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D.C. Circuit Affirms FTC's False Advertising Ruling Against POM Wonderful

POM Wonderful, LLC v. Federal Trade Commission, No. 13-1060 (D.C. Cir.): The D.C. Circuit Court of Appeals recently affirmed a Federal Trade Commission ruling that POM Wonderful used deceptive, unsubstantiated claims in advertising the health benefits of its pomegranate products. In a 2013 administrative ruling, the FTC found that POM made deceptive claims in ads and promotional materials regarding the ability of its pomegranate products to treat, prevent, or reduce the risk of certain diseases, including prostate cancer, heart disease, and erectile dysfunction. For example, one POM advertisement claimed that consuming a glass of POM Wonderful 100% pomegranate juice every day can reduce plaque in arteries by up to 30 percent. While POM argued it had conducted multiple studies and questionnaires to support its claims about the health benefits of its products, the FTC found that POM had cherry-picked favorable results and ignored unfavorable ones. The FTC ruled that disease-related advertising claims must be substantiated by "competent and reliable scientific evidence," specifically the same kind of double-blind, randomized, controlled clinical trials ("RCTs") that are used to study pharmaceuticals. Affirming the FTC's ruling, the D.C. Circuit held that POM's advertisements were "false and misleading" under the FTC Act because they were not supported by "competent and reliable scientific evidence." The D.C. Circuit also upheld the FTC's holding that, for purposes of POM's disease-related claims, "competent and reliable scientific evidence" requires statistically significant results from an RCT. The decision noted that "the need for RCTs [was] driven by specific type of claims that POM had "chosen to make." That is, because POM's advertisements had "claimed a scientifically established, causal link between its products and various disease-related benefits," POM was bound to provide a correspondingly specific degree of scientific corroboration, which, according to the court, meant at least one RCT. By contrast, a less specific advertising claim about a product's benefit might require a lower level of substantiation than an RCT. Rejecting POM's concerns about the cost of RCTs compared to other scientific studies, the court noted, "if the cost of an RCT provides prohibitive, [companies] can choose to specify a lower level of substantiation for their claims." The D.C. Circuit, however, rejected the FTC's argument that POM needed at least *two* RCTs to substantiate its disease-related advertising claims. Acknowledging that the First Amendment protects companies' rights to advertise their products, the court found the FTC had failed "adequately to justify a categorical floor of two RCTs for any and all disease claims." Such a requirement could deny consumers useful, truthful information about products with a demonstrated capacity to treat or prevent serious disease. The D.C. Circuit thus upheld the FTC order "to the extent it requires disease claims to be substantiated by at least one RCT," but reversed "insofar as it categorically requires two RCTs for all disease-related [advertising] claims." [Order](#).

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