

Litigator of the Week: Steven Zalesin of Patterson Belknap

By Scott Flaherty
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Regrouping after a setback at the U.S. Supreme Court, Steven Zalesin of Patterson Belknap Webb & Tyler came up big this week for client Coca-Cola Co., clearing it of longstanding false advertising claims by juice maker POM Wonderful LLC.

POM, which was seeking \$77.5 million, accused Coca-Cola of misleading consumers with its labeling on a pomegranate-blueberry flavored juice. **POM claimed that Coca-Cola led consumers to believe the drink was primarily pomegranate and blueberry juice, when in reality it was a blend made mostly of less-expensive types of fruit juice.** On Monday, Zalesin won a full defense verdict after a six-day trial before a Los Angeles federal jury. Zalesin, who's spent most of the past three decades as a commercial litigator at Patterson Belknap, described the win as a highlight of his career.

The verdict came more than seven years into the litigation brought by POM, which sells 100 percent pomegranate juice and promotes the drink's purported health benefits. POM claimed Coca-Cola made misleading claims about its pomegranate blueberry juice, which contained more than 99 percent apple and grape juice, with only traces of pomegranate and blueberry juice. Zalesin started working on the case in 2009, when his firm replaced Munger, Tolles & Olson.

Zalesin and his team argued that the Food and Drug Administration's food labeling regulations should have blocked POM's claims under the Lanham Act, a federal trademark law. Since Coca-Cola complied with the FDA rules, Zalesin argued, it shouldn't have to face false advertising claims.

"We had always felt that we had a very strong legal argument [against] a claim of this sort, where there were very



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explicit FDA rules and regulations [about] the naming and labeling of a product like this," said Zalesin.

In May 2010 U.S. District Judge James Otero in Los Angeles sided with Coca-Cola's FDA preemption argument and issued a summary judgment that effectively doomed POM's case. The U.S. Court of Appeals for the Ninth Circuit affirmed in 2012, with Zalesin arguing the appeal against Wilmer Cutler Pickering Hale & Dorr's Seth Waxman.

But in July 2014 the Supreme Court revived the case with an 8-0 ruling in POM's favor. Zalesin took a supporting role at the high court, with Kathleen Sullivan of Quinn Emanuel Urquhart & Sullivan arguing for Coca-Cola against Wilmer's Waxman.

With the case remanded, Zalesin had to ramp up for trial after years of litigating a purely legal question. At trial, Zalesin and his second-in-command partner, Travis "T.J." Tu, maintained that Coca-Cola had never claimed that its product was all pomegranate and blueberry juice. The FDA's approval of the product's label bolstered that argument, he maintained. Zalesin told the jury that it wasn't bound to accept the FDA's point of view, but could it give it as much weight as they thought it should be worth.

POM, which was represented by Forrest Hainline III of Goodwin Procter, said in a statement that it's disappointed with the verdict and stands by its claims that Coca-Cola confused consumers.