

## Food & Beverage MVP: Patterson Belknap's Steve Zalesin

By Taylor Arluck

*Law360, New York (January 3, 2017, 12:37 PM EST)* -- Patterson Belknap Webb & Tyler LLP's Steven A. Zalesin's helped achieve a trial victory for The Coca-Cola Co. in a seven-year-long pomegranate juice false advertising battle with Pom Wonderful LLC this year, earning him the label of a Law360 2016 Food and Beverage MVP.

Zalesin said the Coke win was a highlight of his three-decade career as a commercial litigator spent mostly at Patterson Belknap, where he chairs the firm's false advertising group. The victory comes in a year where he also wrapped up other food labeling litigation against The Hershey Company.

"The Pom case was easily the most important of the year for me," Zalesin said. "I didn't represent Coke from the outset" — Zalesin was brought in as lead counsel in 2009 — "but there were many fascinating twists and turns along the way, including the remand from the U.S. Supreme Court."

After a six-day March jury trial in California federal court, under Zalesin's leadership, Coke dodged \$77.5 million in damages that Pom had sought for allegedly confusing customers with a pomegranate juice product that was mostly apple and grape juices.

At trial, Zalesin, along with colleague Travis J. Tu, waged a three-pronged assault on Pom's case.

Zalesin's team argued that Coke's pomegranate juice was not liable because it was appropriately labeled and consistent with federal regulations; that Pom had no damages because its juice product was competing in a different market from Coke's; and that Pom had unclean hands because of Federal Trade Commission rulings that its pomegranate juice's health claims were false.

"The three concepts we drove home to the jury were: no liability, no damages and unclean hands," Zalesin said. "We had a very strong unclean hands defense, which got exponentially stronger because of the FTC's actions," which upheld and expanded an administrative finding that Pom made false and misleading health claims about its juice.



Zalesin and Tu even brought Pom founder Stewart A. Resnick and his wife, who led marketing efforts, to the stand to make Coke's case to the nine-member jury.

"I felt it important for the jury to hear from both because Pom is not like most companies. It's family-owned and a sole proprietorship," Zalesin said. "The Resnicks are the core of the business and Pom has a long history of false advertising, including with the FTC."

The jury trial came on the heels of a unanimous ruling by the Supreme Court in July 2014, which Zalesin said changed the game in food labeling litigation.

"In the competitor space, the Pom case tells us that compliance with FDA regulations doesn't matter in that you can argue it at a jury, which we did, but it's not a legal defense. It does not bar a claim," Zalesin said. "It encourages, or at least allows, a certain kind of litigation on food labeling."

In March, Zalesin also helped Hershey fight off a proposed class action by California consumers who alleged Hershey deceptively labeled chocolate products and failed to disclose that its global supply chain for cocoa may include child slave labor.

Zalesin got the suit dismissed on two grounds, focusing on Hershey's duty to disclose labor practices in Ivory Coast's cocoa trade and the confectioner's protection under state law.

"We had two theories, one being that there was no duty to disclose under unfair competition law or other state consumer protection laws. The other theory was the safe harbor under the California Transparency in Supply Chains Act," he said.

The court accepted both arguments, but the California attorney general has challenged the safe harbor claim in an amicus brief at the Ninth Circuit, where the case is currently on appeal.

"The stakes of the case are high, because the consumers are looking for full or partial refunds for chocolates sold under the statute of limitations," Zalesin said.

— Editing by Ben Guilfoy.