Ninth Circuit Pulps POM Wonderful's Lanham Act Claims Against Coca-Cola, Affirming FDA Preclusion of Challenge to Regulated Food Labeling

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A panel of the Ninth Circuit Court of Appeals ruled May 17 on an appeal from summary judgment in a case filed by pomegranate juice maker POM Wonderful against the Coca-Cola Company's Minute Maid division. The dispute was over a Minute Maid pomegranate-blueberry juice blend that POM alleged misrepresented itself on its label as containing a far higher proportion of pomegranate juice than was present in the beverage. According to POM, this overselling of pomegranate falsely communicated to consumers that the juice blend conferred the unique health benefits of pomegranate juice -- benefits which, themselves, have been heavily advertised by POM but called into question by the FTC and litigants. POM's deceptive labeling claims against other marketers of juice products touched off a network of related competitor, class action, and FTC cases that have become known as the "Juice Wars".

Coca-Cola successfully moved for summary judgment on the ground that FDA regulations issued under the Food, Drug & Cosmetic Act comprehensively govern the content of juice labeling, including permitting marketers of juice blends to identify the products through the juice name and pictures by the juices that provide their characterizing flavors, regardless of whether these juices predominate by volume. Affirming, the Ninth Circuit panel concluded that "Pom's challenge to the name 'Pomegranate Blueberry Flavored Blend of 5 Juices' would create a conflict with FDA regulations and would require us to undermine the FDA's apparent determination that so naming the product is not misleading" and that " forc[ing] Coca-Cola to alter the size of the words on its labeling so that the words "Pomegranate Blueberry" no longer appear in larger, more conspicuous type on Coca-Cola's label than do the words 'Flavored Blend of 5 Juices' ... would again undermine the FDA's regulations and expert judgments." Under the preclusion doctrine, the challenge was therefore barred.

In three other cases filed by POM Wonderful against beverage makers Tropicana, Welch Foods, and Ocean Spray Cranberries, the courts denied similar motions seeking to dispose of the cases on FDA preclusion grounds. Each of those defendants subsequently prevailed over POM at trial. The Ninth Circuit's ruling indicates that the denials of summary judgment in those cases was inconsistent with recent Ninth Circuit precedent, specifically *Photomedex, Inc. v. Irwin*, 601 F.3d 919 (9th Cir. 2010), and that those cases should not have gone to trial.

POM's parallel claims alleged under California's Unfair Competition Law and False Advertising Law were reinstated by the Ninth Circuit, reversing the District Court's ruling that POM lacked standing to

pursue them. But it has not yet been decided whether these claims would be preempted by FDA regulation under much the same logic as the Ninth Circuit's preclusion analysis.

Preclusion cases must be analyzed according to the specific federal regulation and the specific litigated claims at issue, but the Ninth Circuit's ruling is important for any marketer whose product labeling is subject to federal regulatory oversight. It is one of several recent decisions affirming that federal regulatory determinations cannot be second guessed by litigants seeking to impose different standards that would contradict the federal regulations.