




15-SECOND **ADVERTISING LAW ALERT**

COMPANY AND ITS PRESIDENT HELD LIABLE FOR FALSE “100% JUICE” CLAIM

 company and its president were held jointly and severally liable for more than a million dollars last week for falsely advertising adulterated fruit juice.*

BACKGROUND

“Purely Juice” company claimed its product was “100% Pomegranate Juice” with “No Sugar Added.” It also made health claims based on pure pomegranate juice antioxidant levels.

The product was sold at prices well below those of the market leader, which brought a false advertising suit under the federal Lanham Act and state law.

The judge, apparently blessed with a very high threshold for pomegranate information, conducted a seven-day bench trial and then reopened the matter for further expert testimony.

Extensive testing showed that Purely Juice’s product flunked all the major methods for determining pure pomegranate juice.

Absent was the distinctive profile for the anthocyanin antioxidant that helps give the fruit its red color.

Present was sucrose (table sugar) and corn syrup.

DECISION

The court found the “100 %” and “No sugar” claims to be literally false. They were held to be material because they went to the nature of the product and they implicated the pure juice’s healthful properties for which consumers paid a premium.

Plaintiff was awarded damages for its lost profits. Purely Juice also was ordered to disgorge its profits to Plaintiff on the theory that the defendant would not have made such profits without the false claims.

Purely Juice’s president, as an individual, was found to be jointly and severally liable to Plaintiff due to his direct involvement in manufacturing and marketing the adulterated product.■

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* *POM Wonderful LLC v. Purely Juice, Inc., et al.*, D. C. Cal. CV-07-02633 CAS (July 17, 2008).