

PEPSI POINTS." Inspired by the commercial, Leonard set out to get a Harrier jet. He consulted the Pepsi Stuff catalog, but it did not contain any entry or description of the Harrier jet. The amount of Pepsi Points necessary to get the listed merchandise ranged from 15 for a "jacket tattoo" to 3,300 for a mountain bike. The rear foldout pages of the catalog contained directions for redeeming Pepsi Points for merchandise. These directions note that merchandise may be ordered "only" with the original Order Form. The catalog notes that in the event that a consumer lacks enough Pepsi Points to obtain a desired item, additional Pepsi Points may be purchased for 10 cents each; however, at least 15 original Pepsi Points must accompany each order. Leonard initially set out to collect 7,000,000 Pepsi Points by consuming Pepsi products, but then switched to buying Pepsi Points. Leonard ultimately raised about \$700,000. In March 1996, Leonard submitted an Order Form, fifteen original Pepsi Points, and a check for \$700,008.50. At the bottom of the Order Form, Leonard wrote in "1 Harrier Jet" in the "Item" column and "7,000,000" in the "Total Points" column. In a letter accompanying his submission, he stated that the check was to purchase additional Pepsi Points for obtaining a new Harrier jet as advertised in the Pepsi Stuff commercial. Several months later, Pepsico's fulfillment house rejected Leonard's submission and returned the check, explaining that the item he requested was not part of the Pepsi Stuff collection, and only catalog merchandise could be redeemed under this program. It also stated, "The Harrier jet in the Pepsi commercial is fanciful and is simply included to create a humorous and entertaining ad." Leonard sued Pepsico for breach of contract. Will he win?

- (5) Leonard saw a "Pepsi Stuff" commercial encouraging consumers to collect "Pepsi Points" from specially marked packages of Pepsi or Diet Pepsi and redeem these points for merchandise featuring the Pepsi logo. The commercial depicts a teenager preparing to leave for school, dressed in a shirt emblazoned with the Pepsi logo. The drumroll sounds as the subtitle "T-SHIRT 75 PEPSI POINTS" scrolled across the screen. The teenager strides down the hallway wearing a leather jacket, and the subtitle "LEATHER JACKET 1450 PEPSI POINTS" appears. The teenager opens the door of his house and puts on a pair of sunglasses. The drum roll then accompanies the subtitle "SHADES 175 PEPSI POINTS." A voiceover then intones, "Introducing the new Pepsi Stuff catalog." The scene then shifts to three young boys sitting in front of a high school building. The boy in the middle is intent on his Pepsi Stuff catalog, while the boys on either side are drinking Pepsi. The three boys gaze in awe at an object approaching overhead. The military music swelled, and the viewer senses the presence of a mighty plane as the extreme winds generated by its flight create a paper maelstrom in a classroom devoted to an otherwise dull physics lesson. Finally, a Harrier jet swings into view and lands by the side of the school building, next to a bicycle rack. Several students run for cover, and the velocity of the wind strips one faculty member down to his underwear. The voiceover announces, "Now the more Pepsi you drink, the more great stuff you're gonna get." The teenager opens the cockpit of the fighter and can be seen, holding a Pepsi. "Sure beats the bus," he says. The military drum roll swells a final time and the following words appear: "HARRIER FIGHTER 7,000,000