

Leonard v. Pepsico, Inc., 88 F. Supp. 2d 116, (S.D.N.Y. 1999)

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Facts

- In the 90's, Pepsi had a loyalty system where a consumer would earn "Pepsi Points" for every Pepsi purchase. These points could be redeemed for prizes.
- In a fanciful TV commercial, Pepsi advertised that a consumer could redeem 7,000,000 in exchange for AV-8B Harrier Jump Jet, a military fighter craft which was (at the time) employed by the US Navy and US Marine Corps.
- John Leonard redeemed a cheque for \$700,008.50 instead of collecting the 7,000,000 points through purchase. This was permitted by the competition's rules.
- Leonard requested that Pepsi deliver his brand new AV-8B Harrier. Pepsi (understandably) refused to do so, claiming that the TV commercial was mere puffery.
- Leonard claimed that Pepsi had committed a breach of contract. Leonard claimed that the advertisement constituted an offer of contract under the *Restatement (Second) of Contract*.

Issues

- Was the Pepsi commercial an offer of a unilateral contract or mere puffery?

Held

- Judge Kimba Wood of the United States District Court for the Southern District of New York held that the Pepsi commercial did not constitute an offer under the *Restatement (Second) of Contracts*.
- The Court found that even if the advertisement had been an offer, no reasonable person could have believed that the company actually intended to give someone a jet worth approximately US\$23 million for \$700,000.
- It was (clearly) mere puffery.
- The value of the alleged contract meant that it fell under the provisions of the Statute of Frauds, but the statute's requirement for written agreement between the parties was not fulfilled, so a contract had not been formed.

Quotes

While this case has a bounty of wonderful quotes from an incredulous judge, the description of the commercial itself is most entertaining:

"The scene then shifts to three young boys sitting in front of a high school building. The boy in the middle is intent on his Pepsi Stuff Catalog, while the boys on either side are each drinking Pepsi. The three boys gaze in awe at an object rushing overhead, as the military march builds to a crescendo. The

Harrier Jet is not yet visible, but the observer senses the presence of a mighty plane as the extreme winds generated by its flight create a paper maelstrom in a classroom devoted to an otherwise dull physics lesson. Finally, the Harrier Jet swings into view and lands by the side of the school building, next to a bicycle rack. Several students run for cover, and the velocity of the wind strips one hapless faculty member down to his underwear. While the faculty member is being deprived of his dignity, the voiceover announces: "Now the more Pepsi you drink, the more great stuff you're gonna get."

The teenager opens the cockpit of the fighter and can be seen, helmetless, holding a Pepsi. "[L]ooking very pleased with himself," (Pl. Mem. at 3,) the teenager exclaims, "Sure beats the bus," and chortles. The military drumroll sounds a final time, as the following words appear: "HARRIER FIGHTER 7,000,000 PEPSI POINTS." A few seconds later, the following appears in more stylized script: "Drink Pepsi—Get Stuff." With that message, the music and the commercial end with a triumphant flourish."

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