

# All Sides Appeal Initial Decision in FTC's POM Wonderful Action

June 11, 2012

We [reported on May 23](#) on Chief Administrative Law Judge Chappell's initial decision in the FTC's action against POM Wonderful. On June 4, all parties filed notices of appeal. The [FTC staff's notice](#) states that it is appealing "(1) The failure to find that certain of the challenged advertisements made the claims alleged in the Complaint; (2) The level of substantiation required for the challenged advertising claims; and (3) Certain provisions of the Order entered by Judge Chappell." [POM's notice](#) (and the [me-too notice](#) filed by individual respondent Tupper) state that they are appealing "(1) all portions relating to the finding of liability against Respondents in their entirety and (2) all portions relating to the imposition of a remedial order against any and all Respondents, in their entirety" as well as "certain procedural, evidentiary, and substantive rulings relating to the findings of fact and law and remedial relief."

The notices are terse, but if there is a surprise anywhere in them, it is the FTC not explicitly appealing Judge Chappell's finding that the appearances of POM principals such as Lynda Resnick to promote POM on news and talk shows are not within the FTC's reach as "advertising" by reason of not having been paid for. Conceivably, however, such a theory could be lodged within the first part of the staff's statement, together with a challenge to Judge Chappell's interpretation of some of the challenged POM advertisements as not communicating specific disease treatment, prevention, mitigation or cure claims. As expected, the FTC staff also appeals Judge Chappell's rejection of the two-clinical-study requirement that the staff sought to impose on ads making such claims. POM and Mr Tupper simply appeal everything in the decision that didn't go their way.