
The time Pepsi got sued for a \$33m fighter jet

1 message

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The time Pepsi got sued for a \$33m fighter jet

In 1996, Pepsi ran a promotion that jokingly suggested entrants could win a military aircraft. One man took it very seriously.

BY ZACHARY CROCKETT

In the spring of 1996, Pepsi debuted a hot new TV **commercial**.

It opens with a cocky teenager donning a Pepsi shirt. The text, “T-SHIRT 75 PEPSI POINTS,” appears to the beat of a military drum line.

Said teen then swaggers through a door in a leather jacket (“LEATHER JACKET 1,450 PEPSI POINTS”) and flips on a pair of blue-tinted sunglasses (“SHADES 175 PEPSI POINTS”).

The narrator chimes in — “*The more Pepsi you drink, the more great stuff you’re gonna get!*” — and the scene shifts to the teen landing a computer-generated **Harrier fighter jet** in front of his high school, blowing the clothes off a bewildered principal in the parking lot.

“HARRIER FIGHTER ... 7,000,000 PEPSI POINTS” flashes across the screen as the music crescendos into a fade-out.



Via YouTube (nonfps)

The commercial was the national debut of a promotion called **Pepsi Stuff**.

It was, per *The New York Times*, the “largest promotional campaign in the company’s history” — one that Pepsi hoped would steal market share from Coca-Cola at the tail end of the decades-long **Cola Wars**.

In total, this promotion cost Pepsi an **estimated \$200m** (\$350m today) to roll out, including \$125m worth of merchandise.

Pepsi Stuff worked like so:

1. Billions of Pepsi products around the US were marked with “**Pepsi Points**.” A 2-liter bottle of Pepsi was worth 2 points; a 12-pack of cans yielded 5.
2. Customers could save up the points and redeem them for items listed in a **Pepsi Stuff catalog**.

3. Customers could also purchase Pepsi Points for **10 cents each**.

The catalog included **53 items** in total — most of which were your run-of-the-mill corporate swag: T-shirts, hats, and beach towels.

Various items included in the Pepsi Stuff catalog

And the number of points required to redeem them



Pepsi cup:
1 point



Pepsi 2-liter:
2 points



Pepsi 12-pack:
5 points

Item	Points	Item	Points
Phone card	35	Sunglasses	175
CD case	40	Duffel bag	200
Baseball cap	60	Sweatshirt	250
T-shirt	80	Sandals	300
Beach towel	95	Watch	325
Beach shorts	110	Denim jacket	400
Sports balls	120	Leather jacket	1,450
Beach chair	140	Mountain bike	3,300

Collected from a vintage copy of the Pepsi Stuff catalog (1996)

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Notably absent from this list of items was the **Harrier fighter jet**.

Most of the kids who saw the commercial — members of the so-called “**Pepsi Generation**,” a new class of youthful consumers who cared more about lifestyle than brands — figured that the jet was part of Pepsi’s zany sense of humor and not a real prize.

But in Seattle, Washington, a young man named **John Leonard** wasn’t laughing.

I’ll take the jet

Leonard first saw the commercial during a Pacific Northwest test run in February of 1996.

Then a 21-year-old business student at Shoreline Community College, he saw the Harrier jet as a legitimate offer — and sniffed an opportunity for promotional arbitrage.

He knew, from an interest in flying, that the Harrier was a US Marine Corps aircraft used extensively in the **Gulf War**. Capable of taking off vertically and carrying 10k

pounds of bombs, it had been **called** the “most captivating and the most dangerous plane in the US military.”

Moreover, it **cost** ~**\$33m** to manufacture and — needless to say — wasn’t available to the general public.

At **7m** Pepsi Points, the jet was a steal. So, he decided to go for it.



Leonard during a CBS interview in 1996 (CBS News, via YouTube)

Leonard was a 10-cans-per-day kind of guy.

But even at this high rate of consumption, collecting 7m points was a daunting task.

Each 12-pack of Pepsi was worth 5 points, meaning he’d have to consume **16.8m cans** to reach his mark. That amounted to:

- **46k** cans every day for 1 year
- **552k** total ounces of Pepsi
- **2.5B** calories and **689m** grams of sugar
- ~**\$4m** in expenditure

Luckily, there was a workaround.

The catalog only required participants to submit 15 points they’d collected from cans and bottles; the rest could be bought directly from Pepsi for **10 cents each** by mailing in a check.

All Leonard had to do to get 7m points was **raise \$700k**.

Over several months, the enterprising college student put together a business plan, researched case law on promotional advertisements, and convinced several investors — wealthy clients he'd met while **working** as a climbing guide — to front the cash.

On March 28, 1996, he **mailed** 15 Pepsi Points, along with a check for **\$700,008.50** (including shipping), to Pepsi and politely asked for his jet.

Several weeks later, Leonard received a reply from Pepsi.

The company returned Leonard's check, threw in some pity coupons, and made it clear that the jet in the commercial was purely "fanciful."

Mr. Leonard,

May 7, 1996

The item that you have requested is not part of the Pepsi Stuff collection. It is not included in the catalogue or on the order form, and only catalogue merchandise can be redeemed under this program.

The Harrier jet in the Pepsi commercial is fanciful and is simply included to create a humorous and entertaining ad.

We apologize for any misunderstanding or confusion that you may have experienced and are enclosing some free product coupons for your use.

Sincerely,
PepsiCo, Inc.

A mock-up of the response Leonard received from Pepsi corporate (legal proceedings, via Justia)

By this point, Leonard had already sunk **~\$4k** into consulting with legal professionals and researching case law on deceptive advertising.

Instead of backing down, he secured an attorney and doubled down on his demand.

PepsiCo, Inc.,

May 14, 1996

Your letter of May 7, 1996 is totally unacceptable. We have reviewed the video tape of the Pepsi Stuff commercial ... and it clearly offers the new Harrier jet for 7,000,000 Pepsi Points. Our client followed your rules explicitly....

This is a formal demand that you honor your commitment and make immediate arrangements to transfer the new Harrier jet to our client. If we do not receive transfer instructions within ten (10) business days of the date of this letter you will leave us no choice but to file an appropriate action against Pepsi....

Sincerely,
Counsel to John Leonard

A mock-up of Leonard's correspondence with Pepsi (legal proceedings, via Justia)

Leonard's letter made the rounds at PepsiCo and eventually ended up in the hands of **BBDO New York**, the advertising firm Pepsi had retained to create the commercial.

A VP at the firm, Raymond E. McGovern Jr., seemed perplexed by Leonard's persistence.

"I find it hard to believe that you are of the opinion that the Pepsi Stuff commercial really offers a new Harrier Jet," he **wrote** back. "No reasonable person would agree with your analysis of the commercial."

So, Leonard decided to go to battle for his fighter jet.

A battle in the courts

With the help of counsel, Leonard filed suit, claiming that Pepsi's ad had constituted as a binding offer, and that the company had breached contract by refusing to exchange 7m Pepsi Points for a Harrier jet.

A flood of news reports followed the filing — and Pepsi made no qualms about publicly sharing its thoughts on the matter.

"Tens of millions of Americans, and people around the world, saw the spot, got the joke, and laughed," a PepsiCo spokesman **told** CBS News. "Mr. Leonard saw the spot,

hired business advisers and lawyers, and decided to take legal action."

"I didn't want any publicity on this," Leonard **retorted**. "I'm not trying to make a statement. I'm not looking for a settlement. I just want a plane."

In an interview with *The Associated Press*, he **reiterated** that he was "simply trying to take Pepsi up on an offer it made to the public."



An AV-8B Harrier aircraft prepares for vertical takeoff near Catania, Italy. (Via Gisele Tellier/Getty Images)

PepsiCo, the parent company of Pepsi beverages, was swift to counterattack.

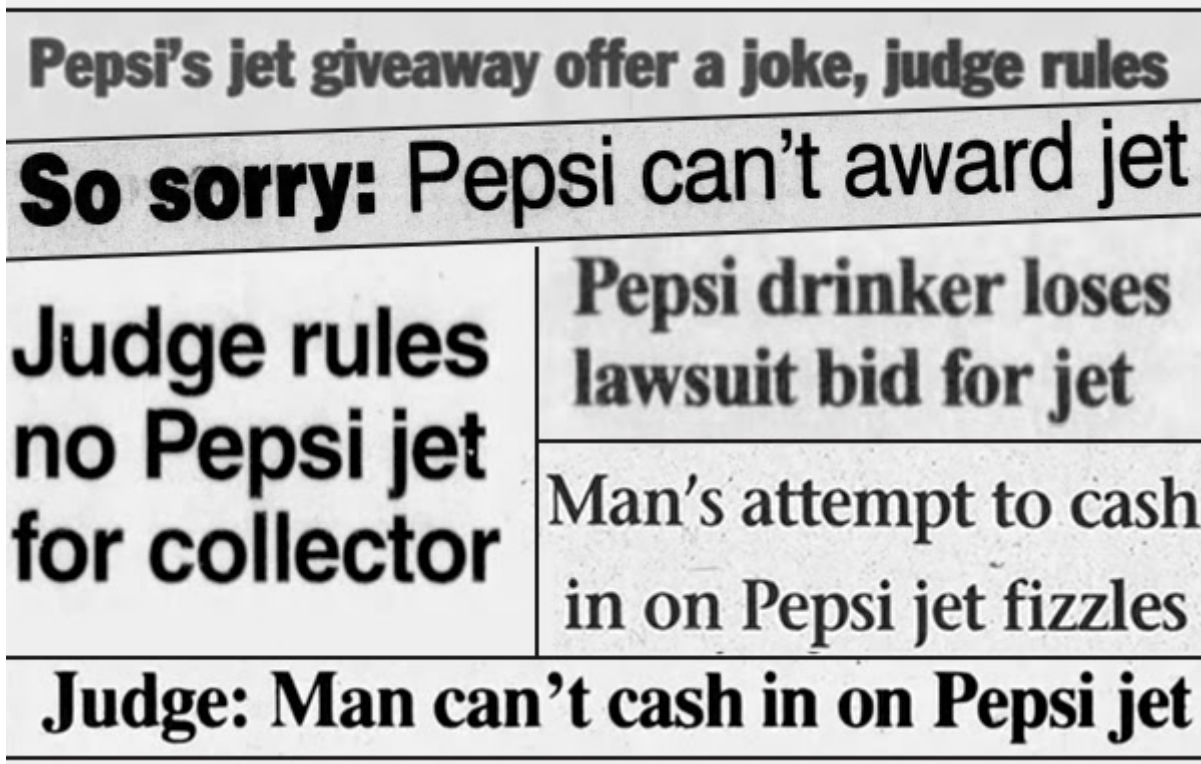
The conglomerate responded with its own suit in New York, seeking to recoup **\$88,162** in attorney's fees and dismiss Leonard's claims as frivolous without going to trial.

As things often play out in America's justice system, the case turned into a **3-year-long** procedural slog before making its way to **Judge Kimba Wood** of New York's Southern

District Court.

Ultimately, the case came down to whether Pepsi's TV ad constituted a legally binding "offer."

And on Aug. 5, 1999, Judge Wood **ruled resoundingly** in Pepsi's favor.



Newspapers around the country followed Leonard's saga (various news sources; 1999)

The decision came down to 3 key **points**:

1. **Advertisements are generally not considered offers in contract law:** "Ads for the sale of goods (TV, radio, newspaper, newsletter)... are merely the *requests* to offer or negotiate" and an advertiser must accept an offer from a customer for it to be legally formed.
2. **The ad was obviously a joke:** An "ordinary, reasonable person" would conclude that a soft drink company would *not* give away a fighter plane as part of a promotion.
3. **An enforceable contract requires both parties' signatures:** Under existing law, any contract for the sale of goods worth \$500+ must be evidenced by writing; Pepsi did not sign anything.

Leonard would not get his jet.

But as a Defense Department spokesman clarified, a fully demilitarized jet probably wouldn't have been much fun, anyway.

"Even if the lad were able to get the plane from Pepsi, it would not be one he could fly," the official **said** at a Pentagon briefing.

He moved to Alaska, where he became the chief mountaineering ranger at Denali National Park. In recent years, he was promoted to the DC Bureau of the National Park Service.



Pages from Pepsi's 1996 promotional catalog (via eBay)

Despite — or perhaps, thanks to — the controversial press, Pepsi Stuff was a massive success.

The company did not respond to requests to comment on the campaign's impact. But in 1996 one Pepsi executive **called it** "by far the most successful promotion" the company had ever run.

After Leonard's lawsuit was filed, the Harrier jet commercial continued to air, but with some minor tweaks to drive home the joke.

The points for the jet were increased from 7m to 700m, and 2 words were tacked onto the closing text: “just kidding.”

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