

## Beverages

### • Class Certified Against Juice Maker In Suit Contesting Purported Health Benefits



By Tiffany Friesen Milone

A class of consumers challenging assertions by POM Wonderful LLC that its juice products have a variety of health benefits supported by “tens of millions of dollars in medical research” was certified Sept. 28 by a federal district court in California (*Pom Wonderful LLC Marketing and Sales Practices Litigation, In re*, C.D. Cal., No. 2:10-ml-02199-DDP-RZ, 9/28/12).

The consumer class alleges that POM's advertising violated California's False Advertising Law (FAL), Cal. Bus. & Prof. Code §17500 et seq, California's Unfair Competition Law (UCL), Cal. Bus. & Prof. Code §17200 et seq., and California's Consumer Legal Remedies Act (CLRA), Cal. Civ. Code §1750 et seq.

On the motion to certify the class, Judge Dean D. Pregerson of the U.S. District Court for the Central District of California initially addressed POM's argument that certification was improper because none of the state statutes at issue could be applied to a nationwide class under the recent decision by the U.S. Court of Appeals for the Ninth Circuit in *Mazza v. Am. Honda Motor Corp.*, 666 F.3d 581, 589 (9th Cir. 2012).

#### Ninth Circuit Case Distinguished

But the court here distinguished this suit from *Mazza*. In this case, the court said, the plaintiffs demonstrated that POM is headquartered and located solely in California, where it also developed its marketing strategies and produced all its pomegranate products.

The burden consequently, the court said, shifted to POM to show that state laws other than California's should apply. POM did not satisfy that burden, the court held.

While the company listed each state's consumer protection laws and summarized their elements in a footnote, POM failed to specify which of those laws differed from California's statutes.

In the absence of a conflict, POM “necessarily fails to carry its burden to demonstrate that the interests of any foreign jurisdiction outweigh California's interest in applying its own consumer protection laws to the facts of this case,” the court concluded.

Further, the certification motion was not defeated by POM's assertion that, because it used several different advertisements to convey the challenged message, individual inquiry will be required as to which putative class members saw which advertisements.

The court found that the use of multiple advertisements was not dispositive because material misrepresentations were allegedly made to the entire class, and thus “an inference of reliance arises as to the entire class.”

It cited in support *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013 (9th Cir. 2011).

The court concluded that the remaining certification requirements had been met under Fed. R. Civ. P. 23(a) and 23(b) and granted the motion for class certification.

In May, an administrative law judge with the Federal Trade Commission issued an initial decision calling for a cease and desist order against POM and its affiliates related to certain statements about its products.

The ALJ found that the companies had made deceptive and false claims in advertising that the POM Wonderful 100% Pomegranate Juice and POMx supplements would treat, prevent, or reduce the risk of heart disease, prostate cancer, and erectile dysfunction—*In re POM Wonderful LLC*, FTC, Dkt. No. 9344, 5/17/12.

Counsel for plaintiffs in the class suit include Alan M. Manfield of The Consumer Law Group in San Diego; Behram V. Parekh, Heather Marie Baker, and Michael L. Kelly of Kirtland & Packard LLP in El Segundo, Cal.; and Joe R. Whatley Jr. of Whatley Drake & Kallas LLC in New York.

Counsel for defendant were Alicia D. Mew, Daniel A. Beck, Kristina M. Diaz, Matthew David Moran, and Michelle Chen-Yu Lee of the

Roll Law Group PC in Los Angeles; Sean A. Commons of Sidley Austin LLP in Los Angeles; and Theodore R. Scarborough Jr. of Sidley Austin LLP in Chicago.

**For More Information**

The court's decision is at <http://op.bna.com/atr.nsf/r?Open=tmie-8ypkdl>.