

POM Wonderful Faces Misleading Advertising Allegations

INTRODUCTION

The company POM Wonderful, LLC has become renowned for its hour-glass shaped bottles of pomegranate juice. Founded in 2002, the mission of POM Wonderful “is to introduce and supply consumers with the highest quality and best-tasting pomegranates and pomegranate food products.” The pomegranate has become particularly popular for its exotic sensory appeal and high content of antioxidants.

The company was founded by billionaire industrial agriculture couple Stewart and Lynda Rae Resnick. Shortly after it was founded, the company’s pomegranate products took off with revenues for the company growing from \$12 million to \$91 million. POM Wonderful has largely based its success on marketing claims concerning its healthy attributes and its ability to help reduce chances for disease. However, in the past few years it has been challenged by the government regarding the truthfulness of its advertising claims. The Federal Trade Commission (FTC) determined that POM Wonderful had made unsubstantiated claims about its products. Although an appeals court supported the FTC’s findings, it did strike down one aspect of the FTC’s ruling, providing a partial victory to POM Wonderful and other companies that make health claims about their products.

This case begins by giving some background information on POM Wonderful and the global market of functional food and drinks. This market has shown significant growth during the past decade, as the superfruit (exotic fruit) as an ingredient has grown in popularity due to its value of combining health benefits with a good taste profile. We examine POM Wonderful’s brand positioning in the market. Next, this case describes some of POM Wonderful’s advertising claims and why they were challenged by the FTC. It concludes with a discussion of the implications this ruling will have on the advertising claims of POM Wonderful and similar companies

BACKGROUND

POM Wonderful, headquartered in Los Angeles, California, produces a line of pomegranate juice and other blended juice beverages, including pomegranate juice mixed with blueberry, cranberry, cherry, mango, or tangerine juices, as well as tea and coffee of various flavors. Besides drinks, it sells capsules and concentrated liquid products that it markets as nutritional supplements. The pomegranates are grown in the central and southern San Joaquin Valley of Central California, both in the company’s own orchards as well as orchards in the surrounding area. The juice is extracted mechanically from the fruit to create its famous lines of juices.

POM Wonderful currently has six main product categories:

- Juices: Pomegranate, POM Blueberry, POM Cherry, POM Mango, and POM Tangerine
- Tea: POM Tea, Pomegranate Tea, Pomegranate Lychee Green, Pomegranate Peach Passion White, Pomegranate Blackberry, LIGHT Wildberry White, LIGHT Orange Blossom Red, and LIGHT Hibiscus Green
- POMx Antioxidant Supplements: POMx pills supplement and POMx Natural Pomegranate Abstract
- Fresh pomegranate fruit: POM Wonderful is the largest grower of the Wonderful variety of pomegranates in the country, owning 18,000 acres of orchard and supplying nearly 90 percent of fresh pomegranate fruit in the United States.
- Concentrate: Pomegranate concentrate for cocktails

Many have attributed the success of the growth of the exotic fruit segment on rising consumer interest in the health benefits of these fruits, which is partly due to the well marketed medical evidence of relevant products. POM Wonderful's advertising campaign is a good example of an organization that uses health food claims to significantly promote its products. As a result, it is able to position its juices as a premium product and price it higher.

THE MARKET FOR POMEGRANATES

Due to the importance of a healthy diet, the global market of food and drink products that promote health benefits has been expanding. The rising awareness of health food and drinks has driven relevant products with considerable growth. Because consumers are showing more interest in their health in both the short and long-term, healthier foods such as exotic fruits are becoming more popular. A healthier diet can reduce the risk of diseases and obesity.

Today's global functional food and drinks market is led by the United States and Japan. It is estimated that functional food and beverages make up 5 percent of the overall food market. Emerging markets including China and India are also embracing western lifestyles and attitudes toward health. The aging of the population is also playing its role in encouraging people to pay more attention to their health from a younger age. The rising attention to fruit and vegetable intake has fueled the growth of juice drinks, especially premium fruit juices.

The pomegranate has taken off in the American market in recent years, even though it has been used as food, medicine, and a cultural icon for thousands of years in other parts of the world. The popularity of the fruit has exploded in the United States due to its high content of natural polyphenols, noted to be a powerful antioxidant. The medical acclaim it has obtained has been regarded as the biggest drive behind its success. Previous research indicates that polyphenols are powerful antioxidants that are useful in a variety of health problems, including premature aging, cardiovascular conditions, and certain types of cancer.

POM WONDERFUL VERSUS COCA-COLA

POM Wonderful has secured a strong share of the market in the pomegranate beverage area. With the success of any product comes rival brands that attempt to steal market share. As a result, market leaders tend to be aggressive in protecting their market share and ensuring that competing

brands are not competing unfairly. This resulted in POM Wonderful challenging promotional claims made by Coca-Cola's rival product, Minute Maid Pomegranate Blueberry Flavored Blend.

In 2007 Coca-Cola introduced its pomegranate-blueberry juice blend sold through its Minute Maid division. However, despite its promotion of blueberry and pomegranate, 99.4 percent of the beverage consisted of apple and grape juices. POM Wonderful believed this was deceptive advertising and filed a lawsuit against Coca-Cola. The company claimed Coca-Cola's promotional claims violated the Lanham Act as the name, label, marketing, and advertising of Coca-Cola's juice blend misled consumers as to its actual content, thereby causing POM to lose sales. The case was dismissed by the Ninth U.S. Circuit Court of Appeals, claiming that these allegations were the domain of the Food and Drug Administration (FDA) and that competing firms are not authorized to sue one another for false labeling or advertising.

POM Wonderful appealed, and the case went all the way to the Supreme Court. In 2014 the Supreme Court reversed the decision and decided that competitors can file Lanham Act claims dealing with false promotion on food or beverage labels. Legal analysts anticipate several more years of litigation on issues not argued in the Supreme Court, such as cause and magnitude of financial or brand injury to POM Wonderful resulting from the Minute Maid product. However, while POM Wonderful won a victory against Coca-Cola, it would be less successful when it was accused of false advertising by the FTC.

POM WONDERFUL VERSUS THE FTC

On February 23, 2010, the FDA sent POM Wonderful a warning letter claiming that the firm was promoting its juice products in ways similar to drug promotion. For instance, between 2003 and 2010 POM Wonderful claimed that its pomegranate ingredients could help combat erectile dysfunction, prostate cancer, LDL cholesterol, and length and severity of colds as well promote a healthy heart and prostate. The FDA determined that to make such claims, POM Wonderful must prove with the scientific rigor of the drug approval process that POM Wonderful juice could aid in the curing, mitigation, treatment, or prevention of disease.

In addition, the FTC ruled that POM Wonderful used deceptive advertising because these claims were not substantiated. According to the FTC, POM Wonderful based these claims on evidence that the company distorted and which was eventually refuted. Nevertheless, POM Wonderful had maintained that pomegranate juice lowers the risks of heart disease, erectile dysfunction, and prostate cancer. Its advertisements included phrases such as "Amaze Your Cardiologist" and "Drink to Prostate Health" and were placed in *Parade*, *Fitness*, and *The New York Times*. They were also placed on price tags and websites including pomwonderful.com, pompills.com, and pomegranatetruth.com.

The FTC found POM Wonderful guilty of violating the Federal Trade Commission Act (FTCA) by making deceptive claims in 36 advertisements and promotions. The FTC also accused the firm of making unsubstantiated efficacy claims—or suggesting that the product works as advertised—as well as establishment claims—claims that a product's benefits and superiority have been scientifically established. The FTC forbade the company from making any claims that its products

were “effective in the diagnosis, cure, mitigation, treatment, or prevention of any disease” unless substantiated by two randomized and controlled human clinical trials. The goal of the FTC is to crack down on food and dietary supplement manufacturers that make misleading claims upon which consumers depend. The FTC desires to adopt the more stringent standards of FDA in approving new drug products to hold food and dietary supplement makers more accountable for the protection of consumers.

POM Wonderful appealed the ruling, and the case was taken to the U.S. Court of Appeals for the D.C. Circuit. One of POM Wonderful’s claims is that it would be too burdensome to conduct clinical trials. After examining the case, the court upheld most of the FTC’s ruling. It claimed that POM Wonderful must have substantiation before making its disease-prevention claims.

However, POM Wonderful did achieve one partial victory. The court determined that the FTC’s requirement of two randomized and controlled human clinical trials was excessive, and that one clinical trial was enough because it could provide valuable health information. The court based its decision on the *Central Hudson Scrutiny* test, which requires “the government, when attempting to restrict commercial speech, to prove that the interest it asserts in regulating the commercial speech is substantial, that the means the government uses to regulate speech directly advance the governmental interest asserted, and that those means are no more extensive than necessary to serve the interest.” The court also ruled that these trials do not necessarily have to meet the same rigorous standards as randomized and controlled human clinical trials and suggested that these stringent criteria might violate POM Wonderful’s First Amendment rights.

Although it is important that companies maintain truthful and transparent communication, some believe the lawsuit against POM Wonderful was excessive. Research suggests that pomegranates are healthy, full of antioxidants, vitamin K, and potassium. Unlike drugs, which could have a harmful impact and should be studied with multiple human clinical trials, there is no evidence that pomegranate juice is potentially harmful. Therefore, critics say that the idea that must go through human clinical trials should not necessarily apply. There is also some evidence that pomegranates can help prevent heart disease. Nevertheless, the FTC believes it necessary to ensure that consumers are getting truthful information regarding health claims of the products they consume.

The decision has important implications for consumers and marketers. For marketers the POM Wonderful decision highlights the type of evidence the FTC will accept in order to make health and nutrition claims on its packaging. It might also impact consumer class-action lawsuits, who can allege that a product’s health claims are misleading if not supported by substantiated studies.

CONCLUSIONS

A healthy diet is becoming increasingly important for consumers, especially women aged 25-35. As a result, they are taking active steps to ensure they are eating healthy but are also looking for other traits, including convenience, natural ingredients, and sensory appeals in order to achieve their nutritional targets. This has created a market opportunity for POM Wonderful to sell an exotic product at a premium price filled with antioxidants, potassium, and other healthy ingredients.

Of course, the market success of any product attracts more competitors to the market segment, either with products made with active ingredients or products with added nutrients to help improve consumer health. POM Wonderful has proactively guarded its market share. Its lawsuit against Coca-Cola's Minute Maid product also shows it is not willing to cede market share without a fight, particularly if the name of the rival product suggests ingredients that are not there.

On the other hand, the FTC ruled that POM Wonderful was guilty of false advertising with its health-related claims. Because it did not conduct human trials, the claims that pomegranate juice can help fight prostate cancer and prevent heart disease cannot be substantiated, according to the FTC. This ruling will have a broad impact on the food industry, and food companies will need to be more careful with their product labeling. It remains to be seen how it will affect POM Wonderful now that it cannot make these advertising claims without human trials. However, if the interest in pomegranates continues to remain high, then POM Wonderful is likely to get past these challenges and persist in its market success.

QUESTIONS

1. Is there any difference in potential deception between Coca-Cola's advertisers and POM Wonderful's advertising?
2. Why does the FTC want food and supplement makers' claims about the health impact of their products to be substantiated with clinical trials?
3. Do you feel that POM Wonderful—a product with known health attributes—should be subjected to the same scrutiny as drug companies if it wants to make health claims about its product?

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