Coca-Cola Wrings the Last Drops out of POM's False Advertising Litigation Campaign

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Seven crops of pomegranates (and other fruits) have grown, ripened, been picked, pulped and processed. A river of juice has flowed. After seven years of litigation, the last overripe fruit of the Lanham Act campaign launched by POM Wonderful against four of its major competitors has hit the ground with a squishy thud.

A Los Angeles jury this week absolved The Coca-Cola Company of any wrongdoing in a Lanham Act case brought by POM Wonderful in September 2008, in which POM contended that Coca-Cola's Minute Maid Enhanced Pomegranate Blueberry Flavored 100% Juice Blend misled consumers by its labeling into believing that it contained more than a tiny amount of pomegranate juice. The jury took less than a day to find that POM had failed to prove that Coca-Cola misled consumers as to its juice blend contents.

The suit, styled *POM Wonderful LLC v. The Coca-Cola Company*, CV 08-06237-SJO (MJWx) (C.D. Cal.) was the first-filed of four actions by POM against major producers of juice blends, the other defendants being the Tropicana division of Pepsi and growing cooperatives Welch Foods and Ocean Spray Cranberries. Each defendant produced a 100% juice blend that featured pomegranate as one of its keynote flavors, but did not contain a very large proportion of pomegranate. Pomegranate, these companies explained, is a strong-tasting fruit of which a little goes a long way, flavor-wise. Consumers, they believed, understand the difference between a juice's featured flavor and its ingredient statement. POM countered that pomegranates supposedly have unique health benefits that consumers sought, but were actually denied, in buying these products.

The stated intention of POM owner Stewart Resnick was to secure one or more victories in these cases and then set out to "clean up the industry" of the many juice drinks that feature characterizing flavors that flavor the beverages but do not make up a large proportion of the contents. It turned out to be lawyers who cleaned up, as POM spent millions attacking its competitors and then defending countersuits by the FTC and class action plaintiffs against POM's dramatic claims of health benefits, inspired by counterclaims and affirmative defenses asserted in the cases POM filed.

The high point of POM's campaign, to the extent it ever had one, was a near-verdict against Welch Foods, in which the jury found that Welch's had intentionally misled consumers as to the pomegranate content of its juice blend, but that this had caused no injury to POM, and thus created no liability to that particular competitor. In all of other cases, the defendants persuaded juries that consumers were not misled as to their beverage's pomegranate content.

What the Jury Didn't Hear

It was just as well for Coca-Cola that there were no Supreme Court justices on its jury. In 2014, in the course of deciding 8-0 that POM's Lanham Act claims were not precluded by the Food, Drug & Cosmetic Act, justices made several gratuitous comments in oral argument that made it clear that Coke's labeling left a bad taste in their mouths. A successful pretrial motion in limine by Coca-Cola kept references to the case's Supreme Court detour out of the trial.

Other decisions on motions in limine, however, seemed to benefit POM Wonderful, and generally had the effect of isolating the trial from all of the related legal and regulatory actions that have become known collectively as the Juice Wars, isolating this matter as if it were the first test of POM's theory. Reference to the Tropicana, Welch's and Ocean Spray matters was prohibited, despite Coca-Cola's argument that these cases were probative of POM's largely fruitless litigation campaign against its competitors. Coke's bid to counterattack against POM's allegedly exaggerated health claims for its juices was severely cut back, with the court excluding Coca-Cola's key expert and almost all references to regulatory and self-regulatory cases against POM's claims. References to no less than 37 follow-on lawsuits against Coca-Cola or POM for deceptive practices also were excluded.

What Does It Mean?

What drops of wisdom are to be extracted from this outcome? POM's 0-and-4 record in these Lanham Act cases can't be dismissed as a fluke. POM had plenty of bites at substantially the same apple, learning from each trial and refining its arguments, legal team and expert witnesses as it went along. By trial number 4, the jury was surely hearing POM's best case. Jurors, at least in this situation, just seem skeptical of claims that people are misled by the presence of prominent words on labels, especially when the challenge comes from a competitor.