

CLERICAL SERVICE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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CUH2A, ARCHITECTS ENGINEERS  
PLANNERS, P.C.,

Plaintiff,

*Plaintiff Designates*

New York  
*County as place of trial*

09115530

-against-

*The basis of venue is*  
Location of Filing of  
the Complaint

**SUMMONS**

PEPSICO, INC.,

Defendant.

*Defendant's address:*  
700 Anderson Hill Road  
Purchase, New York 1207  
*County of Westchester*

**FILED**  
NOV - 4 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

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*To the above named Defendant PepsiCo, Inc.*

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

**Dated:** October 30, 2009

**Defendant's Address:**

PepsiCo, Inc.  
c/o Indra Noogi, CEO  
700 Anderson Hill Road  
Purchase, New York 10577

**Attorney(s) for Plaintiff**

**Office and Post Office Address**

Tesser & Cohen  
946 Main Street  
Hackensack, New Jersey 07601

**SUPREME COURT OF THE STATE OF NEW YORK,  
COUNTY OF WESTCHESTER**

*Index No.*                      *Year*

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CUH2A, ARCHITECTS ENGINEERS PLANNERS, P.C.

Plaintiffs,

against,

PEPSICO, INC.

Defendant,

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**SUMMONS**

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**TESSER & COHEN**  
Attorneys for                      Plaintiff CUH2A, ARCHITECTS ENGINEERS PLANNERS, P.C.

**591 Broadway, Sixth Floor  
New York, New York 10012  
212-226-1900**

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To

Attorney(s) for

Service of a copy of the within \_\_\_\_\_ is hereby admitted.

Dated

.....

Attorney(s) for

*PLEASE TAKE NOTICE*

NOTICE  
OF ENTRY

that the within is a (certified) true copy of a \_\_\_\_\_  
entered in the office of the clerk of the within named court on \_\_\_\_\_ 20

NOTICE OF  
SETTLEMENT

an order \_\_\_\_\_ of which the within is a true copy will be  
presented for settlement to the Hon. \_\_\_\_\_ one of the judges of the  
within named Court, at

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

-----X  
CUH2A, ARCHITECTS ENGINEERS  
PLANNERS, P.C. :  
:  
Plaintiff, :  
:  
-against- :  
:  
PEPSICO, INC :  
:  
Defendant. :  
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**FILED**

Index No.: NOV - 4 2009

COUNTY CLERK'S OFFICE  
*Civil Action* NEW YORK

**COMPLAINT**

**09115530**

Plaintiff, CUH2A, Architects Engineers Planners, P.C ("CUH2A" or "Plaintiff") by way of Complaint against PepsiCo, Inc. ("PepsiCo" or "Defendant") alleges as follows:

**THE PARTIES**

1. CUH2A is a professional architectural and engineering firm licensed to do business in the state of New York, with its principal place of business located at 266 West 37<sup>th</sup> Street, 12<sup>th</sup> Floor, New York, New York.

2. PepsiCo is a company doing business in the state of New York, with its principal executive office located at 700 Anderson Hill Road, Purchase New York.

**STATEMENT OF FACTS**

3. At all times material and relevant herein, CUH2A was a professional architectural and engineering firm. CUH2A was retained to provide professional design services relative to the renovation of PepsiCo's existing headquarters, the design of a new "Center Building", and Site Planning Services for PepsiCo's headquarters campus located in Purchase New York (hereinafter collectively referred to as the "Project") pursuant to

certain proposals that were submitted to and accepted by PepsiCo (hereinafter the "Proposals").

4. Pursuant to the Proposals the services to be performed by CUH2A on the Project were phased into the following design categories: Concept, Schematic, Design Development, Construction Documents and Construction Administration Services (hereinafter "Design Services").

5. In consideration of the services performed, CUH2A was to be compensated a lump sum fee amount of approximately eight (8) million dollars as invoiced on a monthly basis.

6. CUH2A performed the intended Design Services in accordance with the terms and conditions of the Proposals, as well as in conformity with all professional standards governing the conveyance of such design services.

7. PepsiCo repeatedly expressed its satisfaction with the professional services rendered by CUH2A.

8. In March 2008, PepsiCo suspended the development of the Project citing the deteriorating economic climate as its reason for not proceeding with the Project.

9. At that time, CUH2A was asked to restrict its scope of services to the completion of various site plan activities associated with the site plan application process.

10. Throughout the course of the design process, CUH2A made repeated demands upon PepsiCo for payment.

11. Despite the repeated requests tendered to PepsiCo, CUH2A received only one payment from PepsiCo, instead of the multiple payments required under the governing Proposals agreed to by PepsiCo.

12. PepsiCo made continuous representations to CUH2A that full payments would be forthcoming, citing various administrative reasons for the delays associated with advancing CUH2A its rightful payments.

13. CUH2A's invoices were approved by PepsiCo's agent and third party administrator for the Project.

14. PepsiCo's representations to CUH2A regarding forthcoming payments were false, as PepsiCo never had the intent to fully compensate CUH2A for the services it performed. Cumulatively, PepsiCo's excuses for not tendering payments were nothing more than a subterfuge calculated to deceive CUH2A into continuing its performance of professional services, without any intention of compensating CUH2A the full amount of the proposed and agreed upon fees for both prior and future Design Services.

15. In light of PepsiCo's refusal to provide CUH2A with the payments due in full, CUH2A suspended its own performance on the Project.

16. At the time CUH2A initiated its suspension of services, PepsiCo had not yet been provided with certain site related drawings, which were necessary for PepsiCo to secure various permits.

17. Desirous of these drawings, and not wishing to compensate CUH2A for the design services already performed, PepsiCo illicitly used, modified and distributed previously secured copies of drawings, work product and intellectual property owned by CUH2A and caused CUH2A's name and title block to be removed from those documents and had such documents filed with a public authority substituting the name and title block of another design professional on such documents without CUH2A's consent.

### **AS AND FOR A FIRST CAUSE OF ACTION**

18. Plaintiff repeats and reasserts each and every allegation contained in the Paragraphs above, as if fully set forth at length herein.

19. CUH2A performed its services in good faith and for the benefit of PepsiCo.

20. The services provided by CUH2A were executed in compliance with the provisions of the written Proposals assented to by both parties, and for which partial payment was rendered by PepsiCo.

21. These Proposals and PepsiCo's acceptance of such Proposals by word and conduct constitute a contract which governs both the scope of services to be provided by CUH2A and the payment obligations assumed by PepsiCo (hereinafter "Contract").

22. Defendant breached the Contract in that it failed, refused and/or neglected to pay Plaintiff the full amount due and owing for the services performed and the costs incurred.

23. To date, Defendant has failed and refused to make full payment to Plaintiff, although payment has been duly demanded.

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages including compensatory and consequential damages in excess of two million dollars (\$2,000,000.00), together with interest and costs as provided by law, as well as all other relief deemed appropriate by the court or provided by statute.

**AS AND FOR A SECOND CAUSE OF ACTION**

24. Plaintiff repeats and reasserts each and every allegation contained in the Paragraphs above, as if fully set forth at length herein.

25. Plaintiff provided professional services and incurred costs relative to the design of the Plaintiff's Project.

26. CUH2A is entitled to recover the fair and reasonable value of the unpaid services and costs supplied by the Plaintiff to the Defendant.

27. Despite due demand, Plaintiff has not been fully paid and therefore has sustained damages.

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages including compensatory and consequential damages in excess of

two million dollars (\$2,000,000.00), together with interest and costs as provided by law, as well as all other relief deemed appropriate by the court or provided by statute.

**AS AND FOR A THIRD CAUSE OF ACTION**

28. Plaintiff repeats and reasserts each and every allegation contained in the Paragraphs above, as if fully set forth at length herein.

29. Plaintiff furnished services and incurred costs associated with the Project, which inured to the benefit of the Defendant.

30. Defendant failed, refused, and/or neglected to pay Plaintiff for the services performed and expenses incurred, relative to the Project, and for the benefit of the Defendant.

31. As a result of the services performed and expenses incurred by Plaintiff, the Project has been benefited and enhanced. Defendant has been unjustly enriched on account of the benefits conferred upon it by Plaintiff, which have been accepted and retained by Defendant.

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages including compensatory and consequential damages in excess of two million dollars (\$2,000,000.00), together with interest and costs as provided by law, as well as all other relief deemed appropriate by the court or provided by statute.

**AS AND FOR A FOURTH CAUSE OF ACTION**

32. Plaintiff repeats and reasserts each and every allegation contained in the Paragraphs above, as if fully set forth at length herein.

33. Plaintiff rendered to Defendant a full and true account of the indebtedness owed to Plaintiff by Defendant.



34. Defendant has retained a statement of account without any objection to and, as such, an account has been stated between Plaintiff and Defendant.

35. Despite due demand, only part of the account has been paid and the balance on the account is now overdue.

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages including compensatory and consequential damages in excess of two million dollars (\$2,000,000.00), together with interest and costs as provided by law, as well as all other relief deemed appropriate by the court or provided by statute.

**AS AND FOR A FIFTH CAUSE OF ACTION**

36. Plaintiff repeats and reasserts each and every allegation contained in the Paragraphs above, as if fully set forth at length herein.

37. Defendant repeatedly made representations to Plaintiff that it would be fully compensated for the design services it performed.

38. PepsiCo knew that the representations it made to CUH2A were false and made same with the purpose and intent of deceiving CUH2A and inducing it to continue to perform services for the benefit of the Defendant.

39. CUH2A reasonably and justifiably relied upon the misrepresentations of material fact as stated by PepsiCo.

40. As a result of the deceitful and fraudulent conduct perpetrated by PepsiCo, CUH2A has been damaged.

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages including compensatory and consequential damages in excess of two million dollars (\$2,000,000.00), punitive damages, together with interest and costs as provided by law, as well as all other relief deemed appropriate by the court or provided by statute.



**AS AND FOR A SIXTH CAUSE OF ACTION**

41. Plaintiff repeats and reasserts each and every allegation contained in the Paragraphs above, as if fully set forth at length herein.

42. Despite specific admonishments from CUH2A not to misappropriate any of its work product, PepsiCo caused CUH2A's name to be removed from the title block of its drawings and caused the substitution of the title information of another design professional.

43. PepsiCo wrongfully proceeded to file these drawings in support of various governmental applications. PepsiCo's actions constitute a violation of federal copyright law, 17 U.S.C.S. 101 *et seq.*, which protects such architectural works as those prepared by CUH2A.

44. CUH2A has been damaged by PepsiCo's infringement of its intellectual property rights.

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages including compensatory and consequential damages in excess of two million dollars (\$2,000,000.00), punitive damages, attorneys fees together with interest and costs as provided by law, as well as all other relief deemed appropriate by the court or provided by statute.

**AS AND FOR A SEVENTH CAUSE OF ACTION**

45. Plaintiff repeats and reasserts each and every allegation contained in the Paragraphs above, as if fully set forth at length herein.

46. Defendant's tortious conduct is violative of various sections of NY CLS Educ. Sec. 7303, which specifically prohibits the pirating of architectural drawings.

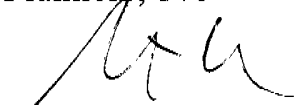
47. PepsiCo's conduct constitutes tortious conversion, as the Defendant exercised dominion over, and interfered with, the property rights of CUH2A when it had no legal right to do so.

48. CUH2A has been damaged by PepsiCo's derogation of the Plaintiff's property rights.

**WHEREFORE**, Plaintiff demands judgment against Defendant for damages including compensatory and consequential damages in excess of two million dollars (\$2,000,000.00), punitive damages, together with interest and costs as provided by law, as well as all other relief deemed appropriate by the court or provided by statute.

Dated: New York, New York  
October 30, 2009

TESSER & COHEN  
591 Broadway, 6th Floor  
New York, NY 10012  
(212) 226-1900  
Attorneys for Plaintiff  
CUH2A, Architects Engineers  
Planners, P.C

  
\_\_\_\_\_  
Steven Cohen Esq.

**SUPREME COURT OF THE STATE OF NEW YORK,  
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Attorneys for                      Plaintiff CUH2A, ARCHITECTS ENGINEERS PLANNERS, P.C.

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To

Attorney(s) for

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Attorney(s) for

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an order \_\_\_\_\_ of which the within is a true copy will be  
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within named Court, at