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 Town, State, Zip Code Flemington, N.J. 08822
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 Attorney(s) for Plaintiff _____

**Superior Court of
New Jersey**

Somerset COUNTY
Law DIVISION

Docket No: SOM-L-367-11

CLAUDIA METCALF, on behalf of herself and all those

similarly situated

Plaintiff(s)

Vs.

FERRERO USA, INC.

Defendant(s)

**CIVIL ACTION
SUMMONS**

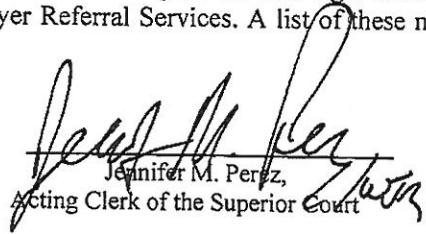
From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated: MARCH 4, 2011



Jennifer M. Perez,
Acting Clerk of the Superior Court

Name of Defendant to Be Served: FERRERO USA, INC.

Address of Defendant to Be Served: 600 COTTONTAIL LANE SOMERSET NJ 08873

NOTE: The Case Information Statement is available at <http://www.njcourtsonline.com>

**DIRECTORY OF SUPERIOR COURT DEPUTY CLERK'S OFFICES
COUNTY LAWYER REFERRAL AND LEGAL SERVICES OFFICES**

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main St.
Hackensack, NJ 07601

LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060

LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(800) 496-4570

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Justice
1st Fl., Suite 150
101 South 5th Street
Camden, NJ 08103

LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 N. Main Street
Cape May Court House, NJ 08210

LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
60 West Broad Street
P.O. Box 10
Bridgeton, NJ 08302

LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY:

Deputy Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd.
Newark, NJ 07102

LAWYER REFERRAL
(973) 622-6204
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:
Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street
Woodbury, NJ 08096

LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY:
Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House--1st Floor
583 Newark Ave.
Jersey City, NJ 07306

LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:
Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822

LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:
Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 S. Broad Street, P.O. Box 8068
Trenton, NJ 08650

LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:
Deputy Clerk of the Superior Court,
Middlesex Vicinage
2nd Floor - Tower
56 Paterson Street, P.O. Box 2633
New Brunswick, NJ 08903-2633

LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:
Deputy Clerk of the Superior Court
Court House
P.O. Box 1269
Freehold, NJ 07728-1269

LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:
Morris County Courthouse
Civil Division
Washington and Court Streets
P. O. Box 910
Morristown, NJ 07963-0910

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:
Deputy Clerk of the Superior Court
118 Washington Street, Room 121
P.O. Box 2191
Toms River, NJ 08754-2191

LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton Street
Paterson, NJ 07505

LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY:

Deputy Clerk of the Superior Court
Attn: Civil Case Management Office
92 Market Street
Salem, NJ 08079

LAWYER REFERRAL
(856) 678-8363
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division
P.O. Box 3000
40 North Bridge Street
Somerville, N.J. 08876

LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:

Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073

LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(908) 475-2010

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on behalf of herself and all those similarly situated

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CLAUDIA METCALF on behalf of herself
and all those similarly situated,

Plaintiff,

v.

FERRERO USA, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
SOMERSET COUNTY - LAW DIVISION
DOCKET NO.: SOM-L 367-11

Civil Action

**CLASS ACTION COMPLAINT
& JURY DEMAND**

Plaintiff Claudia Metcalf (hereafter "Plaintiff"), on behalf of herself and all those New Jersey residents similarly situated, by and through her undersigned attorneys, makes the following allegations and claims, upon information and belief except as to her own actions, the investigation of counsel, and the facts that are a matter of public record, against Defendant Ferrero USA, Inc. (hereafter "Defendant") as follows:

PARTIES

1. Plaintiff resides in New Jersey.
2. Defendant is a Delaware corporation with its principal place of business in Somerset County located at 600 Cottontail Lane Somerset, New Jersey 08873.
3. Defendant advertises and manufactures Nutella.

FACTUAL BACKGROUND

4. Plaintiff purchased a 13 oz jar of Nutella for her children in June 2010 based on the misleading print and television advertising by Defendant as set forth herein. Plaintiff

purchased the Nutella from Shop Rite located on Route 202 in Flemington, New Jersey at an approximate price of \$4.00. Plaintiff's children consumed most of the Nutella.

5. Plaintiff and the Class purchased Nutella because of Defendant's misleading representations that Nutella was "healthy," "nutritious," "part of a balanced breakfast" and made up of "simple quality ingredients" like "hazelnuts and skim milk."

6. Defendant's print and television advertising, as well as the product's label and packaging, are marketed to consumers in New Jersey, with a particular emphasis on mothers with young children.

7. Defendant sells significant quantities of Nutella to consumers in New Jersey.

8. Defendant's print and television advertising misrepresents that Nutella is part of a "healthy breakfast," makes up part of a "balanced breakfast," is "nutritious" and is comprised of "simple quality ingredients" like "hazelnuts and skim milk."

9. The packaging and labeling of Nutella by Defendant represent that it is a "balanced breakfast." This representation is combined by Defendant on the product's label with a picture showing fresh fruit, bread and orange juice. The Nutella label states tells consumers to "Start your day with Nutella spread . . ."

10. Defendant's Nutella Website <http://www.nutellausa.com> (last accessed February 24, 2011) contains two commercials accessed under the "News" link -- captioned "Silence" and "Pass." These commercials have been repeatedly run by Defendant in New Jersey over the last six years. These commercials emphasize the "delicious" taste of Nutella and how it is made from "simple quality ingredients." Defendant's Nutella commercials feature busy moms with children representing that that they "can use all the help I can get" and that serving their children

Nutella allows them to “feel good about serving” breakfast. The commercials feature happy and healthy children eating bread spread thickly with Nutella.

11. Based on Defendant’s print and television advertising as well as the representations contained on the packaging and label for Nutella, and in reliance on same, Plaintiff and the Class purchased Nutella. Plaintiff and the Class would not have purchased Nutella had it been correctly labeled and had Defendant not made the misrepresentations in the advertising of Nutella as set forth herein.

12. Defendant’s advertising represents that Nutella is made of “simple healthy ingredients” like “hazelnuts and skim milk.” Hazelnuts, however, make up only 13% of Nutella and skim milk makes up only 7%.

13. Assuming a 37 gram serving of Nutella, as recommended by Defendant on Nutella’s label, 21 grams of that serving are comprised of sugar.

14. After sugar, the second most common ingredient in Nutella is palm oil, a fatty acid.

15. Approximately 50% of the calories in Nutella are from sugar while approximately 50% are from fat.

16. Defendant’s Nutella packaging, when combined with Defendant’s print and television advertising directed to get moms to buy Nutella and serve it to their children, is misleading as it lists a 2 tablespoon serving. Buried within Defendant’s Nutella Website, Defendant’s paid nutritionist states that a 1 tablespoon serving is “appropriate” for children – not a 2 tablespoon serving. That only a 1 tablespoon serving is supposedly “appropriate” for children is never referenced in the print and television advertising by Defendant or on the actual label of Nutella.

17. Defendant's Nutella's packaging is also misleading as it represents that Nutella would comprise 17% of total fat and 18% of saturated fat of a child's daily allowance. But Defendant's calculations are based on a 2,000 calorie intake – the amount of calories an adult should consume. The American Heart Association recommends that children under 9 years of age consume, depending on their age and sex, between 900-1,400 calories a day. See <http://www.americanheart.org> "Table: Dietary Recommendations for Children" (last accessed on February 24, 2011). Thus, assuming 1,200 calories a day for a child, a single serving of Defendant's Nutella, as recommended by Defendant's label, would be more than 30% of a child's total fat allowance and more than 31% of their saturated fat allowance for the entire day, contrary to Defendant's misleading advertising

18. Along with their misleading labeling and television advertising, Defendant also heavily advertises Nutella in print focused on magazines purchased by mothers such as Working Mother, Family Circle, Good Housekeeping, Parents and Parenting. In those print advertisements, Defendant makes the same misleading representations as set forth herein.

19. Based on Defendant's misleading print, television and label advertising, Plaintiff and the Class had the expectation that they and their children would receive the advertised benefits of Nutella -- that Nutella was "healthy," "nutritious," part of a "balanced breakfast" and made up of "simple quality ingredients" like "hazelnuts and skim milk."

20. Contrary to Defendant's misleading advertising, Nutella is not "healthy," "nutritious," part of a "balanced breakfast," part of a "healthy breakfast" or composed of "simple quality ingredients" like "hazelnuts and skim milk," such that Plaintiff and the Class did not obtain the expected benefits from their purchase of Nutella. Instead, contrary to Defendant's

misleading advertising, Nutella is composed primarily of unhealthy saturated fat and processed sugar.

21. By virtue of its misleading and deceptive advertising, Defendant intended to convey to consumers that Nutella is nutritious and healthy for children. In fact, any claimed nutritional value and health benefits for children by eating Nutella, are premised on the other foods eaten with Nutella. Nutella itself conveys no nutritional value and is not healthy for children. Defendant's print, television and label advertising to the contrary is incomplete, not truthful and misleading.

22. Defendant intended Plaintiff and the Class as consumers to rely on its advertising and misrepresentations of the alleged nutritional and health benefits of Nutella for children to induce their purchase of Nutella.

23. Defendant's misleading advertising extends to its Website for Nutella which contains similar misleading advertising regarding the purported benefits of Nutella. Although Plaintiff did not rely on Defendant's Nutella Website, on information and belief, members of the Class relied on the Website.

24. The Nutella label and packaging contain a link to a Website <http://www.nutellausa.com> (last accessed February 24, 2011) showing happy and healthy children, with their mother, eating Nutella spread thickly on bread.

25. Clicking on the link "About Nutella" under the Website's Heading "Nutella & Breakfast" provides further misrepresentations from Defendant by a statement that Nutella "is a good combination for a balanced breakfast."

26. On Defendant's Nutella Website, under the link "Nutella and Nutrition," Defendant further advertises and misrepresents that: "Nutella® can form a part of a balanced

meal” and that with the “unique taste of Nutella®, kids may think they are eating a treat for breakfast while moms are helping nourish their children with whole grains.” Defendants’ advertising on its Website represents that Nutella is part of a “balanced meal.”

27. Defendant’s Nutella Website contains a further link to “Nutella Tips for Moms,” where Defendant utilizes fabricated questions and misleading answers from its paid nutritional endorser, Connie Evers. Under the “resources” link, Defendant’s Nutella Website goes so far as to contain a link to Ms. Evers’ Website, <http://nutritionforkids.com> (last accessed on February 24, 2011) where Ms. Evers advertises for sale information regarding children’s nutrition.

28. Defendant’s print, television and label advertising is further misleading and deceptive because it is contrary to the limited and inaccurate information Defendant sets forth buried within its Website.

29. For example, one of the “questions” and “answers” by Ms. Evers in the “Nutella Tips for Moms” link on Defendant’s Website is as follows: “Q: Why do you recommend using Nutella® as part of a balanced breakfast? Connie: Research reflects the importance of eating a balanced breakfast on a daily basis and the positive impact breakfast has on individuals. When used in moderation with complementary foods, Nutella® can form a part of a balanced meal. You can start your day with a genuine and tasty breakfast by spreading Nutella® hazelnut spread on a variety of bakery goods, preferably whole wheat or multigrain bread. Add a glass of 1% milk and juice or fruit to get the right fuel to start your day!”

30. Thus, based on Defendant’s Website, Nutella, according to Ms. Evers, has to be “used in moderation” with “complimentary foods” and “can form a part of a balanced meal.” The reference to “moderation,” “complimentary foods” and that Nutella “can” form a part of a balanced meal, are all conspicuously absent from Defendant’s print, television and label

advertising. Even those self-serving statements buried within Defendant's Website are inaccurate. Ms. Evers does not state that Nutella is a part of a balanced meal only that it can be a part of a balanced meal. None of this information is contained in Defendant's advertising or on the label. At no point does Defendant's paid "nutritionist" state or acknowledge that Nutella is comprised almost entirely of fat and sugar. Nor does she explain to consumers that Nutella adds no nutritional value to the meal and that the nutrition to be derived from the use of Nutella is entirely dependent on whatever else is being served.

31. Defendant's Nutella Website contains another "question" to and answer by Ms. Evers addressing why it is "good" to consume saturated fat for breakfast. "Q: Is it good to consume fat as a part of breakfast? Connie: Yes. The DRV (Daily Recommended Value) of fats is 65g, therefore you could spread out your fat intake throughout the day. Fat is an essential nutrient and necessary for a number of reasons, including providing taste and increasing satiety. A proper balanced breakfast containing protein, fats and complex carbohydrates will keep you feeling full for longer than a simple carbohydrate rich breakfast." This information is misleading as well since it is based on the DRV of fat for adults consuming 2,000 calories per day. Defendant's advertising is directed at mothers with young children for whom a 1,200 calorie intake is appropriate and who should consume far less than 65 grams of fat a day.

32. Another "question" and answer on Nutella's Website further emphasizes the misleading nature of Defendant's print, television and label advertising. "Q: What is an appropriate amount of Nutella® hazelnut spread to serve at breakfast? Connie: The key to enjoying Nutella® hazelnut spread at breakfast is an appropriate serving amount. For example, just 1 tablespoon is a good amount for moms to serve to their children on a slice of whole grain toast." Thus, buried in its Website, Defendant's paid nutritional endorser recommends that

moms serve their children only 1 tablespoon of Nutella. Defendant's print, television and label advertising, however, deceptively and misleadingly tout the health and nutrition benefits of Nutella for children while advertising that the recommended serving size as approved by Defendant is 2 tablespoons – or double what Defendant's paid nutritionist endorser states is "appropriate" for children.

CLASS ACTION ALLEGATIONS

33. This action is brought and may properly proceed as a class action, pursuant to the provisions of R. 4:32-1(b)(3). Plaintiff brings this action on behalf of herself and all others similarly situated.

34. The Class is initially defined as follows: "All New Jersey residents who purchased Nutella within six years prior to the filing of this Complaint."

35. Specifically excluded from the Class are: Defendant; Defendant's officers, directors or employees and their immediate family members; any entity in which Defendant has a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of Defendant and their immediate family members; any Judge presiding over this case and the members of their immediate families and judicial staff.

36. The Class for whose benefit this action is brought is so numerous that joinder of all members would be impracticable. Plaintiff reasonably estimates that there are thousands of purchasers of Nutella resident in New Jersey.

37. This Court can and should apply New Jersey law to all of the claims and issues asserted here.

38. Certification of the Class under the laws of New Jersey is appropriate because: (a) Plaintiff and all members of the Class reside in New Jersey; (b) Defendant's principal place of

business is located in New Jersey; (c) Defendant directed its advertising of Nutella to New Jersey residents; (d) Plaintiff and the Class received the advertising from Defendant in New Jersey; (e) Plaintiff and the Class made the decision to purchase in New Jersey; (f) Plaintiff and the Class purchased the Nutella in New Jersey; (g) Plaintiff and the Class made payments for the purchase of Nutella while resident in New Jersey; (h) the damages suffered by Plaintiff and the Class occurred in New Jersey; and (i) New Jersey has a strong interest in protecting its citizens and applying its laws to the claims and issues asserted here.

39. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs' claims arise out of the purchase of Nutella advertised and manufactured by Defendant which is the same or similar to those transactions entered into by other similarly situated Class members who likewise purchased Nutella.

40. Plaintiff does not have any interests antagonistic to the interests of the Class, and the Defendant has no defenses unique to Plaintiff.

41. The Class, of which Plaintiff is a member, is readily identifiable.

42. Plaintiff will fairly and adequately protect the interests of the Class and has retained competent counsel experienced in class and complex litigation.

43. There are questions of law and fact common to the members of the Class including but not limited to: (a) whether Defendant violated the CFA by committing any unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation in connection with their sale or advertisement of the Nutella to Plaintiff and the Class; (b) whether Defendant violated the CFA by knowingly concealing, suppressing or omitting material facts regarding Nutella with the purpose and/or intent that Plaintiff and the Class rely upon said concealment, suppression and/or omission in connection with the

advertisement or sale of the Nutella; (c) whether Defendant's acts, conduct and/or omissions contrary to the CFA were likely to deceive, mislead, induce and/or persuade Plaintiff and the Class into purchasing Nutella; (d) whether by its conduct Defendant has engaged in unfair or unlawful business practices as directed to Plaintiff and the Class; (e) whether there is a causal connection between Defendant's violations of the CFA and the ascertainable losses suffered by Plaintiff and the Class; (f) whether Defendant breached an express warranty that Nutella was "nutritious," part of a "healthy breakfast," part of a "balanced breakfast" and made of "simple quality ingredients like hazelnuts and skim milk"; (g) whether Defendant breached an implied warranty of merchantability that Nutella was "nutritious," part of a "healthy breakfast," part of a "balanced breakfast" and made of "simple quality ingredients like hazelnuts and skim milk"; (h) whether Defendant has been unjustly enriched by its actions as set forth herein; (i) whether Plaintiff and the Class have been injured by Defendant's conduct; and (j) whether Plaintiff and the Class are entitled to relief and, if so, the amount and nature of such relief.

44. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons: (a) it is economically impractical for members of the Class to prosecute individual actions; (b) the Class is readily definable; (c) prosecution as a class action will eliminate the possibility of repetitious and inconsistent litigation; (d) while the economic damage suffered by the individual class members is significant, the amount is minor compared to the expense and burden of individual litigation.

45. A class action will cause an orderly and expeditious administration of the claims of the Class. A class action will also foster economies of time, effort and expense and ensure uniformity of decisions.

46. The questions of law and/or fact common to the members of the Class predominate over any questions affecting individual class members.

47. The prosecution of separate actions by individual members of the Class would run the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the Defendant in this action. Further, the prosecution of separate actions by individual members of the Class would create the risk that adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

48. Defendant's unlawful and unconscionable commercial practices, deceptions, fraud, false promises, and misrepresentations as well as their knowing concealment, suppression and/or omission of significant or important facts, contrary to the CFA, have caused Plaintiff and the Class to suffer an ascertainable loss in the amount of their purchase price (plus any applicable interest) of the Nutella in question given that the Nutella was not "nutritious," "healthy," "part of a balanced breakfast" and made of "simple and quality ingredients" as represented by Defendant. Plaintiff and the Class also suffered an ascertainable loss because the Nutella was worth less than what Plaintiff and the Class paid, given that Nutella is comprised almost entirely of fat and sugar, and that Plaintiff and the Class would not have paid what they did had Defendant not made the representations and omissions as set forth herein in violation of the CFA.

49. The experience of Plaintiff is the same or similar to all others similarly situated in New Jersey who purchased Nutella advertised and manufactured by Defendant.

50. Plaintiff does not anticipate any difficulty in the management of this litigation.

COUNT ONE

CONSUMER FRAUD ACT

51. Plaintiff, on behalf of herself and others similarly situated, repeats and realleges all prior allegations as if set forth at length herein.

52. Plaintiff and the Class are consumers under New Jersey's CFA.

53. The Nutella advertised by Defendant to Plaintiff and the Class constitutes merchandise under the CFA.

54. Defendant's actions complained of herein occurred in connection with the advertisement of said merchandise to Plaintiff and the Class.

55. Defendant is subject to the New Jersey CFA.

56. Plaintiff and the Class purchased Nutella advertised and manufactured by Defendant, who committed and perpetuated unlawful and unconscionable commercial practices, deceptions, fraud, false promises, and misrepresentations against Plaintiff and the Class by deceptively and unlawfully advertising Nutella as "nutritious," "healthy," "part of a balanced breakfast" and made of "simple and quality ingredients." Defendant advertised Nutella by committing and perpetrating unlawful and unconscionable commercial practices, deceptions, fraud, false promises, and misrepresentations against Plaintiff and the Class by deceptively and misleadingly labeling the "nutritional" facts on its label and packaging based on a 2,000 calorie intake when Nutella is advertised for consumption by children.

57. Plaintiff and the Class purchased Nutella advertised and manufactured by Defendant, who knowingly concealed, suppressed and/or omitted significant or important facts, namely that Nutella was not "nutritious," was not "healthy," was not part of a "healthy or "balanced" breakfast, was almost entirely made up of unsafe and unhealthy fat and processed

sugar, purposely or with the intent that Plaintiff and the Class would rely on that concealment, suppression and/or omission in connection with their purchase of the Nutella.

58. Defendant meant to mislead and/or deceive Plaintiff and the Class.

59. Defendant's conduct, acts and/or omissions have deceived and/or were likely to have deceived Plaintiff and the Class.

60. Defendant's conduct, acts and/or omissions caused Plaintiff and the Class to purchase Nutella.

61. Defendant's unlawful and unconscionable commercial practices, deceptions, fraud, false promises, and misrepresentations as well as their knowing concealment, suppression and/or omission of significant or important facts, contrary to the CFA, have caused Plaintiff and the Class to suffer an ascertainable loss in the amount of their purchase price (plus any applicable interest) of the Nutella in question given that the Nutella was not "nutritious," "healthy," "part of a balanced breakfast" and made of "simple and quality ingredients" as represented by Defendant. Plaintiff and the Class also suffered an ascertainable loss because the Nutella was worth less than what Plaintiff and the Class paid, given that Nutella is comprised almost entirely of fat and sugar, and that Plaintiff and the Class would not have paid what they did had Defendant not made the representations and omissions as set forth herein in violation of the CFA.

COUNT TWO

BREACH OF EXPRESS WARRANTY N.J.S.A. 12A:2-313

62. Plaintiff, on behalf of herself and others similarly situated, repeats and realleges all prior allegations as if set forth at length herein.

63. Plaintiff and the Class purchased Nutella advertised and manufactured by Defendant which breached express warranties, pursuant to N.J.S.A. 12A:2-313, that the Nutella was “nutritious,” “healthy,” part of a “balanced breakfast” and comprised of “simple quality ingredients.”

64. The express warranties were contained in Defendant’s advertising as well as on the label of the Nutella and were made a basis of the bargain that Nutella would conform to those express warranties.

65. Defendant breached the express warranties as Nutella is not “nutritious,” “healthy,” part of a “balanced breakfast” and is not comprised of “simple quality ingredients.”

66. As a result of Defendant’s breach of the express warranties, Plaintiff and the Class have been damaged by their purchase price, applicable interest and other damages to be proven at trial.

COUNT THREE

BREACH OF IMPLIED WARRANTY N.J.S.A. 12A:2-314(1) & (2)

67. Plaintiff, on behalf of herself and others similarly situated, repeats and realleges all prior allegations as if set forth at length herein.

68. Plaintiff and the Class purchased Nutella advertised and manufactured by Defendant which breached the implied warranty of merchantability, pursuant to N.J.S.A. 12A:2-314(1) & (2), that the Nutella was “nutritious,” “healthy,” part of a “balanced breakfast” and comprised of “simple quality ingredients” so as to be fit for the ordinary purpose for which Nutella was advertised -- the consumption by young children.

69. Defendant breached the implied warranty of merchantability as the Nutella was not “nutritious,” “healthy,” part of a “balanced breakfast” and is not comprised of “simple

quality ingredients” such that the Nutella is not fit for the ordinary purpose for which Nutella is used.

70. The implied warranty of merchantability provided by Defendant to Plaintiff and all those similarly situated has not been excluded or modified.

71. As a result of Defendant’s breach of the implied warranty of merchantability, Plaintiff and the Class have been damaged by their purchase price, applicable interest and other damages to be proven at trial.

COUNT FOUR

UNJUST ENRICHMENT

72. Plaintiff, on behalf of herself and others similarly situated, repeats and realleges all prior allegations as if set forth at length herein.

73. Defendant advertised Nutella to Plaintiff and the Class based on false and misleading statements that Nutella was “nutritious,” “healthy,” part of a “balanced breakfast” and was comprised of “simple quality ingredients.”

74. However, Nutella is not “nutritious,” “healthy,” part of a “balanced breakfast” and is not comprised of “simple quality ingredients.”

75. Defendant has been unjustly enriched to the extent it has earned profits by the sale of Nutella due to its misleading advertising as set forth herein.

76. Plaintiff, on behalf of herself and the Class, seek restitution.

WHEREFORE, Plaintiff, on behalf of herself and all those similarly situated, demands judgment against Defendant as follows: (a) for certification of this matter as a class action pursuant to R. 4:23-1(b)(3), appointment of Plaintiff as class representative, and appointment of Plaintiff’s counsel as class counsel; (b) for a judgment that Defendant violated the CFA; (c) for a

judgment that Defendant breached the express warranties set forth herein; (d) for a judgment that Defendant breached the implied warranty of merchantability; (e) for actual damages; (f) for treble damages, pursuant to the CFA; (g) for reasonable attorneys' fees and costs of suit in connection with this action, pursuant to N.J.S.A. 56:8-19; (h) for consequential damages; (i) for pre-judgment and post-judgment interest; and (j) for such other and further relief as Plaintiff and all other similarly situated may be entitled or as the court deems equitable and just.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable pursuant to the Rules of Court.

DESIGNATION OF TRIAL COUNSEL

William J. Metcalf, Esq. is designated as trial counsel for Plaintiff.

CERTIFICATION PURSUANT TO RULE 1:38-7(b)

I hereby certify that, pursuant to R. 1:38-7(b), confidential personal identifiers have been redacted from documents submitted to the Court, and will be redacted from all documents submitted in the future.

NOTIFICATION TO ATTORNEY GENERAL

Pursuant to N.J.S.A. 56:8-20, Plaintiff will forward a copy of this Complaint to the Attorney General of the State of New Jersey upon the filing of this action.

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that, pursuant to R. 4:5-1, the matter in controversy is not the subject of any other pending action, except for two purported class actions filed in the Southern District of California, Hohenberg v. Ferrero U.S.A., Inc., Case No. 11-CV-00205-H- CAB and Rude-Barbato v. Ferrero USA, Inc., Case No. 11-CV-00249-DMS-BLM, the subject of any pending arbitration proceeding, nor is there any other action or arbitration proceeding contemplated and

that all known and necessary parties have been joined, except for the class members who shall be joined to this suit once class certification is granted by the Court.

WILLIAM J METCALF LLC
Attorneys for Plaintiff and all others
similarly situated

By:


William J. Metcalf

Dated: February 25, 2011

SOMERSET COUNTY SUPERIOR COURT
40 NORTH BRIDGE STREET
1ST FLR PO BOX 3000
SOMERVILLE NJ 08876-1262

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (908) 231-7054
COURT HOURS

DATE: MARCH 02, 2011
RE: METCALF VS FERRERO USA
DOCKET: SOM L -000367 11

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON EDWARD M. COLEMAN

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001
AT: (908) 231-7000 EXT 7706.


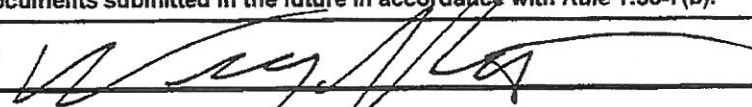
IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING. PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: WILLIAM J. METCALF
WILLIAM J. METCALF
14 COMMERCE STREET
SUITE 105
FLEMINGTON NJ 08822

JUTSINO

Appendix XII-B1

| | | | |
|--|---|---|---|
|  | <h2 style="margin:0;">CIVIL CASE INFORMATION STATEMENT</h2> <h3 style="margin:0;">(CIS)</h3> <p style="margin:0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</p> | | FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER: |
| | ATTORNEY / PRO SE NAME WILLIAM J. METCALF, ESQ. | TELEPHONE NUMBER (908) 782-0479 | COUNTY OF VENUE Somerset |
| | FIRM NAME (if applicable) WILLIAM J METCALF, LLC | | DOCKET NUMBER (when available) SOM-L 367-11 |
| | OFFICE ADDRESS 14 COMMERCE STREET, SUITE 105 FLEMINGTON, NEW JERSEY 08822 | | DOCUMENT TYPE COMPLAINT JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| NAME OF PARTY (e.g., John Doe, Plaintiff) CLAUDIA METCALF on behalf of herself and all others similarly situated, PLAINTIFF | CAPTION CLAUDIA METCALF on behalf of herself and all others similarly situated v. FERRERO USA, INC. | | |
| CASE TYPE NUMBER (See reverse side for listing) 508 | IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. | | |
| RELATED CASES PENDING? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | IF YES, LIST DOCKET NUMBERS Two S.D. California actions have been filed against Defendant by other Plaintiffs – Case Nos. 11-CV-205-H-CAB and 11-CV-249-DMS-BLM | | |
| DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN | | |
| THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE. | | | |
| CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION | | | |
| DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS | | |
| DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION Class Action Complaint brought on behalf of all New Jersey residents who purchased the product Nutella from Defendant. The Class is expected to number in the thousands. The Class Action Complaint alleges violations of New Jersey's Consumer Fraud Act, breach of express and implied warranties and unjust enrichment. | | | |
| DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION | | |
| WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | IF YES, FOR WHAT LANGUAGE? | | |
| I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> . | | | |
| ATTORNEY SIGNATURE:  | | | |

RECEIVED/FILED
 SUPERIOR COURT
 11 FEB 28 AM 8:33
 DEPUTY CLERK

Filed



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Centrally Managed Litigation (Track IV)

- | | |
|----------------------------------|--|
| 280 ZELNORM | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 285 STRYKER TRIDENT HIP IMPLANTS | 291 PELVIC MESH/GYNECARE |
| 288 PRUDENTIAL TORT LITIGATION | 292 PELVIC MESH/BARD |

Mass Tort (Track IV)

- | | |
|---------------------------------------|--|
| 248 CIBA GEIGY | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 282 FOSAMAX |
| 271 ACCUTANE | 283 DIGITEK |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 284 NUVARING |
| 275 ORTHO EVRA | 286 LEVAQUIN |
| 277 MAHWAH TOXIC DUMP SITE | 287 YAZ/YASMIN/OCELLA |
| 278 ZOMETHA/AREDDIA | 601 ASBESTOS |
| 279 GADOLINIUM | |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59