

Drive You Nutella

By Reg P. Wydeven
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One of my favorite episodes of 'Seinfeld' is the one where Kramer invests in a non-fat frozen yogurt shop. The yogurt is delicious, and becomes a favorite treat for the gang. After putting on some weight, however, Jerry and Elaine become suspicious that the yogurt is not fat-free. Elaine then decides to send the yogurt to a laboratory for testing.

Of course, the tests reveal that the yogurt does, in fact, contain fat. The shop then begins to sell truly non-fat yogurt, which is, of course, awful. The switch causes Newman to have uncontrollable rage and the business tanks. In classic 'Seinfeld' fashion, the ending is sad, yet somehow funny.

Ferrero USA, Inc., the manufacturer of Nutella, the popular chocolate-hazelnut spread, also had a sad ending recently that they did not find the least bit funny.

Last year, Athena Hohenberg filed a lawsuit against the Somerset, N.J. company. Hohenberg, a San Diego mother of a 4-year-old daughter, sued Ferrero for false advertising, claiming that she "was shocked to learn" that "Nutella was in fact not a 'healthy' 'nutritious' food but instead was the next best thing to a candy bar." Apparently Hohenberg feels about Nutella the same way George Costanza felt about the allegedly fat-free yogurt: "How could this not have any fat? It's too good!"

Hohenberg bought the gooey, chocolaty spread that is chock full of sugar, palm oil and hazelnuts after seeing advertisements that claimed Nutella was part of a healthy breakfast. According to her suit, Hohenberg was stunned to learn Nutella contained 21 grams of sugar, 200 calories, and 11 grams of fat (3.5 of which are saturated) per serving.

As word spread of Hohenberg's suit across the Internet, the court of public opinion was clearly not on her side. Critics found it hard to believe that anyone could think that a chocolate-based spread would be healthy. A blog from LA Weekly said, "Here's a suggestion for the thousands of other litigious California mothers: Try a little responsible parenting. Try reading the labels and understanding what they mean."

The court of public opinion, however, is not the one that counts. And borrowing a line from Jerry Seinfeld, "The verdict is in...FAT!" The judge in the case sided with Hohenberg. Ferrero agreed to honor Hohenberg's request for the company to cease marketing Nutella as "healthy," "balanced nutrition." Ferrero vowed to change its marketing campaign, modify the Nutella label to state fat and sugar content on the front of the jar, create new television ads, and change the company website.

Hohenberg was also successful in converting her suit into a class action. Accordingly, as part of the settlement of the suit, Ferrero agreed to pay \$3.05 million, \$2.5 million of which is to be divided among consumers who file a claim. The settlement provides that anyone in the U.S. who purchased Nutella between January 1, 2008 and February 3, 2012 (or for Calif. residents between August 1, 2009 and January 23, 2012) can file a claim. Consumers can claim their purchases until July 5, 2012. Claimants are expected to receive \$4 for a single purchase and up to 5 jars for a maximum award of \$20 per household.

Thankfully Nutella has no plans to change its recipe. For if they made their spread so it was truly healthy, it would probably be inedible. Like true fat-free yogurt, Newman would probably say, "I can't eat this!"