-NCR. For the original promotion period, a total of ₱32,600,000 in cash prizes was to be given away. Of the 5,630 winning crowns which PCPPI and PCI seeded into the trade, ten were for ₱1,000,000 each.

(c) DTI-NCR, after processing, approved the application of PCPPI and PCI under Ministry Order #33, series of 1983, upon submission of and compliance with requirements, such as:

c.1. Joint custody of lists of pre-determined winning crowns with corresponding security codes by DTI and PCI;

c.2. DTI supervision in the printing of winning crowns to be used in the promotion;

c.3. DTI supervision in the trade/market seeding of the crowns;

c.4. Nationwide publication by PCPPI/PCI of the promotion mechanics and use of security codes as a measure against tampering or faking of winning softdrink crowns.

(d) A total of 1,000 three-digit number combinations were used for the promotion, of which 510 were printed on non-winning crowns and 60 were used for winning crowns during the original period from February 12, 1992 to May 8, 1992. During the extension period to the promotion from May 11, 1992 to June 12, 1992, an additional 25 three-digit combinations from the unused balance of 430 three-digit combinations, were pre-selected for the winning crowns. The same three-digit combinations for the non-winning crowns used in the original period were used in the extension period.

(e) For the extension period, a total of ₱18,080,000 was to be given away as cash prizes. There were 51,650 winning crowns seeded into the trade, eight of which were for ₱1,000,000 each. Almost 51,000 of these winning crowns were for ₱100 each.

III. Events Leading to the Controversy

During the extension period of the promotion, or on May 25, 1993, it was announced on the news program "TV patrol", aired over television Channel 2, that the number of the winning crown for the next day was "349".

Soon after, PCPPI, was informed by its redemption centers that crowns bearing the number "349" but with non-winning security codes were being presented for redemption. It turned out that, during the original period of the promotion from February 17, 1992 to May 8, 1992, the number "349" was used on crowns with the security codes L-2560-FQ

same number "349" was again used on crowns with the security codes V-2421JC, A-7961S, B-4860TG, C-3984RP, D-5863CO, E-3800EL, U-3501MN and U-3246NP, which were intended as winning crowns. Whereupon, PCPPI, with DTI approval, forthwith recalled the number "349" and replaced it with the number "134" which was the number of the winning crown scheduled to be announced on June 12, 1992. This added to the ongoing confusion.

To avoid further confusion, DTI required PCPPI to publish the numbers of all winning crowns for the remaining period of the promo extension. PCPPI issued the clarification that, except for crowns bearing the non-winning security codes L-2560-FQ and L-3560-FQ, all "349" crowns could be redeemed in exchange for the indicated cash prizes. However, as a gesture of goodwill, PCPPI announced that it would redeem all "349" crowns even with non-winning security codes, for P500.00 each, without however, admission of liability.

Immediately, a deluge of complaints from consumers all over the country were received by DTI for failure of PCPPI to redeem the "349" crowns for the indicated prizes, as advertised. PCPPI's response was that some of the 349 crowns presented for redemption do not bear the corresponding winning security codes. However, the consumers complained that the promotion ads of PCPPI never advised them that the security code is a vital part of the winning process. They added that they were made to understand that so long as they hold a crown with a winning number (such as number "349" in this case) with a security code, they were entitled to the indicated prize. They further complained there was no mention in the ads that the security code should also be a winning one.

In view of numerous complaints filed with DTI, a Task Force was created on June 2, 1992 to: 1) investigate whether there has been a violation of Fair Trade Laws by PCI/PCPPI in the conduct of the Pepsi Number Fever Sales Promotion, and 2) to file the corresponding charges, if proper, in the premises.

IV. DTI-Task Force Findings

After conducting a series of public hearings (June 3, 8, 9, 11 and 19, 1992) and reception of evidence on the matter under inquiry, with all concerned parties in attendance, the Committee composed of Director Zenaida Maglaya, Bureau of Domestic Trade Promotion, Chairman, Atty. Zenaida Reyes, President, Consumer Federated Group of the Philippines and Atty. Lucia Aquino, Assistant Director, Bureau of Trade Regulation and Consumer Protection, submitted the following findings:

1. Two companies were involved in the Under-the-Crown U.T.C.) promotion entitled "Number Fever" - Pepsico Incorporated (PCI) and Pepsi Cola Products Philippines, Inc. (PCPPI).

2. In the original posters released by PCI, the public

3. The security code was first high lighted in the publications of the "Warning Ad". Subsequent ads were likewise published in major newspapers. (Exh. "D", "E", "F" and "G", TF Hearings)

4. PCI also came out with a modified poster (Exh. B-10) for the extension period which added the following phrases and paragraphs:

1. "A 7-digit security code, as a measure against tampering or faking of crowns.

2. "Each and every number has its own matching security code."

"3. IMPORTANT FACTS ABOUT THE PROMOTION:

*Every crown/cap with a winning number and authenticated security code wins the amount printed on the crowns/caps.

*Each winning number has numerous winning crowns/caps. All win the full amount printed on the crowns/caps.

*All holders of winning crowns/caps verified at the Pepsi plants are paid in full without delay."

5. It is important to note that their PCI-PCPPI) advertisements including the posters highlight the significance of the security code "as a measure against tampering or faking of crowns" and to authenticate the number on the crown or caps."

6. This very important information shown on Exhibits B-1, D,E,F and G (TF hearings) were limited to print media. No corresponding information was incorporated in any of the advertisements on TV and radio to alert crown holders to refer to modified print ads and posters, which PCI could have easily done by attaching a 5-second message at the end of the advertisement (T.S.N. 06/19/92; page 8, TF Hearings)

7. In spite of the above omissions it is lucky that the Pepsi crown holders were not confused in the original promotion of Pepsi "Number Fever" as they were given the prizes corresponding to their winning numbers upon surrender and authentication thereof. (T.S.N. 6/11/92 page 41 TF Hearings)

8. It may be recalled that PCI testified that all the advertisements, for print or broadcast media, were submitted to the DTL-NCR office for approval. (T.S.N. 06/11/91; pages 50 & 51: EXH J; PepsiCo Memo page 7 TF Hearings.) This is in compliance with the provisions of Ministry Order # 33, Number 10-1 which provides that:

10-1 *All advertisements, brochures or any printed matter indicating or describing the mechanics of the promotion shall conform with the mechanics approved by this Bureau. Any deviation, modification, addition or deletion shall first be submitted to the Bureau for approval."

9. It appears, however, that after the "349" controversy which came about during the extension of the Pepsi "Number Fever" promo, the significance of the security code as a measure against tampering and faking of the crowns or to determine the genuineness of the alleged winning number appearing in the crown or cap, has been modified. For after May 26, 1992, the "349" number surfaced to have both winning and non-winning security codes.

10. Accordingly, when the "349" crowns were presented by the holders in order to claim their prizes, the PCPPI authorities now verified whether the security code was a winning or non-winning code. If the "349" crown bore the winning security code, the crown holders were given the appropriate prizes, but, if the 349 crown has either of the two non-winning security codes (L-2560-FQ and L-3560-FQ), the crown holders were so advised and prizes were denied then. (Pepsico Memo page 2; see announcement of Rod Salazar, President, PCPPI-Manila Bulletin, Philippine Daily Inquirer, People's Journal, Philippine Star and Balita-dated May 28, 1992 TF Hearings)

11. Those who were not given the prizes because their "349" crowns had the non-winning security codes complained to the DTI offices and to the Pepsi Plant officials claiming that their "349" crowns are genuine and are not tampered and therefore, were entitled to the prizes according to the posters and other advertisements utilized in the promo.

12. It was, therefore, established that after the "349" incident, holders of "349" crowns which were not in fact fake or tampered did not automatically win the prize. PCPPI had to verify whether the security code was a winning or non-winning code.

13. Number 0-1 of Ministry Order #33, requires that any modification, deviation, addition or deletion to any approved mechanics (advertisement in this case) should first be submitted to the Bureau for approval.

14. The DTI-NCR records show that the modification/deviation on the use of the security code, as explained in the trade posters and other print advertisement, was never submitted for approval, in violation of the specific requirements of 10-1 of Memorandum Order #33.

15. As to why only number "349" has both a winning and non-winning security number, Mr. Q.J. Gomez, Jr., National Promotions Manager, PCI, could not amplify the same except by testifying that their consultant from Mexico furnished



then the list of winning numbers and security codes together with a master list of the non-winning numbers, all of which were done through a computer program. (I.S.N. 06/11/92; page 20 IF Hearings)

16. It may be noted, however, that this list of winning numbers which included number "349" was received by PCFPI-PCI from Mexico on April 14, 1992, giving the former company adequate time within which to verify if such number is among those listed as non-winning in the list of non-winning numbers already submitted by the latter company for the original period of the promotion of the "Number Fever" (I.S.N. 6/11/92 page 68 IF Hearings)

The DTI Task Force further reported that:

a) DTI-NCR approval of the additional requirements to be contained in the advertisement designed to further protect the interest of the consumers, were made verbally and not in writing.

b) PCI had the opportunity to determine whether or not any number in the list of the 25 winning numbers sent on April 14, 1992 by the Mexican Consultancy firm for the extension period of the "Number Fever" promotion, is also found in the list of non-winning numbers already submitted by said firm to PCI before the start of the promo period. But it failed to do so.

c) Of all the numbers used in the promo, from 001 to 777, only "349" deviated in the use of security codes, in that it was assigned winning and non-winning codes. Such deviation, whether intentional or not, was not reported to nor approved by DTI.

In view of the above findings, charges were filed by the Bureau of Trade Regulations and Consumer Protection against PCFPI/PCI (Adm. Case No. 22-31, Bureau of Trade Regulation and Consumer Protection, Complainant vs. Pepsi Cola Products Phils. Inc. and PepsiCo, Inc. Respondents) for violation of DTI/M.O. No. 33. However, at the start of hearings, respondents compromised the case without objection from complainant "after consultation/clearance with supervisors" by paying a compromise settlement of P150,000 which is the maximum that could be imposed by the DTI, under Sec. 6 of Executive Order No. 913 (Series 1982) and Ministry Order No. 33 (Series 1985) resulting in the consequent dismissal of the charge, with prejudice. The order of Dismissal was signed by Maximo U. Mercado, Hearing Officer and approved by Virgilio A. Savandal, Adjudicating Officer.

In the meantime, thousands of criminal cases for estafa and civil actions for damages were filed against PCFPI-PCI and its officers in the different courts of Metro Manila and the provinces, which are presently pending resolution.

V. Committee Findings

a) Pepsi Cola Products, Philippines, Inc. (PCFPI) is the local franchise of Pepsi Cola International, New York (PEPSICO or PCI) being also a substantial stockholder of PCFPI. PCI supplies the beverage concentrates and PCFPI bottles the softdrinks thru an exclusive arrangement with Challenge Corporation of the



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Philippines (formerly Pesi Cola Bottling Corporation of the Philippines). The softdrinks brands marketed nationwide are PEPSI, MIRINDA, 7-UP and MOUNTAIN DEW.

b) On January 15, 1992, Ogilvy and Mather, Phil. Inc. an advertising company representing PCI and PCPPI obtained approval from DTI-NCR to conduct a marketing promotion entitled "NUMBER FEVER" for the period from February 17, 1992 to May 8, 1992.

c) The marketing promotion principally designed to sell PCI-PCPPI softdrinks products (i.e. Pepsi, Mirinda, 7-up and Mountain Dew) consisted of softdrinks bottle crowns upon which were imprinted three-digit number combinations and a security code which were randomly pre-selected by computer and subsequently seeded into the trade. Consumers with winning crowns are entitled to prizes.

d) This promotion scheme was originally conceived in 1984 by one Pedro Vergara, a Chilean national who was then employed by PCI, New York. The scheme was launched by PCI in several Latin American countries like Mexico, Guatemala, Argentina and lately in Chile in April, 1992, thru its Chilean franchises, Embotelladora Chile S.A.

e) As reported in the May 19, 1992 issue of the Chilean national newspaper "La Nacion", last April 9, 1992 thousands of Chileans beat on the doors of Embotelladora Chile after the company refused to pay the prizes of the PEPSI "winning numbers" promotion corresponding to the number "688" which was announced as the winner on a show "Teletrece" on Chile's Catholic TV Station, "Corporacion de Television dela Universidad Catolica de Chile" and the Santiago, Chile newspaper "Las Ultimas Noticias".

Embotelladora Chile S.A. the local Pepsi bottler regretted the inconvenience and announced that due to a "human and involuntary error" they could not honor the "688" crowns because the real winning number was "588".

Chile Pepsi executives claimed the error must have taken place in the fax transmission of the winning number sent to the TV station and the media. Sr. Sergio Pinto, President of Embotelladora Chile issued an official declaration expressing regret for the inconvenience caused to thousands of consumers by the error, and that any claim will be attended to. However, some 688 crown holders chose to take the matter to the courts or to the Chilean National Consumer Service, where the claims are still to be resolved as of the present time.

f) Barely a month, after the Chilean fiasco, PCI-PCPPI launced the "Number Fever" marketing promotions scheme in the Philippines, engaging the services of D.G. Consultores (MEXICO), a consultancy firm who also handled PCI's promotions scheme in Chile and other Latin American countries.

g) DTI-NCR after processing, approved the application of PCPPI and PCI under Ministry Order No. 33, Series 1983, upon submission of and compliance with requirements, i.e.

g.1 Joint custody of lists of computer pre-determined winning crowns each with their own "unique" security codes provided to PCPPI-PCI by their consultant D.G. Consultores (Mexico) on April 14, 1992.

g.2 DTI supervision in the printing of winning crowns to be used in the promotion.

g.3 DTI supervision in the trade/market seeding of the crowns.

g.4 Nationwide publication by PCPPI/PCI of the promotion mechanics, ads and use of security codes against tampering or faking of crowns.

h) A total of 1,000 three digit number combinations were used for the promotion. For the original promotion period from February 12 to May 8, 1992, 510 three digit numbers were printed on non-winning crowns and 60 three-digit numbers were printed on winning crowns, each number with their own matching security code.

Among the 510 three-digit non-winning numbers was number "349" with security code no. L-2560-FQ and L-3560-FQ.

For the extension promotion period, from May 11 to June 12, 1992, 25 three-digit pre-selected number combinations, from the balance of 430 unused numbers, were printed on winning crowns with their own matching security codes. The same three-digit number combinations for the non-winning crowns used in the original period were used in the extension period. However, due to gross error, included in these 25 three-digit combinations was again the number "349" with security codes no. V-2421 JC, A-79615, B-4860 TG, C-3984 RP, D--5863 CO, E-3800 EL, 3501MN and U-3246 NP.

i) The duplication of number "349" as a non-winning number with 2 different security codes seeded into the trade in the original promotion phase and as a winning number in the extended phase which should not have happened, with eight variously different security codes, was attributed by PCPPI-PCI to the gross error of its consultant D.G. Consultores (Mexico). PCPPI-PCI likewise failed to discover the error despite the fact that the list of winning crowns were furnished to and received by them from their consultant, as early as April 14, 1992. A simple comparison if the numbers contained in the winning list *vis-a-vis* the list of non-winning numbers furnished PCI-PCPPI by their Mexican consultant before the start of the promotion, would easily have rectified the error.

j) The advertisement made by PCPPI-PCI on the significance of a matching "unique" security code as a measure against tampering or faking of the softdrinks crowns, without it being an essential part of the winning process, was only limited to print media. No corresponding information was incorporated in any of the TV or radio advertisements to alert crown holders to refer to modified print ads and posters for modifications in the promotions scheme, especially with reference to the use of security codes. PCPPI-PCI could have easily done this by attaching a second message to its radio and TV ads. (TSN-TF/Hearings, 6/19/92)

k) Although the print ads were submitted by PCPPI-PCI to and approved by DTI, however, the additional requirements and modifications thereto required by DTI for the protection of the consumers, were made verbally and not in writing. (TF Findings.)

l) Significantly, the DT-NCR also failed to notice the duplication of number "349" on both winning and non-winning crowns during the initial and extended phases of the promotion, despite the fact that DTI was furnished the lists of winning numbers by PCI-PCPPI prior to the start of the promotion.

m) The error attributed by PCPPI-PCI to its consultant D.G. Consultores (Mexico) in the duplication of number "349" as both a winning and non-winning number is not a valid defense to exculpate PCPPI-PCI from liability due to negligence, based on the principle of employer-employee and/or agent-principal relationship.

n) This is further aggravated by the failure of PCPPI-PCI to exercise the utmost diligence required to ensure that the mechanics of its promotion scheme which involved hundreds of thousands of consumers nationwide, be made scrupulously free and devoid of mistakes as will not mislead and delude the consumers, following as it did, on the heels of the Chilean fiasco hereinabove narrated.

o) Thus, so long as No. 349 crowns are not tampered or fake crowns, even though coupled with "non-winning" security codes L-2560 FQ and L-3560 FQ, the holders thereof may have a strong legitimate claim to the indicated prize.

For it is clear from the PCPPI-PCI print ads that the security code is used only as "a measure against tampering or faking of the crowns". It is to provide a basis for detecting whether or not a crown on which is imprinted a winning number is fake, spurious or tampered. Stated otherwise, as advertised by the PCPPI-PCI, the security code is the determinant of the genuineness of the winning crown, and not an essential ingredient to the winning process.

p) However, after the incident on May 25, 1992 when PCPPI-PCI "mistakenly" announced "349" as the winning number for the next day, and it promptly recalled the same and replaced it with No. 134, then again recalled number 134 and reintated number "349" as the winning number, PCPPI-PCI changed the rules as previously made known to the consumers by its spint ads. It announced, for the first time, that not all crowns bearing "349" are winners. In other words, "349" is only a winner if coupled with a likewise "winning" security code. By said announcement, it also surfaced that of all 3-digit number combinations used in the promo, only No. 349 had both winning and non-winning security codes.

A bizarre situation was thus created, in which number "349" was possessed of several security codes and thus only bacame a winner if it has the "winning" security code, as well, which fact was divulged by PCPPI-PCI to the consuming public for the first time and only after May 25, 1992 when the "349" fiasco er

q) In the light of the foregoing, it is submitted that:

q.1) PCPPI-PCI may be faulted for gross negligence, by its failure to exercise that degree of due negligence in assuring that its "Number-Fever" promotions scheme which involved as it did hundreds of thousands of consumers nationwide, is conducted scrupulously and devoid of mistakes as will not delude and/or mislead the consuming public, following as it did, barely a month on the heels of the PEPSI Chilean fiasco which also created a consumer furor nationwide caused by its franchisee's "mistake" in the announcement of the winning number.

q.2) PCPPI-PCI may be faulted for misleading and/or deceptive advertising "by changing rules of the game" contrary to that made known to the consuming public, and by its failure to disclose to the consuming public in clear and unmistakable terms the importance and relevance of the security codes, to the winning process.

q.3) PCPPI-PCI violated the provisions of M.O. No. 33 (Series 1983) by its failure to submit to DTI-NCR for approval, its print, radio and TV ads, with the required modifications, for the protection of the consuming public.

q.4) DTI was negligent by its failure to fully implement and monitor compliance by PCPPI-PCI with the requirements as provided for by M.O. No. 33.

q.5) DTI failed in its mandate of protecting the interest of the consumers by its failure to pursue to a conclusion, the hearing in Administrative Case No. 92-31 against PCPPI-PCI for violation of the Fair Trade Laws, by allowing a compromise settlement without findings of culpability or non-culpability, despite findings of the DTI-Task Force mentioned in IV above.

VI. Recommendations

Wherefore, it is recommended that:

1. The Consumer Act of the Philippines and/or its implementing Rules and Regulations be amended, with a view to further strengthen its provisions on misleading and deceptive advertisements and marketing promotion schemes.

2. Sanctions against violations of Fair Trade laws and/or rules should be upgraded and strengthened, depending on the gravity of the violation, its magnitude and consequent effect on the consuming public.

3. The regulation and monitoring functions of DTI should be upgraded, strengthened and assiduously enforced for the protection of consumers.

4. For the protection of consumers against possible abuse or exploitation by consumer groups, the organization and activities of such consumer groups be regulated and monitored.

5. The attached bills designed for the protection of consumers and to implement the recommendations contained in this report be given due consideration.

Respectfully submitted:

(Sgd.) GLORIA M. MACAPAGAL
Chairperson
Committee on Trade and Commerce

ANNA DOMINIQUE M.L. COSETENG
Vice Chairperson

M E M B E R S:

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EX-OFFICIO MEMBERS:

(Sgd.) TEOFISTO T. GUINGONA, JR.
President Pro-Tempore

ALBERTO G. ROMULO
Majority Leader

(Sgd.) WIGBERTO E. TAXADA - Pending clarification of certain
Minority Leader issues, I have decided to
withhold action on this Report.
Please see my letter dated July
13, 1993.

HONORABLE EDGARDO J. ANGARA
President of the Senate
M a n i l a

[Signature]
OK, OFFICE OF THE SECRETARY

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