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POM Wonderful Boosts Legal Revenue! Company Sues FTC and Gets Mixed Result in Trial with Welch

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By Victor Li

September 15, 2010

POM Wonderful boasts that its pomegranate juice provides incredible health benefits, including prevention of heart disease, cancer, diabetes, and erectile dysfunction.

No word on whether it also makes you more litigious, but we're inclined to think so, based on the recent spate of lawsuits that POM Wonderful has initiated.

On Monday, POM filed a lawsuit against the Federal Trade Commission in federal court in Washington, D.C., alleging that the agency has created a new rule regarding false advertising and that the standard violates federal agency law and the First Amendment.

In its complaint, POM claims that the FTC informed it that it is applying a new standard requiring food and drug companies to get FDA approval before making certain types of health-related claims about their products, especially relating to disease prevention. "The FTC never required prior approval of advertising statements by any agency or the FDA," POM's attorneys, Barry Coburn of Washington D.C.-based Coburn & Coffman, and Kristina Diaz of Roll Law Group, wrote in their complaint. "The FTC has admitted in its own previously published comments that this requirement constitutes a ban on both deceptive and non-deceptive speech, the latter of which is protected by the First Amendment."

Coburn referred our inquiries to POM's parent company, Roll International, which also declined to comment. FTC spokesperson Betsy Lordan also declined to comment.

False advertising was again on center stage when a federal jury in Los Angeles returned a verdict on Monday in POM's lawsuit against Welch Foods, Inc., finding that Welch violated federal trademark and false advertising laws by marketing its drink as 100 percent pomegranate juice when, according to POM, most of Welch's product consisted of apple and grape juice. The verdict was only a partial win for POM, however, since jurors did not find that POM had suffered any injury as a result of Welch's actions.

POM was represented by Todd Theodora of Theodora Oringer Miller & Richman, who referred us to the company. POM Wonderful president Matt Tupper issued this statement: "We view today's verdict as a clear win for consumers who are constantly bombarded by deceptively labeled products marketed by big juice companies."

Welch's attorney, Rick Shackelford of Greenberg Traurig, told us that Welch had prevailed on the most important issue. "The jury found that POM did not suffer any injury as a result of lost sales," said Shackelford, who expects the case to be dismissed when judgment is entered next week. "No one in their right mind could have confused our product with theirs."

And, of course, we would be remiss if we didn't mention POM's July injunction against our sibling publication, *The National Law Journal*, enjoining the NLJ from reporting on the FTC's investigation of POM. After one week, POM asked the judge to rescind the order.

POM is clearly keeping its lawyers busy. No doubt they're supplied with plenty of pomegranate juice to fight their fatigue and make it through those long working nights.

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