

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

REFRESCO BEVERAGES US INC.,

Plaintiff,

v.

CALIFORMULATIONS, LLC, SYMRISE  
INC., THE GREEN ORGANIC  
DUTCHMAN HOLDINGS LTD., 6003  
HOLDINGS LLC, EDMUND O'KEEFFE,  
TYRONE POLHAMUS, KHANH LY,  
JASON PONTES, DANA KLAYBOR,  
WANDA JACKSON, AND KALEENA  
GEE,

Defendants.

Civil Action No.: \_\_\_\_\_

**COMPLAINT**

Plaintiff Refresco Beverages US Inc. ("Refresco US"),<sup>1</sup> through their undersigned counsel, Travis C. Hargrove of the Finley Firm, P.C., by way of their Complaint against defendants Califormulations, LLC ("Califormulations, LLC"), Symrise Inc. ("Symrise"), The Green Organic Dutchman Holdings Ltd. ("TGOD"), 6003 Holdings LLC ("6003 Holdings"), Edmund O'Keeffe ("O'Keeffe"), Tyrone Polhamus ("Polhamus"), Khanh Ly ("Ly"), Jason Pontes ("Pontes"), Dana Klaybor ("Klaybor"), Wanda Jackson ("Jackson"), and Kaleena Gee ("Gee")<sup>2</sup> (collectively, the "Defendants") allege and say as follows:

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<sup>1</sup> The facts of this case involve multiple Refresco entities and multiple Cott Corporation entities. For pleading convenience, in this Complaint, "Refresco" shall refer generally to any Refresco entity and "Cott" shall refer generally to any Cott entity. Where the identity of a particular Cott or Refresco entity is relevant, it is identified by name.

<sup>2</sup> Collectively, all of the defendants are referred to herein as the "Defendants." O'Keeffe, Polhamus, Ly, Pontes, Gee, Jackson, and Gee are collectively referred to herein as the "Individual Defendants" or the "Former Cott Employees."

## INTRODUCTION

As set forth with particularity in this Complaint, Symrise and TGOD conspired with and purposefully assisted the Individual Defendants – while each was still employed by Cott or Refresco – in breaching the duty of loyalty owed to his/her employer for the purpose of pilfering valuable trade secrets, including beverage formulations, customers, suppliers, and industry-leading know-how, and then forming a competitive entity literally down the road from the employer they had betrayed. As detailed below, it was a brazen scheme, planned and executed in bad faith, and which resulted in numerous violations of law. And the evidence is overwhelming.

It is a bedrock principle of American corporate law that corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests. As the Delaware Supreme Court observed more than eighty years ago, and as many courts across the country have repeated since, “[t]he rule that requires an *undivided and unselfish loyalty to the corporation* demands that there shall be *no conflict between duty and self-interest*.” *Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939) (emphasis added). While corporate officers owe a strict duty of loyalty to the corporations they serve, competitors (or would-be competitors) also have a responsibility not to encourage or participate in an officer’s breach of his/her duty of loyalty to the company. That is precisely what this case is about: Symrise and TGOD actively and purposefully encouraged and assisted the president of a company that competes with the company they were scheming to create to breach his duty of loyalty by enticing that fiduciary to recruit a group of fellow employees (who, in turn, violated their duties of loyalty as employees and breached their restrictive covenants), pilfer company trade secrets, and then assist in the usurpation of multiple business opportunities that belonged to their then-employer – culminating

with the formation of a new competitive entity (Califormulations, LLC) owned by a complicit group of entities and individuals, including Symrise, TGOD, the disloyal president, and several of the disloyal former employees.

\* \* \*

1. Refresco and Symrise are competitors in the beverage space. While Symrise is part of a multi-billion-dollar international conglomerate specializing in developing and selling flavors and scents, including flavors and scents for beverages, in November 2017, it launched “Califormulations,” which it described in a November 28, 2017 press release as being “an entirely new concept offering a dedicated suite of product development services to beverage entrepreneurs.” In that same press release, Paul Graham, President of Symrise Flavors North America, described “[t]he Califormulations concept” as “giv[ing] beverage entrepreneurs access to a single-source partner with the expertise required to help them bring their ideas to life.” That same press release stated that Califormulations would be based out of Symrise’s Laguna Beach, California “beverage development center.” Graham added further that Symrise is “uniquely capable of bringing a revolutionary beverage prototyping concept like Califormulations to market.” The bottom of the press release directed readers seeking “additional information about the Califormulations concept” to Michael Falkenberg, who, at the time, was Symrise’s Senior Category Director Beverages & Savory. *See* Exh. 1 attached hereto (true and accurate copy of Nov. 28, 2017 press release).

2. Graham and Falkenberg feature prominently in this Complaint, as they used Symrise’s Califormulations beverage incubator as a “Trojan Horse” to infiltrate Cott Beverages LLC (“Cott Beverages,” a Delaware limited liability company that was later acquired by

Refresco)<sup>3</sup> and forge a conspiracy with the company's executives and scientists to compete against their employer. With Symrise's active and purposeful encouragement and assistance, those executives and employees then breached their duties of loyalty by, *inter alia*, stealing Cott Beverages' (later Refresco's) trade secrets and proprietary know-how, and then collectively forming a new entity – Califormulations, LLC<sup>4</sup> – that would compete against Cott and Refresco as a formulation and beverage manufacturer.

3. Refresco previously brought an action against Symrise in the United States District Court for the District of New Jersey (the “New Jersey Action Against Symrise”).

4. In addition to filing the New Jersey Action Against Symrise, Refresco brought an action against Califormulations, LLC in the Superior Court of Muscogee County in May 2019 (the “Georgia State Court Action”). The Georgia State Court Action was subsequently expanded to include the Individual Defendants, each of whom was formerly employed by Cott and/or Refresco.

5. Through discovery in the New Jersey Action Against Symrise, Refresco obtained evidence making it clear that Symrise and TGOB have subjected themselves to the jurisdiction of this Court. Accordingly, in the interest of judicial economy, Refresco now brings this action against all of the Defendants rather than litigating in piecemeal fashion against different defendants in different federal and state courts. Indeed, this Court is in a position to adjudicate Refresco's claims against all of the Defendants, thereby maximizing judicial economy and eliminating the risk of inconsistent rulings and judgments.

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<sup>3</sup> Through its acquisition, Refresco acquired all the assets and rights of Cott Beverages, and has therefore stepped into the shoes of Cott Beverages as its successor in interest for purposes of the claims asserted in this Complaint.

<sup>4</sup> Defendant Califormulations, LLC is not the same entity as Symrise's beverage incubator, which it launched under the name “Califormulations” in November 2017.

## THE PARTIES

6. Califormulations, LLC is a Delaware limited liability company with its principal place of business at 6000 Technology Parkway, Midland, Georgia.

7. Symrise is a New Jersey corporation with its principal place of business at 300 North Street, Teterboro, New Jersey 07608.

8. TGOD is an Ontario, Canada corporation with its principal place of business at 6205 Airport Rd, Building A - Suite 200 Mississauga, Ontario L4V 1E3.

9. 6003 Holdings is a Georgia limited liability company. According to the records of the Georgia Secretary of State, its principal address is PO Box 185, Midland, Georgia 31820.

10. O'Keeffe is a former Cott Beverages employee who, on information and belief, resides at 46 Old Mill Drive, Toronto, Ontario, M6S 4J9, Canada.

11. Polhamus is a former Cott Beverages employee who, on information and belief, resides at 221 Mink Drive, Cataula, Georgia 31804.

12. Ly is a former Cott Beverages and Refresco employee who, on information and belief, resides at 160 Kodiak Trail, Fortson, Georgia 31808.

13. Pontes is a former Cott Beverages and Refresco employee who, on information and belief, resides at 7121 Pinewood Court, Columbus, Georgia 31909.

14. Klaybor is a former Cott Beverages and Refresco employee who, on information and belief, resides at 2112 Cherokee Avenue, Columbus, Georgia 31906.

15. Jackson is a former Cott Beverages and Refresco employee who, on information and belief, resides at 142 Grey Smoke Trail, Cataula, Georgia 31804.

16. Gee is a former Cott Beverages and Refresco employee who, on information and belief, resides at 5561 Saratoga Drive, Columbus, Georgia 31907.

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