

Pom Wonderful, a juicemaker with strong Valley ties, has day in Supreme Court

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WASHINGTON — Dual marketing disputes have ripened for the California-based makers of Pom Wonderful pomegranate juice, with Supreme Court justices sounding sympathetic Monday to some company claims.



In the first of two key court cases, justices seemed Monday to accept Pom Wonderful's argument that Coca-Cola misleadingly labeled as "Pomegranate Blueberry" a product that had only an infinitesimal amount of either juice.

The company wants to sue Coca-Cola under the federal Lanham Act, which permits civil action against anyone who "misrepresents the nature, characteristics or qualities" of goods being sold.

"It's relevant for us to ask if people are cheated in buying this product," Justice Anthony Kennedy said, adding to general laughter that "I thought that this was pomegranate juice."

Justice Ruth Bader Ginsburg similarly noted that "the consumer is able to buy the Coke product much cheaper, and the Pom product costs more (while) the consumer thinks they are both the same." Justice Sonia Sotomayor asked Coca-Cola's attorney why the company was able to use the juice label "in a misleading way."

"Coke's label is, as a matter of law, not misleading," countered Coca-Cola's attorney, former Stanford Law School Dean Kathleen Sullivan.

Nonetheless, the hard questions put to Sullivan and the notably respectful attention given to Pom Wonderful's attorney, former Clinton administration Solicitor General Seth Waxman, suggested a likely victory for the juice company.

"Coke well knew, and intentionally designed a label that grossly misleads consumers, to the economic disadvantage of the company that, in large part, created the market," Waxman said.

In a legal twist, the validity of Pom Wonderful's own marketing claims anchors a second pending case.

On May 2, in arguments before the U.S. Court of Appeals for the District of Columbia Circuit, the company will defend health claims that have been disputed by the Federal Trade Commission.

Citing three dozen advertisements and promotional materials, the trade commission found that Pom Wonderful advertised deceptively and lacked sufficient support for claims that pomegranate products could treat, prevent or reduce the risks of heart disease, prostate cancer and erectile dysfunction.

"Pom's account of the medical evidence routinely distorted the scientific record and omitted the negative results of Pom's own studies," the FTC said in a legal brief, adding that the company "had not substantiated any of its disease claims with positive results from even one well-controlled clinical trial."

Pom Wonderful counters that its marketing claims deserve consideration as free speech.

"It cannot seriously be maintained that the First Amendment offers no protection to commercial speech that accurately quotes a newspaper article and truthfully recites the results of a scientific study," the company's attorneys argue in a legal brief.

Pom Wonderful is owned by Stewart and Lynda Resnick, reported by Forbes magazine to be billionaires. The couple's agricultural ventures, through their Roll Global holding company, include major citrus, almond and pistachio orchards in addition to pomegranate operations in the San Joaquin Valley.

About 32,000 acres of pomegranates are planted in California. Kern County, the heart of the Resnicks' farming empire, leads all other counties in pomegranate production.

In September 2007, Coca-Cola introduced its "Pomegranate Blueberry" product. It contains about 99.4% apple and grape juices, tinted with 0.3% pomegranate juice, 0.2% blueberry juice and 0.1% raspberry juice.

Pom Wonderful sued. A lower appellate court rejected the suit, concluding that the federal Food and Drug Administration had effectively pre-empted labeling oversight.

Throughout the oral argument Monday morning, Supreme Court justices seemed skeptical about the pre-emption claim. Some, including Chief Justice John Roberts Jr., said a label might comply with the FDA's health-based regulations yet still mislead consumers, suggesting that some additional action might be warranted. Others noted that Lanham Act suits, such as the one sought by Pom Wonderful, could help reinforce an understaffed FDA.

"In the real world, the FDA has a tremendous amount of things on its plate, and labels for juices are not really high on its list," Ginsburg said. "It has very limited resources."

She said it was "very hard to conceive" that Congress would have ruled out private lawsuits in cases such as this.

Justice Stephen Breyer recused himself from the case heard Monday.

Justice Clarence Thomas, as is his custom, was the only one of the eight remaining justices not to speak or ask questions during the hourlong oral argument. A decision is expected by the end of June.

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