

Kelley Drye Represents Welch Foods in Lawsuit Demanding Insurers Defend Wrongful Advertising Lawsuits

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(Washington, D.C.) – It’s not about apples and oranges, but rather apples, grapes and pomegranates.

Welch Foods Inc. is demanding that two of its insurers, Zurich American Insurance Company and National Union Fire Insurance Company (an AIG company) pay to defend and indemnify Welch’s for two separate lawsuits that wrongfully challenge the marketing of “Welch’s 100% Juice White Grape Pomegranate Flavored 3 Juice Blend From Concentrate With Added Ingredients.”

The well-known U.S. maker of popular jams, jellies, juices and other fruit-based foods filed a lawsuit on December 8, 2009 in a Massachusetts federal court, asserting that its insurers must pay the costs of defending two separate California suits involving the blended juice product.

In the first suit, a California-based company named POM Wonderful LLC sued Welch’s on January 23, 2009, claiming that POM had created the market for pomegranate juice in the United States, and claiming that other juice makers, including Welch’s, have created confusion among consumers by marketing other products that contain pomegranate juice in blends, and that use pomegranates in their names and labels. The second suit is an attempted consumer class action, filed on August 14, 2009, echoing the allegations in the POM suit and seeking to recover attorney’s fees and vague damages on behalf of a Los Angeles plaintiff’s law firm and the alleged class members.

Welch’s denies these allegations, noting that its product is marketed accurately and in compliance with FDA regulations.

Kelley Drye represents Welch’s in its claim against its insurers said, “The California lawsuits against Welch’s are baseless. POM’s products have unusually high retail prices, and in the current economy is likely having a difficult time selling its product and achieving the margins to which it has grown accustomed. So, POM is trying to protect its market share and its margins by driving out other products through litigation. The consumer case is piggybacking on the same baseless allegations, and has rightfully been characterized as “opportunistic” by the judge presiding over it. The costs of defending both suits is significant, and the insurers’ failure to honor their contracts has wrongfully forced Welch’s to spend its own funds on its defense efforts.”