

1 KEITH E. EGGLETON, State Bar No. 159842
COLLEEN BAL, State Bar No. 167637
2 DALE R. BISH, State Bar No. 235390
EDMUNDO C. MARQUEZ, State Bar No. 268424
3 AMIR STEINHART, State Bar No. 275037
WILSON SONSINI GOODRICH & ROSATI
4 Professional Corporation
650 Page Mill Road
5 Palo Alto, CA 94304-1050
Telephone: (650) 493-9300
6 Facsimile: (650) 565-5100

7 Attorneys for Defendant
FERRERO U.S.A., INC.
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10 UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
12

13 In re FERRERO LITIGATION

CASE NO.: 11 CV 0205 (H CAB)

**DECLARATION OF KARL KROHN
IN SUPPORT OF FERRERO U.S.A.,
INC.'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

Date: November 7, 2011
Time: 10:30 AM
Before: Hon. Marilyn L. Huff

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1 I, Karl Krohn, hereby declare and state as follows:

2 1. I am the Category Manager for Nutella at Ferrero U.S.A., Inc., (“Ferrero U.S.A.”
3 or “the Company”). I have been employed by Ferrero U.S.A. since February 2005. The
4 following facts are within my personal knowledge and, if called and sworn as a witness, I could
5 and would competently testify thereto.

6 2. I have been Ferrero U.S.A.’s Category Manager for Nutella since September
7 2009. I am responsible for improving the overall performance and building the brand awareness
8 of Nutella. When I started in this position, Ferrero U.S.A. was in the process of rolling out
9 national advertising for Nutella. I understand that, before the national rollout, Ferrero U.S.A.
10 had tested some of the advertisements in certain markets, including Providence, RI and Albany,
11 NY. I also understand that, apart from these test markets, Nutella was not advertised in the
12 United States on television, radio or in magazines. I understand that, prior to 2009, marketing
13 for Nutella in the United States varied by state and by market and was limited to efforts such as
14 coupons, product sampling, in-store displays, and co-promotions with movie premieres.

15 **TELEVISION ADVERTISEMENTS**

16 3. I understand that the first television advertisement for Nutella that aired in the
17 United States was adapted from an advertisement that Ferrero Canada, Ltd had run in Canada. It
18 is my understanding that the Canadian advertisement was developed by GWP Brand Engineering
19 in Toronto, Ontario and filmed in Toronto by another Canadian company that is no longer in
20 existence.

21 4. Although it uses the same footage as the Canadian commercial, the advertisement
22 that appeared in the United States used a different script. A true and correct copy of the first
23 television advertisement that aired in the United States (nicknamed “Mom”) is being provided to
24 the Court as Exhibit 1.

25 5. Ferrero U.S.A. began airing the “Mom” advertisement in two test markets
26 (Albany, NY and Providence, RI) in February 2008. In January 2009, Ferrero U.S.A. began
27 airing this advertisement in Columbus, Ohio; Buffalo, New York; and Portland, Oregon. In
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1 August 2009, Ferrero U.S.A. began airing this advertisement nationally. To my knowledge, this
2 was the first time that Nutella had been advertised nationally in the United States.

3 6. Ferrero U.S.A. uses ZenithOptimedia (“Zenith”) to purchase placements for its
4 television advertisements. Our primary contact at Zenith is JoAnn Accarino, who works in
5 Zenith’s New York office.

6 7. In late 2009, Ferrero U.S.A. began working with Merkley & Partners (“Merkley”)
7 to develop two new television advertisements for Nutella. Our primary contact at Merkley is
8 Diane Hernandez, who works in Merkley’s New York office. Over the course of several months,
9 I worked with Ms. Hernandez and other members of Merkley’s New York office to develop the
10 concepts for two new television commercials. I attended meetings at Merkley’s offices in New
11 York and at Ferrero U.S.A.’s offices in New Jersey where we discussed and agreed on the
12 concepts, scripts, and storyboards for these new television advertisements.

13 8. I understand that Merkley contracted with Believe Media in Los Angeles, CA, to
14 produce (i.e., film) the advertisements. Believe Media invoiced Merkley directly for its services.

15 9. In June 2010, I traveled with members of Merkley’s New York office to oversee
16 the filming of these advertisements in Los Angeles, California, utilizing the scripts written in
17 New Jersey and New York. We were on site for approximately 12 hours for the filming of the
18 advertisements. During filming, the creative decisions and directions were made by Ferrero
19 U.S.A. and Merkley. Post production work was performed by Red Car, Inc. at their New York,
20 New York offices.

21 10. The two new television advertisements, nicknamed “Silence” and “Pass,” began
22 airing nationally in August 2010 and November 2010, respectively. True and correct copies of
23 “Silence” and “Pass” are being provided to the Court as Exhibits 2 and 3.

24 **PRINT ADVERTISEMENTS**

25 11. The print ads described in plaintiffs’ Motion for Class Certification and attached
26 as Exhibits 6 through 8 to the declaration of Greg Weston (Dkt. No. 51-2) first appeared in
27 national publications in the Fall of 2009. Those advertisements were developed in New Jersey
28 and New York. The first print ad appeared in Family Fun, Parenting School Years, Parents, and

1 Real Simple Family in September 2009. This print ad appeared in three different publications
2 (Cookie, Working Mother, and Ser Padres) for the first time in October 2009. In February 2010,
3 the ad appeared in one additional publication (Scholastic Parent). In August 2010, Ferrero
4 U.S.A. discontinued circulation of its ads in certain of these publications, while continuing to run
5 them in others, including Family Fun, Parenting, Parents, Scholastic Parent, and Working
6 Mother. These print ads also appeared in three additional publications at that time (All You,
7 Redbook and Women's Day).

8 WEBSITE

9 12. In August 2009, Ferrero U.S.A. launched a version of the Nutella website that
10 contained some of the content challenged in the complaint.

11 13. The Nutella website was updated in August 2010. These revisions incorporated
12 new information and tips from a nutritionist, Connie Evers, and added the web pages titled
13 "About Nutella," "Nutella and Nutrition," "Nutella Tips For Moms," as well as an updated
14 version of "Nutella Build Your Own Breakfast."

15 14. To the best of my knowledge, Ferrero U.S.A. worked with Vision Creative to
16 develop the concepts and content for the version of the website that launched in August 2009. In
17 2010, I worked with our public relations agency, MS&L, on the development of the concepts and
18 content for the updated website that launched in August 2010. The design and layout work for
19 the website was performed by Vision Creative out of its offices located in New Jersey. Our
20 primary contact at Vision (Andy Bittman) works in Vision's New Jersey office. Our primary
21 contact at MS&L (Elise Titan) works in MS&L's New York office.

22 NUTELLA LABEL

23 15. In the Fall of 2009, the Nutella label was restyled to include the statement, "[s]tart
24 your day with Nutella spread... An example of a tasty yet balanced breakfast: a glass of skim
25 milk, orange juice and Nutella on whole wheat bread." To my knowledge, this was the first
26 instance in which Ferrero U.S.A. used this statement. When the label was restyled, Ferrero
27 removed the phrase, "Spreadably Delicious™ on: whole wheat, multigrain and bakery breads[;]
28 bagels[;] English muffins[;] waffles[;] toast[;] croissants."

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CONNIE EVERS

16. In mid-2009, Ferrero U.S.A. asked MS&L to locate a potential spokesperson for Nutella. MS&L identified several potential candidates including Connie Evers. In October 2009, MS&L contracted with Ms. Evers to provide services for Ferrero U.S.A. It is my understanding that Ms. Evers resides in Beaverton, OR.

17. Ms. Evers engaged in many activities in an effort to promote awareness of the Nutella product, some of which required her travel to various destinations across the country. On three occasions, Ms. Evers attended events referred to as "Mommy Parties" where she discussed Nutella. Two of these events which Ms. Evers attended took place in Orange County and Riverside, California. Ms. Evers also attended a "Mommy Party" in Denver, Colorado.

18. To my knowledge, Ms. Evers' only other visit to California, related to Nutella, was to attend the "BlogHer Food" event in San Francisco, California on October 8 and 9, 2010. Ms. Evers also attended a similar blogging event, the Mommy Blogger Roundtable, in New York, New York on March 9, 2010.

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 7th day of October, 2011, at Somerset, New Jersey.


Karl Krohn

EXHIBITS 1-3

to this declaration will be manually filed with the Court, and will be maintained in the case file in the Clerk's office, pending approval of the Court to make such manual filing. These exhibits could not be e-filed because they contain electronic files which cannot be converted to PDF, specifically, three (3) video clips of television advertisements.