

EXHIBIT B

Apr 26, 2012 12:57pm

Nutella, After Suit, Drops Health Claims

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: Andrew Harrer/Bloomberg via Getty Images

By ABBY ELLIN

It's hard to imagine that there are people who might confuse Nutella—a gooey, chocolate spread laden with sugar, palm oil and hazelnuts — with a health food. But apparently that's exactly what Athena Hohenberg, a San Diego mother of a 4-year-old daughter, did.

Last February, [Hohenberg sued](#) (<http://dockets.justia.com/docket/california/casdce/3:2011cv00205/343346/> USA, Inc., the makers of Nutella, for false advertising. In her suit, she claimed that she “was shocked to learn” that Nutella “was the next best thing to a candy bar.”

She argued that TV ads falsely promoted Nutella as a healthy breakfast option, while omitting the fact that a few tablespoons contains 200 calories, 11 grams of fat (3.5 grams saturated), and 21 grams of sugar. She sought an order preventing Ferrero from marketing Nutella as “healthy,” “balanced nutrition,” and said her goal was to pursue a class-action suit.

Hohenberg got [all sorts of flack](#) (http://www.slate.com/articles/life/food/2011/08/go_ahead_eat_chocolate for her apparent nutritional naiveté, but she won.

The suit has been settled for \$3.05 million, \$2.5 million of which will be [divided among consumers](#) (<https://nutellaactionsettlement.com/>). Anyone who bought Nutella between Jan. 1, 2008 and Feb. 3, 2012, (or Aug. 1, 2009 and Jan. 23, 2012 in California) can file a claim.

Not that they'll get rich: Consumers can receive up to \$4 per jar of Nutella that they purchased during the specified time period, with a maximum allowance of \$20 per household. But Ferrero also agreed to modify the Nutella label and certain marketing statements about the product, create new television ads and change [their website](#) (<http://www.nutellausa.com/>).

So now consumers can take their winnings, buy more Nutella, and know for sure they're not eating tofu.

April 27, 2012 4:04 PM

Nutella health claims net \$3.05 million settlement in class-action lawsuit

By [Ryan Jaslow](#)



(Credit: Wikimedia Commons)

(CBS News) Is Nutella, the popular chocolate-hazelnut spread, actually good for you? A class-action lawsuit over the spread's purported health claims has just been settled, with a judge siding with a parent who says she was duped into believing it was good for her kids.

Nutella-maker Ferrero USA, Inc. will pay out \$3.05 million as part of the [settlement](#), with \$2.5 million to be divided among consumers who file a claim, the [New York Daily News](#) reported.

As part of the settlement, 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. People can claim their purchases until July 5, 2012 and expect \$4 for a single purchase and up to 5 jars for a maximum award of \$20 per household.

[NPR](#) reported last year that California mom Athena Hohenberg proposed a class-action suit against Ferrero stating that she had fed her 4-year-old daughter Nutella after seeing advertisements that suggested the spread was part of a healthy breakfast. Hohenberg was reportedly shocked to find out it contained 21 grams of sugar, 200 calories, and 11 grams of fat (3.5 of which are saturated) per serving.

"Nutella was in fact not a 'healthy' 'nutritious' food but instead was the next best thing to a candy bar," read the complaint.

That lawsuit was met with some ridicule across the web by people who were surprised to hear someone thought a chocolate-based spread could be construed as healthy.

"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," read a blog from [LA Weekly](#).

"Nutella isn't the breakfast demon that Hohenberg and others make it out to be, certainly not when consumed as advertised," read a blog from [Slate](#).

But it appears a judge sided with Hohenberg. Ferrero also agreed to change its marketing campaign, modify the Nutella label to state fat and sugar content on the front of the jar and will create new television ads, and change the company website

A call placed to Ferrero USA, Inc. in Somerset, N.J., was not returned at press time.

Were you fooled by the ads? Take a look at one of the commercials in question. What do you think?



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1/31/2012 @ 10:33AM | 7,122 views

Nutella Class Action Settlement: Not Part of a Balanced Legal System

[Glenn G. Lammi](#), Contributor[+ Comment now](#)

Image via Wikipedia

Washington Legal Foundation (WLF) has commented twice before ([here](#) and [here](#)) at our *Legal Pulse* blog on the indigestion-causing class action suits that were filed in New Jersey and California against Ferrero, the maker of Nutella. The gist of the complaints is that Ferrero misled consumers with statements and images on the product label and in ads that Nutella was “healthy” by not being sufficiently transparent about the sugar and fat it contained.

Ferrero has decided to settle both cases. The terms of the now preliminarily approved California settlement and the proposed NJ settlement inspired some reasoned venting at the [Consumer Class Actions and Mass Torts](#) blog. Given our coverage of the cases and our larger concerns with food/beverage regulation-through-litigation, we offer below some (reasoned) venting of our own.

The Monetary Awards. Plaintiffs’ class counsels in New Jersey are proposing Ferrerero create a fund of \$2.5 million from which anyone who claims they purchased Nutella thinking it was “healthy” can seek reimbursement. In California, the proposed amount is \$550,000, and is limited to state residents. Members of the “settlement class” can claim up to \$20 each (four bucks for each Nutella jar, up to five jars). If there is cash left over in the funds after a period of time, the claimants may receive more money and/or money may be “put to a *cy pres* use that will benefit the Class.”

If crusading against “disfavored” foods and beverages would “benefit the Class,” we wouldn’t be suprised to see *cy pres* disbursement applications by the academic and nonprofit institutions on [this list](#) from WLF’s *Eating Away Our Freedoms* project. We hope the presiding judges resist any such entreaties.

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Class counsels in both cases are also seeking an “Incentive Award” for the “named plaintiffs” (i.e. those who were bold enough to have their names placed on the court documents and claim that all other class members were harmed just like they were). The New Jersey counsels proposed \$2,000 for each named plaintiff; no set amount is sought in California. What “time and effort” did the named plaintiffs expend? If they claimed all other plaintiffs were harmed in the same way they were, why should they get more than \$20? These types of awards do little more than encourage more class action litigation.

Injunctive Relief. The counsels proposed nearly identical terms in both cases, terms which transform lawyers into labeling, advertisement, and website design consultants. Ferrero must create a front-of-packaging label; remove the offending phrase “An example of a tasty yet balanced breakfast” from the rear label and replace it with a phrase of *completely* different meaning – “Turn a balanced breakfast into a tasty one”; make modifications to their website; and replace current TV ads with new ones. The class counsels in both lawsuits have helpfully provided suggestions on the content and approach of the new ads. And, once the ads are produced, Ferrero must give the counsels one last look at them. “Creative” lawyering indeed!

Attorneys’ Fees. In each case, the lawyers seek fee awards *both* for the injunctive relief they achieved and from the settlement fund. The New Jersey suit lawyers want \$3 million dollars for injunctive relief, and up to 30% of the fund (\$750,000), as well as reimbursement for costs from the fund. Ferrero has agreed to pay the California suit lawyers \$900,000 for the injunctive relief, and the lawyers will pursue more fee money from the fund. The respective judges will have the last say on whether these fees are reasonable; let’s hope they closely scrutinize these requests.

Final Thought. We understand that businesses like Ferrero have to weigh numerous factors when posed with litigation, and that some will decide it makes more financial sense to settle even the most dubious claims. But there’s always the risk that such settlements lead to more lawsuits. No doubt that’s how other food and beverage companies will feel about the outcome of *In re Ferrero Litigation*.

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UPDATE 1-Ferrero sets aside \$3 mln for Nutella US class action

Sun, Apr 29 2012

(Adds Ferrero statement)

By Michel Rose

MILAN, April 29 (Reuters) - Italian confectionery group Ferrero has agreed to set aside \$3 million to settle a class-action lawsuit championed by a Californian mother after she discovered the group's Nutella chocolate spread packed more calories than jam or syrup.

Notices of class action settlements said that Ferrero USA Inc., the group's U.S. division, would pay up to \$4 for every jar of Nutella bought in California since August 2009, or bought anywhere else in the United States since January 2008.

The notices posted on nutella.classactionsettlement.com said the settlement was for \$3,050,000 in total.

Ferrero USA also agreed to "modify certain marketing statements about Nutella" and to give more prominence to nutrition labels on Nutella jars, the notices said.

"Ferrero USA continues to stand by its product," a spokeswoman for Ferrero said on Sunday. "We believe that it is in the best interest of the company to resolve these matters, and have reached an agreement with the parties involved."

Athena Hohenberg, the mother of a 4-year old in San Diego, California, launched the class-action lawsuit last year, alleging that Ferrero was promoting Nutella as something "healthier than it actually is," court documents said.

Ferrero lists sugar, palm oil, hazelnuts, cocoa and skimmed milk as Nutella's main ingredients. The typical serving size of 2 tablespoons contains 200 calories and 11 grams of fat, it says on its website.

It markets the dark, creamy paste worldwide as "an example of a tasty yet balanced breakfast" when combined with milk, orange juice and wholewheat bread.

"Ms. Hohenberg was surprised and upset to learn that Nutella was in fact not a 'healthy, nutritious' food but instead a product with the nutritional properties of a candy bar," the lawsuit said.

It is not the first time the spread, popular with children and young adults all over Europe, is criticised for exaggerating its health benefits.

In 2008, the British industry watchdog said a television commercial for Nutella had broken advertising rules because it overstated the role Nutella can play in a child's balanced diet.

Two years ago, Italy complained to the European Union over the impact of stricter food labelling on confectionary products, with Ferrero executives leading the charge against Brussels.

Ferrero is one of Italy's richest and most successful family-owned companies, but also one of its more secretive. It had pre-tax earnings of 856 million euros (\$1.14 billion) on sales of 7.2 billion euros for the year to end-August 2011.

Nutella was invented in 1944 by Pietro Ferrero in a patisserie in Alba, near Turin. The company, which also makes Kinder chocolates and Tic Tac sweets, has remained in family hands since his death in 1949. (Reporting by Michel Rose; Editing by Susan Fenton)

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Nutella Maker May Settle Deceptive Ad Lawsuit For \$3 Million

03:53 pm

April 26, 2012

by TED BURNHAM



STEFANO RELLANDINI/Reuters /Landov

The fact that Nutella's parent company, Ferrero, is known for its chocolates might be a tip-off that the sweet hazelnut spread isn't exactly "health" food.

Remember that California mom who sued Nutella maker Ferrero over misleading advertising that made the addictive and gooey chocolate-hazelnut spread seem healthy?

Well, her lawsuit was awarded class action status, and the New York Daily News [reports](#) that Ferrero has agreed to settle for \$3 million. That works out to be about \$4 a jar or less, if you're thinking of making a claim.

Quick recap: as we [reported](#) on the Shots blog last year, the trouble began when Athena Hohenberg realized that the Nutella she'd been feeding her 4-year-old daughter was "the next best thing to a candy bar," according to [court documents](#). Hohenberg says she was taken in by ads and product labels that claimed Nutella was "healthy" and "part of a balanced meal." When friends eventually pointed out Nutella's high sugar and fat content, she sued Ferrero for deceptive advertising.

At the time, many commenters were astounded that anyone would consider TV ads a reliable source of nutritional information. Indeed, it only takes a glance at the label to discover that Nutella's main ingredients are sugar and palm oil.

Now, to be fair, many of us [don't really look](#) at labels too closely, but with glaring numbers like 21 grams of sugar and 200 calories in each 2-tablespoon serving – and half of those calories coming from fat – you'd think that might register with a shopper.

Naturally, Ferrero's ads don't mention the fat or sugar. Instead they talk up the "simple, quality ingredients like hazelnuts, skim milk and a hint of cocoa." Apparently, that gave Hohenberg's claim enough weight to convince Ferrero to settle. The company now says it will change its nutrition labels and its advertising, in addition to the \$3 million payout.

Under the terms of the proposed settlement, anyone who purchased Nutella in the last few years may join the class action. Each claim will pay out up to \$20 – that's \$4 per jar, on up to five jars – or less, depending on the number of claimants.

If you, too, were fooled into thinking that sweet, chocolatey, hazelnut goop was actually good for you, visit nutellaclassactionsettlement.com for more information.

For the legal geeks keeping score, technically, there's two class-action settlements – one for California and one for the rest of the country. And they were reached in January, although both settlements aren't really final until the district courts give them the OK at "fairness hearings" in July.



July 2, 2012



Nutella Lawsuit: Ferrero Settles Class-Action Suit Over Health Claims For \$3 Million

The Huffington Post | By Rachel Tepper
Posted: 04/26/2012 5:44 pm Updated: 04/27/2012 11:47 am

Well, it turns out that eating everything slathered in nutella *isn't the healthiest thing for you*.

The manufacturers of the chocolate-hazelnut spread, Ferrero, have agreed to a \$3 million settlement in a lawsuit calling foul on the product's purported health benefits.

If you were led to believe such claims, which is what a new [class action lawsuit](#) alleges, you may be entitled to some cash. The suit, filed by California mom Athena Hohenberg, invites others who feel wronged by the sugary product to join along.

Of the award sum, \$2.5 million will be divided among claimants. It comes to a payment of about \$4 a jar for up to five jars, or less as more people hop on the let's-sue-Nutella bandwagon. (Put in your own claim [here](#).)

Court documents say that Hohenberg decided to take legal action when she realized the Nutella she'd been feeding her four-year-old daughter was "the next best thing to a candy bar." She'd been convinced the hazelnut-chocolate spread was healthy by ads and product labels that seemed to suggest as much.

In addition to shelling out some hard cash, Ferrero must now change Nutella's labeling and some marketing statements. It'll also have to scrub television ads and their website clean of any misleading health claims.

Watch one Nutella ad below for yourself below. Do you feel deceived?



Nutella settles lawsuit. You can get \$20.

Nutella settles lawsuit over false advertising claims. Because the maker of Nutella settles lawsuit, it agrees to set up a \$3 million settlement fund to repay customers up to \$4 a jar.

By Laurent Belsie, *Business editor* / April 27, 2012



Nutella produced in Italy is displayed for sale at an FIS supermarket in Vitez, Bosnia, last month. The company has international operations. Because the maker of Nutella settles lawsuit in the United States over false advertising claims, American customers can apply for up to \$20 in reimbursement.

Dado Ruvic/Reuters/File

[Enlarge](#)

The headline that caught my eye – "Nutella settles lawsuit" – took me back instantly to memories of slathering the product on real French bread. It was convenient. You spread it on like peanut butter, but it tasted so much better: chocolate with just the right essence of hazelnut.



Laurent Belsie
Business Editor

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Back then, it was touted as an after-school treat for European kids and hard to find in the United States. Now, it's marketed increasingly for breakfast for American children. That's what got its maker, Italy's Ferrero Group (which also makes Ferrero Chocolates and Tic Tacs), into trouble with US courts.

Advertised as a way to get children to eat a healthy breakfast, Ferrero was insinuating that Nutella was healthy when, in fact, it has about as much nutritional value as a candy bar. Or so claimed several consumers, who sued the company's US unit.

As part of its settlement of two class-action suits, Ferrero U.S.A. Inc. is offering to reimburse consumers for up to five jars (at \$4 a jar). Since it doesn't appear you need any receipts, it's one of the easiest \$20 you can make. You can apply here.

Your actual reward could amount to less than \$20, because so many people may apply for the \$3.05 million available. But I'm not sure I'll be one of those people.

Our family is certainly entitled to the money. My daughter has become a big fan, so we bought far more than five jars of Nutella between the

court-specified period of Jan. 1, 2008, to Feb. 3, 2012 (Aug. 1, 2009, to Jan. 23, 2012, for those in California, where one of the suits was filed).

And while we were never duped into thinking Nutella was health food, some food companies are so cavalier about enhancing the appeal of their products with words like

"natural" that maybe Ferrero deserves to be made to pay. Call it social justice. Or punitive damages.

But here's the thing: Ferrero doesn't appear to be a rapacious megacorporation. It looks to be run like a conscientious family-run business.

The company issued its first social responsibility report two years before the first lawsuits were filed. This year it stopped advertising to audiences where more than half of the viewers or readers are under 12; next year, no more than 35 percent of the audience can be under 12. It has started a training program with USAID for hazelnut growers in the country of Georgia. Last year, one of its two managing directors (and a grandson of the founder) died during a humanitarian mission to South Africa. By 2020, the company aims to supply all its cocoa, palm oil, and coffee from sustainable farms.

These are not the moves of a company with a single-minded focus on the bottom line.

And the ads that helped convince several judges there was a case against Ferrero? Here's the transcript of one TV ad from court documents:

"[MOM]: As a mom, I'm a great believer in Nutella, a delicious hazelnut spread that I use to get mykids to eat healthy foods. I spread a little on all kinds of healthy things, like multigrain toast. Everyjar has wholesome, quality ingredients, like hazelnuts, skim milk, and a hint of delicious cocoa. AndNutella has no artificial colors or preservatives. It's quick, it's easy, and at breakfast I can use all thehelp I can get.
[VOICEOVER]: Nutella—breakfast never tasted this good."

Does that qualify as deception? You be the judge. I'm not applying for the money.

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Nutella contains 100 calories per tablespoon, with 10.5 grams of sugar and 5.5 grams of fat — a poor nutritional choice when eaten straight from the jar, which is how we like it.

If you have Nutella in your cupboard, it's probably not there to add dietary fiber. It's there for the same reason you have (admit it) that jar of Cheez Whiz. Because it makes other things taste better, that's why. Brussels sprouts are good for you, but sometimes you need a little something to help you choke them down. In a pinch, Nutella would work here, too.

Ferrero's problems stemmed from pitching Nutella as a breakfast food for kids. Its website devotes a separate section to breakfast, and one of the alleged frequently asked questions is *How can Nutella help moms at breakfast time?* (Another alleged FAQ is *How can I get a Nutella T-shirt and other merchandise?*)

But anyway, since you asked about breakfast, the answer is this: *It can be difficult to persuade children to eat breakfast. When used in moderation with complementary foods, Nutella is a quick and easy tool to encourage kids to eat whole grains, such as whole wheat toast, English muffins, toaster waffles and bagels.*

The website features an interactive build-your-own-breakfast app that calculates the nutritional values of endless combinations of grains, fruits, veggies, proteins, dairy items, spreads and pastries. It's hard not to notice that the nutritional balance of any breakfast that includes Nutella can be improved significantly by subtracting the Nutella. But you knew that.

Still, you may have some money coming, thanks to two moms who aren't ashamed to say they can't read product labels. If you purchased Nutella between Jan. 1, 2008 and Feb. 3, 2012 (or Aug. 1 2009 and Jan. 23, 2012 in California), you can apply for a refund of up to \$4 for up to five jars, assuming the \$3 million holds out.

It could be the easiest \$20 you ever make, because you don't have to prove you bought the product, much less that you were tricked into feeding it to your unsuspecting offspring. You just fill out the form and submit it.

What will you do with all that money? There's nothing to stop you from spending it on Nutella.

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Nutella Settles Lawsuit Over 'Healthy Breakfast' Claims

By Samantha Bonar

Published Fri., Apr. 27 2012 at 11:52 AM



Flickr/[elisasizzle](#)

A dab of Nutella on mini toast

Nutella isn't a health food? But it's made with hazelnuts -- nuts are good for you. And chocolate -- doesn't chocolate contain healthy antioxidants?

Two class-action lawsuits against Ferrero, the maker of Nutella, say the company's claims in a recent TV commercial that Nutella spread on toast makes a healthy breakfast for children went a little too far, according to the [New York Daily News](#). (One suit was for California, where the suit originated, and the other was for hazelnut-spread victims in the rest of the country.)

In the ad, a mom touts the sweet spread's "simple, quality ingredients like hazelnuts, skim milk and a hint of cocoa" as an ideal way to start the day.

In fact, a few tablespoons of Nutella spread onto toast contain the caloric (200), fat (3.5 grams, saturated) and sugar (21 grams) equivalent of a Three Musketeers bar, according to [Consumerist.com](#). (Hmm, Three Musketeers bar on toast? Maybe put it under the broiler for a minute or two. Now there's an idea.)



That pissed off a mom in California, who grabbed a lawyer and sued Ferrero for false advertising, saying she was taken in by the ads and started feeding her 4-year-old daughter "the next best thing to a candy bar," according to [court documents](#). Then friends suggested she look at the label, and just imagine her shock when she discovered there was chocolate and sugar in the stuff (Nutella's main ingredients are sugar and palm oil).

In settling the lawsuits for \$3 million, Ferrero agreed to change its marketing campaign, modify its product label, create new TV ads and change the [Nutella website](#) (which, as of today, still claims on its homepage: "Nutella ... Breakfast never tasted this good!" and offers a "Build Your Own Breakfast" feature. Four "equivalent" choices included 1 slice of whole grain bread with 2 tablespoons of Nutella, 1 cup of strawberries and 8 ounces of 1% milk; or 1 scrambled egg, 2 slices of bacon, 1/2 cup of fried potatoes and 8 ounces of orange juice.)

The site also has a section on "Nutella and Family," which states: "A balanced breakfast should provide the proper balance of protein, carbohydrates from whole grains, fat and the nutrients provided by either a serving of fruit or vegetables. For example, a breakfast that consists of a small whole grain bagel with Nutella, 1/2 cup of sliced strawberries and 1 cup of 1% milk is suitable for school-aged children. So why not use Nutella hazelnut spread to turn a balanced breakfast into a tasty one!"

Now, Nutella. We love ya. But, seriously? This ad campaign would've gotten Peggy fired from [Sterling, Cooper, Draper and Pryce](#) faster than she lost the Heinz account for depicting hippies enjoying baked beans around a campfire.

Shoppers who bought Nutella between Jan. 1, 2008 and Feb. 3, 2012 (Aug. 1, 2009 and Jan. 23, 2012 if you live in California) can file a claim and join the class action, according to the official notice from the company -- you'd end up with about four bucks for a jar. If you too were fooled into thinking the delicious chocolatey goo was good for you, go to [nutellaactionsettlement.com](#) for more information.

(Editor's note: *Or maybe actually read the label before you decide what to have for breakfast.*)

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Nutella settles suit over health claims

LINDSAY GOLDWERT

Thursday, April 26, 2012

Bad news for people who thought they'd found their dream diet — Nutella is not a health food.

Ferrero, the makers of the creamy chocolate and hazelnut spread, has settled two class-action lawsuits with consumers who sued over the company's advertising claims that it was a good-for-you treat.

The company will pay out over \$3 million to consumers in California and nationwide.

Shoppers were thrilled when television commercials touted the sweet spread's "simple, quality ingredients like hazelnuts, skim milk and a hint of cocoa" as an ideal way to start the day, but a glance at the label proves otherwise.



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THE FATTIEST FOODS EVER "The complaint is that this ad and others like it play up the healthiness of the breakfast those adorable kids are eating, while neglecting to mention that the few tablespoons of Nutella on their toast contains 200 calories, 11 grams of fat (3.5 grams saturated) and 21 grams of sugar," commented Consumerist.com. "That's comparable to a Three Musketeers candy bar."

Ferrero has agreed to change its marketing campaign, modify the Nutella label, modify certain marketing statements about Nutella, create new television ads, and change the Nutella website.

Shoppers who bought Nutella between Jan. 1, 2008, and Feb. 3, 2012 (Aug. 1, 2009, and Jan. 23, 2012 if you live in California) can file a claim and join the class action, according to the the official notice from the company.

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As a result of a recent [class action lawsuit](#) filed against Nutella over falsely alleging that its hazelnut spread could be considered a health food, customers who purchased Nutella are entitled to receive up to a \$20 cash settlement. (You get \$4 per jar purchased during the eligible period, for up to five jars.) To claim your money, fill out [this form](#). Eligible claimants in CA must have purchased Nutella between August 1, 2009, and January 23, 2012; all other claimants must have bought the product between January 1, 2008, and February 3, 2012. The last day to file a claim is July 5. [Click here](#) for more information.



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Snack Attack: Moms Take On Nutella, Fruit Roll-Ups

By [Stephanie Armour](#) on June 21, 2012

Laura Rude-Barbato, a coffee shop owner in Imperial Beach, Calif., used to feed her kids Nutella several times a week. It was easy for her to identify with its ads depicting a frenzied mom serving up the chocolate-hazelnut spread with the tagline “breakfast never tasted this good.” Then she realized the product is loaded with 10.5 grams of sugar per tablespoon. “I had no idea,” she says. “I might as well have been giving my kids a Brownie for breakfast.”

Rude-Barbato kicked the Nutella habit. Then she joined a class action filed in a federal court in California that claimed Ferrero U.S.A., Nutella’s manufacturer, misled consumers via labeling and marketing into thinking the spread was healthy. In January, Ferrero settled the case and a similar one brought in New Jersey, without admitting guilt, for almost \$7 million.



Photograph by 731Click to

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It turns out Rude-Barbato is no outlier. In 2011, Kellogg ([K](#)) consented without admitting guilt to a \$5 million settlement in a class action claiming it touted Cocoa Krispies and Rice Krispies as helpful to children's immunity without any clinical studies to back up the marketing. A false-advertising lawsuit filed in a federal court in Ohio that alleged Dannon ([BN](#)) lacked conclusive evidence to say its Activia and DanActive products prevented illness came to a close in 2009, with Dannon agreeing to pay consumers and lawyers at least \$35 million. The company says it stands by its advertising.

Stephen Gardner, litigation director for the Center for Science in the Public Interest (CSPI), a Washington consumer advocacy group, says all he has to do to find candidates for such cases is conduct yearly "supermarket sweeps." In 2011 his group filed a federal lawsuit in California against General Mills ([GIS](#)) for marketing Fruit Roll-Ups, Fruit by the Foot, and Fruit Gushers as "fruit flavored." CSPI says the snacks mostly consist of sugars, and Strawberry Fruit Roll-Ups don't have any strawberries in them. "We stand behind our products and the accuracy of the labeling of those products," says General Mills spokeswoman Maerenn Jepsen.

Jack Fitzgerald, a plaintiffs attorney in California, says suing food manufacturers “can be more lucrative” than the patent law practice he left in 2010. He’s among a group of lawyers that was awarded about 66 percent of the Nutella settlements—about \$4.6 million. Fitzgerald is also representing consumers suing Quaker Oats ([PEP](#)) for touting some of its oatmeals and granolas as wholesome even though they contain trans fats. He’s filed a similar case against Kraft Foods. Quaker declined to comment. “We do our best to make sure our labels give consumers accurate and useful information that complies with applicable government regulations and is presented responsibly,” says Basil Maglaris, a spokesman for Kraft.

Angel Garganta, a San Francisco attorney who defended Dannon, says, “A lot of these cases are just kind of silly. Most consumers don’t care. You tell them what these cases are about, and the responses are, ‘You’re kidding, someone is suing over that?’ ”

The Food and Drug Administration has the power to enforce rules requiring food and drink labels to be truthful. Yet it doesn’t always have the bandwidth to do so, says Marion Nestle, professor of nutrition, food studies, and public health at New York University. “So private lawyers are going into action,” she says. “They’re making real progress.”

Companies are overhauling their advertising as part of the settlements. On its Nutella labels, Ferrero consented to swapping “an example of a tasty yet balanced breakfast” to “turn a balanced breakfast into a tasty one.” That was a sweet vindication for Rude-Barbato, who says a blogger called her an idiot for joining the Nutella case. “Moms are busy, and we don’t have time to stop and read every label,” she says. “There should be truth in advertising.”

The bottom line: Ferrero settled class actions over claims that ads for its sugar-filled Nutella spread made it seem healthy, paying out about \$7 million.

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