



15-SECOND

## ADVERTISING LAW ALERT

# COMPANY AND ITS PRESIDENT LIABLE FOR FALSE ADVERTISING DAMAGES, COSTS

A reminder to corporate officers that their personal knowledge of, and involvement in, false advertising can lead to strict personal liability under the Lanham Act was issued recently by the Court of Appeals for the Ninth Circuit.\*

### BACKGROUND

Defendant company marketed “100%” pomegranate juice with “no added sugar.” The competing Plaintiff sued that company and its president under the Lanham Act and state law, alleging that Defendants knew or should have known these claims were false.

Defendants chose brokers simply by talking to them, not investigating them, and their broker accepted juice from suppliers based only on the suppliers’ certification of its content.

An internal memorandum about tests of the juice and known prices for 100% pomegranate juice put Defendants on notice that the company was being supplied with cheaper, adulterated juice, the trial

court found. Yet, Defendant did not investigate or change the claims to the contrary that its President authorized and directed be used.

The trial court found Defendant and its president jointly liable for false advertising under the Act. It awarded Plaintiff \$1,192,905 in damages, \$305,137 in ill-gotten profits, and \$622,755 in legal costs.

### DECISION

The Ninth Circuit affirmed on the law and facts. It noted that proving intent to falsely advertise was not required under the Lanham Act.

Nonetheless, the continuation of the claims after being informed of the juice content test results showed that Defendants knew or should have known the claims were false.

Defendant president “is liable under the Lanham act for torts which he authorizes or directs or in which he participates, notwithstanding that he acted as an agent of the corporation and not on his own behalf.”\*\*

**Richard J. Leighton: 202-434-4220**  
**[Leighton@khlaw.com](mailto:Leighton@khlaw.com)**

\* *POM Wonderful LLC v. Purely Juice, Inc. and Paul Hachigan*, No. 08-56377 (Dec. 28, 2009 – Unpublished).

\*\* Internal quotations and citations omitted.