

Food & Beverage Group Of The Year: Patterson Belknap

By Alex Wolf

Law360, New York (January 19, 2017, 8:28 PM EST) -- After racking up major product labeling defense wins for Coca-Cola over a landmark \$77.5 million suit brought by Pom Wonderful and Hershey over litigation concerning cocoa harvesting disclosures, Patterson Belknap Webb & Tyler LLP has earned a place among Law360's Food & Beverage Groups of the Year.

For another year in a row, Patterson Belknap's food and beverage practice has stood out amongst the pack for its defense of consumer class action litigation and competitor claims. The group, based entirely in New York, was busy at work over the past year helping familiar clients like Coca-Cola Co. and Hershey Co. battle claims concerning product labeling disclosures related to public health and safety concerns.

"Our cases are nationwide. We go wherever our clients get sued, basically," said Patterson Belknap partner Steve Zalesin. "But we all work under one roof."

Coke's victory in March over Pom Wonderful LLC's pomegranate juice false advertising suit ended after seven years of litigation that wound its way through the Ninth Circuit and the U.S. Supreme Court before ultimately being squashed by a jury in California federal court. That win cleared Coke subsidiary Minute Maid of claims that it misled customers into thinking its pomegranate-flavored juice was predominantly fruit juice.

That jury decision was especially sweet for Coke because the case was kicked back to trial after the Supreme Court vacated trial and appellate court wins for the beverage giant when it found in 2014 that just because a label statement or product name is authorized by U.S. Food and Drug Administration regulations, it does not provide a defense to a competitor's Lanham Act claim, Zalesin said.

"The lesson of the trial is that just because you get past the motion to dismiss and you have a claim, doesn't mean that you're going to be able to persuade a judge or a jury that something that is FDA-blessed is nevertheless misleading to consumers," he said. "It's possible to bring these cases now, but it's still difficult to win."

Firm partner Travis J. Tu, who worked on the Pom Wonderful suit in its early stages as an associate,



made partner by the time the case went to trial last year.

"That's the case I really grew up with," he said. "It's a strange experience to have a case where you win when you're a junior associate only to have it come rearing back to life years later when you're a partner."

Despite the twists and turns that the case took, it was ultimately very gratifying to come away with a win and to put Pom Wonderful on the spot in the process regarding the actual benefits of pomegranate juice, Tu said.

Though the firm's win for Coke in the Pom Wonderful case was the primary highlight of its work for the company last year, Patterson Belknap's attorneys also recently worked to consolidate multidistrict litigation against Coke over phosphoric acid labeling on its flagship product, helped it trim a suit over its marketing of Simply Orange Juice and is working to dismiss a suit alleging Coke's Odwalla brand juices broke the law by using the term "evaporated cane juice" on its list of ingredients.

In addition to fighting recent battles for Coke, Patterson Belknap helped its long-time client Hershey defeat a putative class action alleging its chocolate products are deceptively labeled because they do not disclose that the global supply chain for cocoa includes the use of forced child labor in Ivory Coast, a region where the company sources a significant amount of cocoa, according to the firm.

A California federal judge ruled in March that while child slave labor in Africa's Ivory Coast presents an ethical problem for companies like Hershey and Nestle, they aren't required to disclose the practices on their candy labels. That case is currently on appeal in the Ninth Circuit.

Zalesin, who called the dismissal "an important win for Hershey," said that he and co-counsel successfully argued that there was no duty under California law to tell consumers on the label of every package every fact that they may be interested to know.

"There's just no requirement that you disclose all of that on your label," he said.

Hershey, which has said it will get all child labor-produced cocoa out of its supply chain by 2020, provides consumers with relevant information on its website, Zalesin added.

Over the past year, Patterson Belknap's attorneys also helped pet food maker Blue Buffalo resolve a long-running fight with rival Nestle Purina over adulterated ingredients allegedly in each other's products, setting up an upcoming showdown with Blue Buffalo's ingredient supplier.

In 2016, Blue Buffalo came to confidential settlement terms with Purina and reached a deal with a class of consumers enabling individual reimbursements of up to \$2,000, Zalesin said. The allegations were brought over unintentional product mislabeling, wherein Blue Buffalo had said that its food contains only premium poultry meat, but it in fact contained certain poultry byproducts.

"It's a good settlement for Blue Buffalo in the sense that although it's obviously a substantial dollar figure; it represents real value to customers," Zalesin said.

Patterson Belknap continues to represent Blue Buffalo as it now litigates third-party claims against ingredient supplier Wilbur-Ellis and distributor Diversified Ingredients Inc. for allegedly providing the tainted components without its knowledge. It is seeking as damages the amount of the class action

settlement, plus a variety of other expenditures and losses, Zalesin said.

--Additional reporting by Steven Trader, Kat Greene and Bonnie Eslinger. Editing by Christine Chun.

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