

Jury Squashes Pom's \$77M Claim Coke Tricked Juice Buyers

By **Bonnie Eslinger**

Law360, Los Angeles (March 21, 2016, 5:02 PM ET) -- A California federal jury on Monday cleared The Coca-Cola Co. of Pom Wonderful LLC's claim that the beverage giant owed Pom \$77.5 million for stealing its business by tricking consumers with a pomegranate juice product that was mostly apple and grape juices.

After less than a day of deliberation following a six-day trial in Los Angeles, the nine-member jury returned with a verdict finding that Pom had not proven by a preponderance of evidence that the packaging or label of Coca-Cola unit Minute Maid's "Enhanced Pomegranate Blueberry Flavored 100% Juice Blend" would mislead customers into thinking it had more than a half-percent of pomegranate and blueberry juice combined.



Pom sued Coca-Cola in 2008, claiming the name and labeling of Coca-Cola's product was misleading. (Credit: AP)

With that decision, the jury didn't need to reach a finding on Coca-Cola's unclean-hands defense — that Pom had made unsubstantiated health claims about its own product and previously used filler juices.

During Friday's closing arguments, Coca-Cola's attorney Steven Zalesin of Patterson Belknap Webb & Tyler LLP told the jury that Minute Maid had followed U.S. Food and Drug Administration guidelines in coming up with the labeling for Minute Maid's pomegranate blueberry juice blend, and that it was clear the Minute Maid juice blend was fairly marketed to consumers.

"It's typical for these flavored products not to list the amount of juice, but just to say this word 'flavor,'" Zalesin said. "It's a pomegranate-blueberry flavored blend of five juices, and that's what it says."

He added that Pom itself had forfeited its right to claim Coca-Cola was unfairly marketing its pomegranate juice blend, through Pom's own misleading marketing and use of filler juices.

Zalesin noted that for all the argument from Pom's attorney Forrest Hainline of Goodwin Procter LLP about Coca-Cola's including only 0.3 percent pomegranate juice in its blend, Pom's iced tea products included even smaller amounts of flavoring juices. Zalesin said that Pom's "Pomegranate Peach Passion White Tea" contained only 0.005 percent passion fruit juice.

Pom had sued in September 2008, claiming the name and labeling of Coca-Cola's product was misleading under the Lanham Act — the federal trademark law that business rivals can also use to target

what they see as unfair competition or false advertising practices.

Pom has taken other competitors to court, including Ocean Spray Cranberries Inc. and Welch Foods Inc. under similar circumstances, although without much success. In 2011, a federal jury in California found that Pom did not prove that the advertising and labels on Ocean Spray's pomegranate cranberry juice drink were misleading because it contained a only a trace amount of pomegranate juice.

In 2010, another California federal jury had found that Welch deceptively marketed a white grape and pomegranate juice that contained little pomegranate, but also found that Pom was not injured by that intended deceit.

During Friday's closing arguments in the instant action, Hainline argued that Coca-Cola wanted to capitalize on the reputation for health benefits that Pom has established for its own products, and did so by misleadingly labeling a product that was made up almost entirely of much cheaper and sweeter apple and grape juices.

"Coke set out to mine this market and to undermine this market, [saying,] 'We will create a product that looks like it's made of pomegranate and blueberry, that says it's made of pomegranate and blueberry ... and we'll sell it 75 percent cheaper than our competitor Pom. How? We won't put any pomegranate or blueberry in it,'" Hainline said.

Hainline declined an opportunity for comment about the jury verdict.

A spokesman for Coca-Cola said the company was "pleased and gratified" by the jury's verdict.

"As we have said all along, our flavored juice blend was clearly and properly labeled in compliance with all FDA requirements," said Scott Williamson, Coca-Cola's Vice President of Public Affairs and Communications.

U.S. District Judge James Otero, who presided over the trial, thanked the jury for their service after the verdict was read, telling them that it had been "an extremely important case" for both Pom and Coca-Cola with unique legal issues that at one point went to the U.S. Supreme Court before returning to federal court.

In that July 2014 decision, the nation's highest court reversed a Ninth Circuit ruling that federal regulations preclude Pom Wonderful's Lanham Act claim against Coca-Cola, finding that U.S. Food and Drug Administration rules on labeling can coexist with the federal false advertising statute.

Pom is represented by Forrest A. Hainline III of Goodwin Procter LLP and Kristina M. Diaz, Matthew D. Moran and Brooke S. Hammond of Roll Law Group PC.

Coca-Cola is represented by Steven A. Zalesin, Travis J. Tu and Rachel B. Sherman of Patterson Belknap Webb & Tyler LLP, Jeffrey A. Rosenfeld of DLA Piper LLP and Shani Thome of The Coca-Cola Company

The case is Pom Wonderful LLC v. The Coca-Cola Co. et al., case number 2:08-cv-06237, in the U.S. District Court for the Central District of California.

--Additional reporting by Daniel Siegal. Editing by Edrienne Su.
