

Consumer Protection Advertising Alert

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FTC “Pomels” POM Wonderful and Other Companies for Making Allegedly False and Misleading Health Claims

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The Federal Trade Commission’s (FTC’s) recent enforcement initiatives on health claims may be heading for a showdown. On September 27, 2010, the FTC issued a particularly detailed 25-page administrative complaint charging POM Wonderful LLC, sister corporation Roll International Corp., and principals Stewart Resnick, Lynda Resnick, and Matthew Tupper with false and misleading health claims. The allegedly misleading ads appeared in national publications such as *The New York Times* and *Prevention* magazines, on various websites, and elsewhere. The FTC claimed that POM Wonderful’s scientific research failed to support the company’s claims that its products can prevent heart disease, prostate cancer, and erectile dysfunction.

In its accompanying press release, the FTC characterized the case as “part of its ongoing efforts to uncover over-hyped health claims in food advertising.” David Vladeck, Director of the FTC’s Bureau of Consumer Protection, said, “[w]hen a company touts scientific research in its advertising the research must squarely support the claims made.”

The POM Wonderful action continues the FTC’s recent record of enforcement against companies such as Nestle and Kellogg over unsubstantiated marketing claims about the health benefits of their products.

The FTC’s Complaint

In its administrative complaint, the FTC alleged that POM Wonderful’s heart disease claims were false and unsubstantiated because many of the scientific studies conducted by POM Wonderful did not show a significant difference between consumption of pomegranate juice and a control beverage on measures of cardiovascular function. The complaint alleged that the prostate cancer claims were unsubstantiated because, among other things, POM Wonderful did not rely on a study that was controlled. Finally, the complaint alleged that the erectile dysfunction claims were false and unsubstantiated because the studies failed to show that POM Wonderful was any more effective than a placebo.

The statements made in POM Wonderful advertising being challenged include:

“SUPER HEALTH POWERS!...100% PURE POMEGRANATE JUICE...Backed by \$25 million in medical research. Proven to fight for cardiovascular, prostate and erectile health.”

“NEW RESEARCH OFFERS FURTHER PROOF OF THE HEART-HEALTHY BENEFITS OF POM WONDERFUL JUICE. 30% DECREASE IN ARTERIAL PLAQUE...17% IMPROVED BLOOD FLOW...PROMOTES HEALTHY BLOOD VESSELS....

“Clinical studies prove that POM Juice and POMx prevent, reduce the risk of, and treat prostate cancer, including by prolonging prostate-specific antigen doubling time;

“Clinical studies prove that POM Juice prevents, reduces the risk of, and treats, erectile dysfunction.”

The proposed order against POM Wonderful would require that the company receive pre-approval from the FDA before making future claims that its products can prevent or treat serious diseases. Generally, however, FDA approval of health claims is not required for compliance with the FTC Act. The proposed order would also prohibit POM Wonderful from making any other health claims about its products without what the FTC considers to be competent and reliable scientific evidence.

The case will be initially tried before an administrative law judge. The administrative law judge’s decision may be appealed to a five-person FTC panel and ultimately to the federal court of appeals.

As the FTC acknowledges, the Commission has launched an aggressive enforcement effort against food claims. It previously challenged claims by Kellogg that breakfast cereal Frosted Mini-Wheats is “clinically shown to improve kids’ attentiveness by nearly 20%” and that Rice Krispies cereal “now helps support your child’s immunity.” The FTC also challenged Nestle’s claim that Boost Kid Essentials drink contains “probiotics clinically shown to help strengthen the immune system.”

None of those cases were adjudicated to a decision that tests, upholds, or modifies the standard the FTC staff appears to be applying to food health claims’ evidence. POM, at least for now, appears to be gearing up for a fight. The case may provide the vehicle ultimately for a decision, as opposed to a complaint and consent decree.

Settlement Reached in Related Case

The FTC also filed a supplementary complaint against Mark Dreher, POM Wonderful’s former head of scientific and regulatory affairs and its expert endorser. Dreher has settled with the FTC. The settlement bars him from making any disease treatment or prevention claims in advertising for a POM Wonderful product unless the claim comports with FDA requirements and is not misleading. It is unusual for the FTC to pursue an action against a researcher, but its action sends a clear message that researchers who also provide endorsements are not beyond FTC scrutiny.

Please contact any of the attorneys in our [Antitrust and Federal Regulation practice](#) if you would like a copy of the FTC’s complaint or if you would like to discuss the FTC enforcement efforts against health claims in food advertising, or, more generally, how advertising regulations can affect your business.

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