

POM Wonderful loses labeling challenge

By Michael
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WASHINGTON — [POM Wonderful](#), the company that makes juice from San Joaquin Valley pomegranates, lost a labeling challenge Friday in a high-profile case over the regulation of commercial speech.

In a [unanimous decision](#) by a three-judge panel, the U.S. Court of Appeals for the District of Columbia Circuit largely rejected claims by POM Wonderful that the [Federal Trade Commission](#) went too far in restricting the company's aggressive and allegedly misleading health claims.

"The Commission's findings of deception are supported by substantial evidence in the record," Judge Sri Srinivasan wrote in the [45-page opinion](#).

The ruling upholds the FTC's order that POM Wonderful not make "misleading and inadequately supported claims about the health benefits of POM products." But in a partial victory for the company, and others like it, the court rejected the trade commission's requirement that two clinical studies support each health claim.

Federal Trade Commission Chairwoman Edith Ramirez called the ruling a "victory for consumers."

"It is in keeping with established law that advertisers who market products for serious health conditions must have rigorous science to back up those claims," Ramirez said.

In a statement, POM Wonderful said it's "proud of the \$35 million of peer-reviewed scientific research we have done

about pomegranates and pomegranate juice.” The ads and health claims in question ran between 2003 and 2010.

“Consumers know that pomegranate juice is inherently healthy, and POM Wonderful has always communicated with consumers in a transparent, honest manner, delivering valuable information about the potential health benefits of our products,” the company stated.

Founded by Stewart and Lynda Resnick in Los Angeles, with orchards about 100 miles away in the southern San Joaquin Valley, the privately held POM Wonderful LLC produces pomegranate juice sold in distinctively bulb-shaped bottles. The wealthy, politically well-connected Resnick family also controls vast citrus and other agricultural holdings through the Roll Global corporation.

From 2002 to 2010, sales for POM Wonderful juice and POMx pills, described by the company as a pomegranate supplement, totaled close to \$250 million, according to the FTC. The company prides itself on having grown the pomegranate market, with the roughly 32,000 acres of pomegranates planted in California marking a tenfold increase over the planted acreage in 1976.

Health claims have propelled the company’s aggressive marketing.

Running in magazines from Playboy to Men’s Health, POM Wonderful ads have included vivid language such as “Cheat Death” and “Drink to Prostate Health,” as well as myriad references to scientific studies.

One ad, for instance, declared that “a clinical pilot study” showed that a daily 8-ounce glass of POM Wonderful reduces plaque in the arteries up to 30%. The FTC countered that the study was “tiny and methodologically flawed.” Much larger, double-blind studies “showed no significant plaque-reducing benefits at all,” according to the trade commission.

After an extensive trial, an administrative trial judge previously found that 19 Pom Wonderful claims were false or misleading. In January 2013, the full [Federal Trade Commission](#) went further, concluding that 36 ads or promotional materials were false or misleading.

A 2007 brochure quoted one scientist as declaring that pomegranate juice “has been proven to promote cardiovascular health,” but made no reference to two other studies that reached contrary conclusions. Another POM Wonderful claim disputed by the court Friday involved pomegranate juice as a supposed remedy for erectile dysfunction.

“Insofar as the FTC imposed liability on petitioners for the nineteen ads found to be deceptive by the administrative law judge, the Commission sanctioned petitioners for misleading speech unprotected by the First Amendment,” Srinivasan wrote.

In a partial, but meaningful victory for POM Wonderful and other businesses, though, the appellate court agreed with the company that regulators couldn’t require two randomized controlled trials to support a health claim, instead of just one.

“Requiring additional RCTs without adequate justification exacts considerable costs, and not just in terms of the substantial resources often necessary to design and conduct a properly randomized and controlled human clinical trial,” Srinivasan wrote.

Several industry and consumer groups had filed amicus briefs supporting POM Wonderful, arguing that the trade commission was effectively blocking many healthy food claims by insisting on multiple, expensive randomized clinical trials.

“We are grateful that the court substantially reduced the requirement that the FTC tried to enforce on us to conduct multiple double-blind, placebo-controlled studies,” POM Wonderful said in its statement Friday.

Last year, POM Wonderful fared better in high-stakes litigation, as the Supreme Court sided with the company and agreed in an [8-0 decision](#) that it could sue Coca-Cola over the latter firm's alleged mislabeling of a "pomegranate-blueberry" drink that was mostly made from apples and grapes.

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