

Pomegranate Juice Unfair Competition Claims Headed for Trial

Two pomegranate juice competitors lost their summary judgment motions, sending their mutual unfair competition claims further on the road to trial. The claims in Pom Wonderful, LLC v. Organic Juice USA, Inc., 2011 U.S. Dist. LEXIS 1534, depend on each parties' assertions that the other is less than truthful in classifying its juice as 100% pure. The motions focused on Organic Juice's allegations that Pom's failure to mention its juice being from concentrate in its print ads and website (but still printed on the bottle) was an effort to deceive consumers.

Competing Expert Reports

The court devotes much of its opinion to evaluating Organic Juice's expert report. In a false advertising claim, the disputed advertising material does not have to be literally false, but can tend to mislead or confuse customers to be actionable. To prove an advertisement is misleading, a plaintiff will often depend on expert consumer surveys. A judge's own perception of whether the advertisement is misleading is "irrelevant and insufficient."

While many instances of expert testimony will be precluded where the expert used erroneous methodology, expert surveys are treated differently. Errors in survey methodology will speak to the weight given to expert's conclusions based on the survey – not necessarily to the question of admissibility. The parties are then free to argue whose survey is more credible.

Factual Issues Raised by Survey Evidence

These survey rules proved to be the undoing of Pom's and Organic Juice's motions. A judge will not grant summary judgment if the parties dispute issues of fact. As the parties could dispute the validity of each other's expert surveys – the sole source of whether the ads were misleading – the case had to go to trial.

Beyond the use of expert surveys in unfair competition claims, this case also provides two small gems regarding strategic case planning. First, the aspects of the case you bring to a summary judgment motion, if too broad, are likely to be fatal to an application to have the court decide in your favor without a trial. Judges are very inclined to deny this type of motion – they can easily be overturned on appeal if they grant the motions and the path of least resistance for them is let the case be tried. Summary judgment can be an effective tool in deciding critical issues, but attempting to get rid of too much all at once all but makes that impossible.

Fee Award in Unfair Competition Claim

The final lesson from this case is, if you do nothing else, heed the judge's decisions. After the judge granted Organic Juice's motion to bring additional counterclaims months earlier, Pom moved to have them dismissed – using the same opposition that didn't work in the

first motion. Pom was slapped with Organic Juice's attorney's fees for making the frivolous motion.