

# **EXHIBIT 1**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
NO. 3:11-CV-00205-H-CAB

IN RE FERRERO LITIGATION

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VIDEOTAPED DEPOSITION OF CONNIE EVERS  
C O N F I D E N T I A L  
Taken in behalf of Plaintiffs  
Tuesday, July 26, 2011

TSG JOB NO. 39549

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEW JERSEY  
3 TRENTON DIVISION  
4  
5 MARNIE GLOVER, individually  
6 and on behalf of all others  
7 similarly situated,  
8 Plaintiff,  
9 v. No. 11-CV-01086  
10 FERRERO USA, INC.,  
11 Defendant.  
12  
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14  
15 VIDEOTAPED DEPOSITION OF CONNIE EVERS  
16 C O N F I D E N T I A L  
17 Taken in behalf of Plaintiffs  
18 Tuesday, July 26, 2011  
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1 BE IT REMEMBERED THAT, pursuant to the Federal  
2 Rules of Civil Procedure, the deposition of CONNIE  
3 EVERS was taken before Marilyn T. Hoover, a Certified  
4 Shorthand Reporter in Oregon, Washington, and  
5 California; on Tuesday, July 26, 2011, commencing at  
6 the hour of 9:08 A.M.; at STOLL BERNE P.C., 209 S.W.  
7 Oak Street, Suite 500, in Portland, Oregon.  
8  
9 THE WESTON FIRM  
10 BY MR. JACK FITZGERALD  
11 888 Turquoise Street  
12 San Diego, California 92109  
13 On behalf of Plaintiffs  
14  
15  
16  
17 DAVIS & TALIAFERRO  
18 BY MR. GREG DAVIS  
19 7031 Halcyon Park Drive  
20 Montgomery, Alabama 36117  
21 On behalf of Plaintiff Glover  
22  
23  
24  
25 VIDEOGRAPHERS: Ms. Anna Austin, Mr. Mick Irwin

1 APPEARANCES (CONT.)  
2 SCOTT & SCOTT  
3 BY MS. JUDY SCOLNICK  
4 500 5th Avenue, 40th Floor  
5 New York, New York 10110  
6 On behalf of Plaintiff Glover  
7  
8  
9  
10 WILSON SONSINI GOODRICH & ROSATI  
11 BY MS. COLLEEN BAL  
12 650 Page Mill Road  
13 Palo Alto, California 94304  
14 On behalf of Ferrero  
15  
16  
17  
18 FERRERO USA, INC.  
19 BY MS. BETH M. KOTRAN  
20 600 Cottontail Lane  
21 Somerset, New Jersey 08873  
22 On behalf of Ferrero USA Inc.  
23  
24  
25

1 APPEARANCES (CONT.)  
2 TIMOTHY W. GRABE, P.C.  
3 BY MR. TIMOTHY W. GRABE  
4 2720 N.E. 33rd Avenue  
5 Portland, Oregon 97212  
6 On behalf of the Witness  
7  
8  
9  
10 STOLL BERNE  
11 BY MR. SCOTT SHORR  
12 209 S.W. Oak Street  
13 Portland, Oregon 97204  
14 On behalf of the Witness  
15  
16  
17  
18 LAW OFFICE OF RONALD A. MARRON, APLC  
19 BY MR. RONALD A. MARRON  
20 3636 Fourth Avenue, Suite 202  
21 San Diego, California 92103  
22 On behalf of Plaintiffs  
23  
24  
25

[Redacted text on page 62]

[Redacted text on page 63]

[Redacted text on page 64]

[Redacted text]

[Redacted text] s.

4 Q. Okay. And the second bullet point under the

5 "just a recap of our conversation," you say: "Beef to

6 actually brief M.D.'s, Ph.D.'s, R.D.'s, et cetera, on

7 breakfast," slash, "Nutella"?

8 A. Um-hum.

9 Q. "Any new findings or cutting edge research?

10 What is the motivation for them to spend 30 minutes on

11 the phone?" Do you see that?

12 A. Yes.

13 Q. Did you get an answer to your question of

14 whether there's any new findings or cutting edge

15 research to share with key opinionators?

16 A. As I recall, we discussed breakfast research

17 studies. My concern was that we're talking to very

18 high-level key opinion leaders and I didn't want to

19 just tell them something that's commonly known; and so

20 we discussed that we would be talking about breakfast

21 research, both in terms of the importance and also in

22 terms of kids skipping breakfast, and how Nutella

23 could be part of this.

[Redacted text]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2 THE WITNESS: -- Nutella is a tool for getting  
 3 your kids to eat breakfast on a busy morning, that  
 4 specific message is consistent.

[REDACTED]

20 Q. Okay. Is the messaging you were hired to  
 21 promote also conveyed on Nutella's label?  
 22 MS. BAL: Objection. Vague and ambiguous.  
 23 THE WITNESS: Yes.

[REDACTED]

[REDACTED]

8 Q. Okay. So the messaging was conveyed on  
9 posters as well?

10 A. Yes.

11 Q. Okay. Do you have those posters in your  
12 possession?

13 A. No.

14 Q. Was the messaging conveyed in print  
15 magazines?

16 A. Yes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text]

1  
2 Do you see the first sentence says: "As families  
3 rush around in the morning, breakfast may be viewed as  
4 yet another distraction?"  
5 A. Yes.  
6 Q. What support is this -- What support is  
7 there for this statement?  
8 A. It would be editorial copy based on research  
9 that shows a lot of American families skip breakfast  
10 and a lot of American children still miss breakfast  
11 many days of the week, especially as they get older.  
12 Q. What is the research that the editorial  
13 comment is based on?  
14 A. There are a number of surveys that show that  
15 children continue to -- I mean, there's a number of  
16 studies and surveys.  
17 Q. Okay. Do you have something specific in  
18 mind that supports this statement?  
19 A. One thing that comes to mind, American  
20 Dietetic Association Foundation did a family nutrition  
21 survey in 2010 that again showed many kids are  
22 skipping breakfast. And the research support is  
23 pretty clear: As children get older, especially, they  
24 skip more and more meals, but an alarming number of  
25 kids still go to school without breakfast.

1 Q. Okay. The 2010 American Dietetics  
2 Association study that you just referenced, that was  
3 published after this copy was on the Web site, wasn't  
4 it?  
5 A. Right. I just thought of that as an  
6 example, because you just asked me if I knew research  
7 support. There's others.  
8 Q. Okay. What was the support when this  
9 statement was made?  
10 A. There's many. There's a lot of research  
11 that supports that.  
12 Q. Okay.  
13 A. There's a whole body of evidence. I mean,  
14 for instance, the -- you know the review study; but  
15 there's -- there's a whole body of research.  
16 Q. And --  
17 A. And surveys and government data and market  
18 research, et cetera.  
19 Q. And this is all about skip -- habits in  
20 skipping breakfast?  
21 A. Yes.  
22 Q. Can you go to the paragraph below the bullet  
23 points. It says: "While we all know that eating a  
24 balanced breakfast is important, having time to feed  
25 our children a wholesome meal in the morning can be a

1 challenge." Do you see that?  
2 A. Yes.  
3 Q. Do you agree with the statement that "we all  
4 know that eating a balanced breakfast is important"?  
5 A. I think it's an editorial comment. I don't  
6 think that it means every single person in the United  
7 States of America knows that eating a balanced  
8 breakfast is important. It's an editorial comment.  
9 Q. Okay. And do you agree with that editorial  
10 comment?  
11 A. Yes, I do. I wrote it.  
12 Q. The second part of the sentence says:  
13 "Having the time to feed our children a wholesome meal  
14 in the morning can be a challenge."  
15 What support is there for that statement?  
16 A. I think it's common sense.  
17 Q. So no -- there's no research based support  
18 for that statement?  
19 A. I think I could find research.  
20 Q. Okay.  
21 A. But I think it's also common sense.  
22 Q. Okay. When you wrote this, you weren't  
23 thinking of some specific research; it's just an  
24 editorial comment?  
25 A. Yeah, there's a research study right there;



1 it compiles 47 studies.  
2 Q. At the bottom?  
3 A. Um-hum.  
4 Q. You're referring to the footnote?  
5 A. Um-hum.  
6 Q. That footnote is relating to the paragraph  
7 beforehand, isn't it?  
8 A. Yes. But that Rampersaud study, breakfast  
9 habits, nutritional status, body weight and academic  
10 performance in children and adolescents is actually a  
11 compilation of 47 --  
12 Q. Right.  
13 A. -- pieces of work.  
14 Q. Okay. Does --  
15 A. So there is, you know, just there, there's  
16 research backing.  
17 Q. Okay. Does Rampersaud or any of the 47  
18 studies that it summarizes talk about whether mothers  
19 have time to feed children a meal in the morning?  
20 A. I -- I would have to look at that. I don't  
21 know.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21 Q. Okay. The idea of the battle at breakfast  
22 and what you've just described as a mother, is there  
23 any research-based authority for those things you just  
24 described?  
25 A. Right. Market -- Market research that talks

1 about -- you know, that goes into detail; there's  
2 market research that address the barriers why kids  
3 skip breakfast.

4 Q. Okay. What is that research specifically?

5 A. There's a number of -- I don't have a  
6 specific citation, but it -- you know, I've been  
7 exposed to it a number of times.

8 Q. How many research studies support that?

9 A. I don't know.

10 Q. And, I'm sorry. You said that these were  
11 market studies as opposed to nutrition studies?

12 A. Because I've worked with a number of  
13 industry clients, they often --

14 (Reporter request.)

15 THE WITNESS: Because I work with food industry,  
16 they often contract with market research firms, and I  
17 have been exposed to this data, as well as heard it  
18 anecdotally from a lot of families that I talk to and  
19 work with.

[REDACTED]

[REDACTED]

[REDACTED]

15 Q. Is "balanced breakfast" a synonym for  
16 "healthy breakfast"?

17 A. Yes.

18 Q. So "balanced" is -- in this context, it's a  
19 euphemism for "healthy"; right?

20 A. Yes.

21 Q. And occasionally Ferrero has talked about  
22 healthy breakfasts featuring Nutella, correct, as  
23 opposed to balanced breakfasts?

24 A. I believe so.

[REDACTED]

[REDACTED]

- 1 Q. Okay. This number, "Sixty-six percent of
- 2 moms want to provide something their child will eat
- 3 without supervision," do you have an understanding of
- 4 where that number is derived from?
- 5 A. My understanding is from this Just Kid Inc.
- 6 March 2009 survey. That's my understanding.

2 Q. Do you see under the heading "breakfast  
 3 positioning and usage," the first bullet point, it  
 4 says: "It can be difficult for moms to persuade their  
 5 children to eat breakfast."  
 6 Is that an editorial comment, or is there a  
 7 specific research-based source for that statement?  
 8 A. Again, as I've referenced, market surveys,  
 9 American Dietetic Association -- many studies,  
 10 including Rampersaud. Children don't eat breakfast.  
 11 A lot of children are skipping breakfast, and that is  
 12 what this is referring to.

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. Okay. What percentage of children skip  
 14 breakfast?  
 15 A. It varies among studies, but pretty much all  
 16 the surveys and studies that I look at have -- have  
 17 that data; and it varies among ethnic groups,  
 18 socioeconomic groups, et cetera, et cetera. There's a  
 19 body of research and surveys on that.

[REDACTED]

[REDACTED]