

Supreme Court Considers Pom Wonderful, Coca-Cola Juice Case

SAM HANANEL, Associated Press

WASHINGTON (AP) — Count Supreme Court Justice Anthony Kennedy among consumers who feel misled by a beverage called "Pomegranate Blueberry Flavored Blend of 5 Juices."

The drink was the subject of a lively debate Monday as the high court considered whether to allow [false advertising claims](#) [1] against the [Coca-Cola Co.](#) [2], which markets the beverage under its Minute Maid unit.

Juice maker [Pom Wonderful](#) [3], which sells its own line of pomegranate juice blends, says the label is misleading because 99 percent of its competitor's juice is either apple or grape.

"Don't make me feel bad because I thought this was pomegranate juice," Kennedy told Coke's lawyer, Kathleen Sullivan, as laughter erupted in the court.

"He sometimes doesn't read closely enough," Justice Antonin Scalia chimed in to more laughter.

Sullivan argued that Pom's lawsuit should not be allowed to go forward because Coke's label fully complies with the federal Food and Drug Administration's regulations. Those regulations were approved in the interest of national uniformity, she said, and preclude competitors from bringing false advertising claims under conflicting federal trademark laws.

But Kennedy was having none of it. He asked whether the national uniformity argument is furthered in allowing "labels that cheat the consumer like this one did."

"I think it's relevant to ask whether people are cheated in buying this product," Kennedy said.

At the same time, Pom separately is battling its own misleading advertising case against the federal government. A Federal Trade Commission judge ruled in 2012 that Pom used deceptive advertising when claiming that its pomegranate juice could treat or prevent heart disease, prostate cancer and other illnesses. Pom has appealed that case, and the U.S. Court of Appeals for the D.C. Circuit is set to hear arguments May 2.

But at the high court Monday, Pom's challenge to Coke's drink label appeared to be winning over the justices. Chief Justice John Roberts said he didn't see why a label couldn't comply with FDA regulations but still be challenged as misleading to consumers for different reasons.

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Published on Food Manufacturing (<http://www.foodmanufacturing.com>)

Sullivan said it would be a "logistical nightmare" for food companies to have to change labels in response to every private lawsuit. She asserted that Congress believed the FDA was in the best position to enforce label requirements.

Justice Ruth Bader Ginsburg noted that the FDA is a busy agency and doesn't have much time to police juice labels. Ginsburg questioned whether Congress intended to preclude private false advertising claims.

"It's really very hard to conceive that Congress would have done that," Ginsburg said.

The case is being closely watched by the food and beverage industry, which is concerned that a broad ruling in favor of Pom could open the door to more litigation against food companies and create uncertainty about label requirements.

Pom is credited with having started the pomegranate craze that has spread to everything from smoothies to salad dressings. It sells bottled pomegranate juice and other juice blends, including a pomegranate-blueberry juice blend. But it began losing market share in 2007 after Coke introduced its "Pomegranate Blueberry Flavored Blend of 5 Juices" drink.

The drink's label shows the words "Pomegranate Blueberry" in much larger type than the rest of the phrase, and Pom filed a lawsuit complaining that the product contained only 0.3 percent pomegranate and 0.2 percent blueberry juice. It also includes a prominent picture of large pomegranate set among other fruits.

The 9th U.S. Circuit Court of Appeals ruled in favor of Coke, finding that food labeling laws preclude private lawsuits under trademark law.

Pom attorney Seth Waxman argued that federal food and drug laws are "a floor and not a ceiling" and do not prevent false advertising claims.

"What's misleading consumers here is they have no way on God's green earth of telling that the total amount of blueberry and pomegranate juice in this product can be dispensed with a single eyedropper," Waxman said. "It amounts to a teaspoon in a half gallon."

Appearing for the Obama administration, Justice Department lawyer Melissa Sherry adopted a middle ground. She said federal food and drug law precludes Pom from challenging the name of the drink because FDA regulations specifically allow labels like the one Coke used when products contain juice blends. But she said Pom's challenge to the presentation of the juice's name and other aspects of the label not addressed by FDA law or regulations should be permitted.

Justice Stephen Breyer is taking no part in consideration of the case. If there were to be a 4-4 split among the remaining justices, the lower court ruling in Coke's favor would stand.

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The case is Pom Wonderful v. the Coca-Cola Co., 12-761.

Source URL (retrieved on 04/28/2015 - 6:44am):

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