

False Advertising

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Abstract

Have you ever come across the advertisement campaigns that these big companies nowadays run? Well, I think you might have.

It's easy to spot such advertisements once in a while nowadays.

But what do you think about them?

Are they genuinely doing it just to support themselves or to earn a huge amount of profit?

Well, the answer to this could be two folds.

These big firms might run these ad campaigns to spread awareness about their brand amongst the people or just to earn profit by increasing their presence in the people's lives out there. Every business that focuses on maximizing its business or the scalability or the profit of the business is successful nowadays.

And to reach that success, these big firms can go to any limits and my paper deals with one such scenario where the people have been harmed and have suffered a lot due to these ad campaigns.

In my paper, we will discuss the famous advertisement campaign Pepsi ran in the year 1995 to win the Cola war with its opponent coca cola. The campaign was called "Drink Pepsi, get stuff."

This campaign was a huge example of false advertising as well as which raised the question of whether advertisements were an offer to the public or not.

Introduction

Without further ado, let's begin the topic of the research paper that deals with the famous case of Leonard v. PepsiCo, Inc., 1995.

Background

This is a famous case law that deals with questions about the advertisements that these big firms nowadays run.

There was a young guy around 20 years of age from Seattle named Leonard who suffered a lot due to a false advertising campaign run by Pepsi in the year 1995.

The marketing campaign was run so that the consumers could earn some Pepsi points from each purchase made of a Pepsi bottle and then redeem these points for some super fashionable merchandise with the Pepsi logo on it.

The products that they offered in the merchandise were T-shirts, shoes, and jackets, and had a catalog built for it but to the surprise, the commercial aired that Pepsi would offer a Harrier Jet for the 7 million Pepsi points.

The 20-year-old college student, Lenoard, taking the offer of Harrier jet seriously started to collect the 7 million Pepsi points to win the prize, but did he get the prize?

So let's see what happened to him.

Problem Statement

The problem that arose in the case was the 20-year-old guy saw the offer on the commercial as real, but the company was just joking about it!

So was this commercial an offer to the viewers? Or was it just another example of false advertising?

Research Methodology

I used the doctrinal method along with the qualitative method for my whole research. The study focuses on an extensive study of the data collected from the websites, various journals and articles publications, documentaries, and newspaper magazines which focused on the aspects of the above-stated case.

Research Objectives

1. Does Pepsi owe Leonard a Harrier Jet?
2. Was the Pepsi commercial an offer?
3. Was the commercial a case of false advertising?
4. Did the commercial as an offer create a power of acceptance in the audience?
5. Was the offer of Harrier Jet reasonable, objectively?
6. Is the statute of fraud a defense?

Chapter I

The 90s was the era of the ColaWars¹.Pepsi knew that the brand Coca-Cola was its competition. To win the competition, they came up with intense ways of advertising their product.

Pepsi wanted to win the cola war and become the leader instead of Coca-Cola as back then Coca-Cola was the leader as it had the original cola.

Pepsi has worked with celebrities such as Madonna, Michael Jackson, Marlon Brando, and Britney Spears to advertise their products to the Pepsi generation and put Coke on the defensive side.

Since the beginning, Pepsi was an underdog, but it became famous due to its advertising style.

To win the war, they introduced another campaign called “Drink Pepsi, get stuff.”

¹ Coke v Pepsi

The underlying theme of the campaign was to ask people to drink more Pepsi so that they can get more stuff out of it.

They aired a commercial stating Pepsi points, one needs to get specified stuff from Pepsi.

The commercial stated that for 80 Pepsi points, one would get a T-shirt. For 1200 Pepsi points one would get a leather jacket and for 125 Pepsi points, one can get shades and so on.

They built a new Pepsi stuff catalog for the same and at the end of the commercial they stated without a disclaimer that for 7 million Pepsi points one will get a Harrier fighter jet.

John Leonard, believing the commercial, made up his mind to win the prize.

He did some rough calculations that the actual cost of Harrier Jet would be around \$30-\$32 million.

But what Pepsi offered for the same was 7 million Pepsi points which was a lot less as compared to the actual amount.

John, at all costs, wanted to see the opportunity and change his world. To do so, he needed someone who could join him in the same course.

He had only one person in his mind as adventurous as himself, who could join this battle, an adventurous old person with a huge amount of money in his bank account, none other than Todd Hoffman.

They had a great friendship over their mutual love for climbing the mountains. During climbing various mountains, their friendship grew stronger and the bond was unbreakable.

John told him about the Pepsi commercial and made him see the commercial, and when he was satisfied that he was in it, he asked John to make a business plan for the same.

John made a business plan that was focused on collecting 7 million Pepsi points to acquire the Harrier jet.

According to his business plan, the total cost of collecting the 7 million Pepsi points would be around dollar 4,300,000 million.

So he strategized that he gets five Pepsi points for one 12-pack of Pepsi.

And to get 7 million Pepsi points he needs to buy 1.4 million of such 12 packs.

That if we put it in layman's language would be around 16 million cans of Pepsi.

In addition, to store all the cans, he would have required six lakh feet of Storage space.

He made the plan to hire a company called Labor Ready which was providing temporary labor and he hired them to work on the storage and calculate the cans for him and when the actual score meets up, telling him that the work is done.

But in all this, Hoffman saw some pitfalls.

He asked questions such as -

Q: Is it legal to own a Harrier jet?

John found the answer to this question, by discussing it with a spokesperson of the Pentagon, who said that it is legal to own a Harrier jet if it does not have any missiles or radar jamming stuff on it.

Q: What will they do once they get the jet?

John answered that they could raise a whole another business out of it or maybe use it for air shows, ads, movies, and whatnot!

This could be a huge financial blessing for them.

Q: What if they fail to collect points in time?

John researched well and came across the fine print in the Pepsi catalog stating that they can buy Pepsi points for 10 cents apiece and so long as they submitted a minimum of 15 points, they could buy the balance of Pepsi points.

Now, as per this discovery, the cost came down from 4.3 million dollars to 700 K dollars.

And with all the questions settled, Hoffman and John began their new adventure.

Chapter II

As per the calculations of John and Todd, they required dollars 700,008.50 to legally own a jet.

They collected the points and found the address of the PO box where Pepsi points were to be submitted.

The PO box was situated in Young America, Minnesota.

This place was a fulfillment house for many others like camel bucks, Marlboro Man, or Pepsi points.

John and Todd wanted to safeguard the deal and decided that John would fly to Miami from his hometown, Seattle, and then to Minnesota and deposit the check.

Along with him would be sent a paralegal to keep everything under control.

As the check was deposited, Pepsi got to know about it.

Pepsi thought that John and Todd saw this as a money-grab opportunity and they might want a settlement of millions of dollars by sending a check of such absurd nature.

It was a joke to them.

They didn't want to pay any attention to this matter as doing so could encourage others to come up with the same cause against them.

So, they wanted it to settle as the legal process could cost them a lot.

On the other hand, while John and Todd were waiting for the reply, they got the answer from Pepsi which said -

“Thanks for the effort. Ha ha ha. It was meant to be a joke.
For your troubles, here are coupons for two cases of Pepsi.”

Hence, they did not answer whether they will get any sort of jet or not.

They both went to the famous lawyer, Larry Schantz for help on this matter. He with his team discussed the matter and decided to take action against Pepsi.

They drafted a letter saying that in the commercial you made the offer and we accepted your offer. Now, Pepsi has to deliver the offer.

They further focused on the fact that they met the requirements of the commercial to win the prize so they should now perform on the offer and this is not a joke.

They have got the funds and the funds are real so they should act accordingly.

On this front, Pepsi filed a lawsuit against John in New York. They chose New York as it was a favourable spot for them.

They did it before John could do so as it was a great move.

John was in trouble with this lawsuit and helicopters were hovering over his house.

Chapter III

Pepsi along with its lawyers and BBDO lawyers and insurance company lawyers sued John Leonard.

Their main argument was whether it is legal for anyone to own a Harrier Jet.

And as per the law for any offer to be legitimate, it has to be legal.

Pepsi in this case, wanted a settlement as going for long proceedings could have posted them a huge amount of money and if they lost it then they could have easily lost the cola wars too which they never would have wanted to.

The next thing Pepsi did is that they change their ad where Pepsi points for the Harrier jet went from 7 million to 700 million.

In their opinion, this would have made it a not-so-good deal and anyone else would not think about going for it.

Besides this, they put in parentheses “Just kidding” to make people aware that it is a joke and not a serious offer.

As per John and Todd, this change meant that they own up to their mistake and admit that it was an offer.

But Pepsi claimed that they did so so that anyone else apart from John could not turn up and claim the prize because there is a little probability of another John out there.

Pepsi lawyers called them for settlement and offered them about three-quarters of a million dollars which is a huge amount of money.

But they were not in it for the money and they canceled the deal of settlement and stated they wanted the jet itself.

Chapter IV

Now, the settlement was not an option. They opted to fight the case. For the same John and Todd hired the famous lawyer, Michael Avenatti, who had a great record of winning cases.

He took up the case and strategized that this issue needs to be brought up in the public eye with the help of interviews, radio shows, and talk shows to gain support against such a big firm like Pepsi.

John did various interviews and they all were a success but to counter attack Pepsi started that they wanted the money and nothing else.

To which John answered that if they would have wanted the money, they could have agreed to the settlement contract but they did not. They are after the Jet and not the money.

Avenatti argued that Pepsi's target audience was kids and teenagers and the ad was designed such that kids were convinced to believe that by drinking Pepsi they could get the jet and John was a Pepsi kid too.

But as we know, Pepsi had the upper hand, they somehow managed to make Pentagon officials announce that owning a Harrier jet is not demilitarized and it can not be sold to be public.

Hence, all the arguments of John's lawyer stood powerless.

Carrying on his research, Avenatti came across the fact that the same commercial was run with a disclaimer relating to the unavailability of jets in Canada while in the US it was not.

There was some serious reason behind it.

Additionally, he tumbled up on the past scandals of Pepsi. One such scandal was *Numbers Fever*.

They ran a campaign stating that people could win money by collecting bottle caps that had numbers over them. If one gets 3 numbers, they win a certain amount of money like 100 pesos, 500 pesos, etc.

The main prize was one million Philippine pesos which was equal to US dollar 40,000.

The number chosen was 349.

But what did happen was due to some technical error more than one bottle cap had this number and due to this reason there was more than one winner.

The company denied the prize stating the reason for the computer error. It was a huge marketing scam.

People were hurt and they rushed to Pepsi offices and there were riots. In the chaos, people even lost their loved ones.

The Pepsi sale trucks were even firebombed and at the moment rival bottlers found the perfect moment to even blast one of Pepsi's plants killing its three employees.

Therefore, with such proof and arguments, Avenatti came up with a strategy to defame Pepsi by putting up billboards that were negative and incriminating in nature against Pepsi.

Then Hoffman denied it as John could have been sued for harming the brand if he did so as well as causing harm to gain what one wants is pure blackmail. So, they chose another direction.

John joined Todd and then they hired a new lawyer named David Nachman.

David had previously fought battles against Pepsi and he took up their matter because of his previous cases.

Chapter V

Pepsi never wanted John to face the jury but John had all the right to do so.

Nevertheless, Judge Kimba Woods was appointed to decide their case and she was a good judge but here she was a disappointment as she had a history of favoring big firms in her past decisions.

Pepsi asked for Summary judgement² in the case. Summary judgement is a mechanism to decide a case before it even gets a jury.

It was done by Pepsi as it had the upper hand and it wanted to not lose the battle at any cost.

John's lawyers asked for the depositions³. Depositions are a process whereby someone is placed under oath and they have to answer questions about what transpired.

But they were denied depositions too as Judge said that she already knows the facts of the case, she has seen the ad and had the catalog too and she knows correspondence between Leonard and Pepsi.

If they would have allowed the depositions, they would have asked Pepsi -

²Summary judgement is a judgement entered by a court for one party and against other without a full trial.

³ Witness's sworn out-of-court testimony.

Q: Why do they run the ad with a disclaimer related to the unavailability of the jet in Canada and without any disclaimer in the US?

Q: Why did they raise the point in the ad from 7 million to 700 million?

Q: Why is it they did not make it clear that it was a joke?

Q: Wasn't it the intention to make children believe that getting the jet was achievable?

Finally came Wood's judgement -

- She was in the unusual position of trying to explain humor.

“Humour can be dissected as a frog can, but the thing dies in the process.”

- She said no school would make a parking space for a student's fighter jet.
- She criticized the commercial for not having the pilot wear a helmet.
- All in all, she said that case did not have merit.
- Rather than deciding the matter she was more focused on who is the reasonable person who could believe this offer to be legitimate.
- She said that the offer that was made would not have been seen by a reasonable person as a legitimate offer.

“That no reasonable person could find this ad credible.”

- From her perspective, it was not a legitimate offer.

But John still says it's a legitimate offer as it is not just him who thought it was an offer when he first watched the ad but millions of his peers too believed that it was a legitimate offer.

Todd believes that it was a corporate decision from a corporate judge as it's the target audience who needs to decide the credibility of the ad as it was meant for them and if they find it credible then it is!

And in his opinion, the majority of the target audience found the offer credible.

Conclusion and Suggestion

As per the statute of frauds⁴, the absence of any written contract led to the granting of summary judgment.

Therefore, from the given research we can conclude that ads are not offered as they don't create a power of acceptance in an offer.

As well as it won't be taken seriously by a reasonable and objective person. A reasonable person would have understood the humor in the ad and not taken such actions.

⁴ Written legislation or common law that requires that certain contracts be written to be valid.

All in all, courts do not consider ads as offers but rather as invitations to begin negotiations.

References:

1. h2o.law.harvard.edu
2. hoaglandlongo.com
3. casemine.com
4. Netflix.com